

**VOLUME 7**  
**Titles 71 through 83**

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**2008**  
**REVISED CODE OF WASHINGTON**

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Containing all laws of a general and permanent nature through the 2008 regular session, which adjourned sine die March 13, 2008.

# REVISED CODE OF WASHINGTON

2008 Edition

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## CERTIFICATE

The 2008 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



MARTY BROWN, Chair  
STATUTE LAW COMMITTEE

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## PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

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# Title 71

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**71.02.490 Authority over patient—Federal agencies, private establishments.** The United States veterans’ administration, or other United States government agency, or the chief officer of a private facility shall have the same powers as are conferred upon the superintendent of a state hospital with reference to retention, transfer, parole, or discharge of mentally ill persons ordered hospitalized in their facilities. [1959 c 25 § 71.02.490. Prior: 1951 c 139 § 26.]

(2008 Ed.)

*Commitment to veterans’ administration or other federal agency: RCW 73.36.165.*

**71.02.900 Construction and purpose—1959 c 25.** The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 25 § 71.02.900. Prior: 1951 c 139 § 1; 1949 c 198 § 1; Rem. Supp. 1949 § 6953-1.]

### Chapter 71.05 RCW

#### MENTAL ILLNESS

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**Rules of court:** Cf. *Superior Court Mental Proceedings Rules (MPR)*.

**Reviser's note:** The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

*Council for children and families: Chapter 43.121 RCW.*

*Implementation of chapter through regional support networks: RCW 71.24.310.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

**71.05.010 Legislative intent.** The provisions of this chapter are intended by the legislature:

- (1) To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
- (2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
- (3) To safeguard individual rights;
- (4) To provide continuity of care for persons with serious mental disorders;
- (5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;
- (6) To encourage, whenever appropriate, that services be provided within the community;
- (7) To protect the public safety. [1998 c 297 § 2; 1997 c 112 § 2; 1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

**Effective dates—1998 c 297:** "This act takes effect July 1, 1998, except for sections 18, 35, 38, and 39 of this act, which take effect March 1, 1999." [1998 c 297 § 53.]

**Severability—1998 c 297:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 297 § 58.]

**Intent—1998 c 297:** "It is the intent of the legislature to: (1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; (2) improve and clarify the sharing of information between the mental health and criminal justice systems; and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system.

The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment." [1998 c 297 § 1.]

**71.05.012 Legislative intent and finding.** It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in *In Re LaBelle* 107 Wn. 2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to restore the person to or maintain satisfactory functioning.

For persons with a prior history or pattern of repeated hospitalizations or law enforcement interventions due to decompensation, the consideration of prior mental history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.

Therefore, the legislature finds that for persons who are currently under a commitment order, a prior history of decompensation leading to repeated hospitalizations or law enforcement interventions should be given great weight in determining whether a new less restrictive alternative commitment should be ordered. [1997 c 112 § 1.]

**71.05.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Admission" or "admit" means a decision by a physician or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed by the department of health and certified by the department of social and health services under RCW 71.24.035, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Designated chemical dependency specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in chapters 70.96A and 70.96B RCW;

(10) "Designated crisis responder" means a mental health professional appointed by the county or the regional support network to perform the duties specified in this chapter;

(11) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter;

(12) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(13) "Developmental disabilities professional" means a person who has specialized training and three years of experience in directly treating or working with persons with developmental disabilities and is a psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

(14) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(15) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(16) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(17) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

(18) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(19) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

(20) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(21) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(22) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(23) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(24) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(25) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(26) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(27) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(28) "Professional person" means a mental health professional and shall also mean a physician, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(29) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(30) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(31) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(32) "Public agency" means any evaluation and treatment facility or institution, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with mental illness, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(33) "Registration records" include all the records of the department, regional support networks, treatment facilities,

and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness;

(34) "Release" means legal termination of the commitment under the provisions of this chapter;

(35) "Resource management services" has the meaning given in chapter 71.24 RCW;

(36) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(37) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(38) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others;

(39) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2008 c 156 § 1. Prior: 2007 c 375 § 6; 2007 c 191 § 2; 2005 c 504 § 104; 2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3; prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Alphabetization—Correction of references—2005 c 504:** "(1) The code reviser shall alphabetize and renumber the definitions, and correct any internal references affected by this act.

(2) The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 504 § 811.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.025 Integration with chapter 71.24 RCW—Regional support networks.** The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by \*county-designated mental health professionals and evaluation and treatment facilities to assure that determina-

tions to admit, detain, commit, treat, discharge, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services. [2000 c 94 § 2; 1989 c 205 § 9.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Evaluation of transition to regional systems—1989 c 205:** See note following RCW 71.24.015.

**71.05.026 Regional support networks contracts—Limitation on state liability.** (1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after March 29, 2006, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents, or employees. [2006 c 333 § 301.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**71.05.027 Integrated comprehensive screening and assessment for chemical dependency and mental disorders.** (1) Not later than January 1, 2007, all persons providing treatment under this chapter shall also implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders adopted pursuant to RCW 70.96C.010 and shall document the numbers of clients with co-occurring mental and substance abuse disorders based on a quadrant system of low and high needs.

(2) Treatment providers and regional support networks who fail to implement the integrated comprehensive screening and assessment process for chemical dependency and mental disorders by July 1, 2007, shall be subject to contractual penalties established under RCW 70.96C.010. [2005 c 504 § 103.]

**Findings—Intent—2005 c 504:** "The legislature finds that persons with mental disorders, chemical dependency disorders, or co-occurring mental and substance abuse disorders are disproportionately more likely to be confined in a correctional institution, become homeless, become involved with child protective services or involved in a dependency proceeding, or lose those state and federal benefits to which they may be entitled as a result of their disorders. The legislature finds that prior state policy of addressing mental health and chemical dependency in isolation from each other has not been cost-effective and has often resulted in longer-term, more costly treatment that may be less effective over time. The legislature finds that a substantial number of persons have co-occurring mental and substance abuse disorders and that identification and integrated treatment of co-occurring dis-

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orders is critical to successful outcomes and recovery. Consequently, the legislature intends, to the extent of available funding, to:

(1) Establish a process for determining which persons with mental disorders and substance abuse disorders have co-occurring disorders;

(2) Reduce the gap between available chemical dependency treatment and the documented need for treatment;

(3) Improve treatment outcomes by shifting treatment, where possible, to evidence-based, research-based, and consensus-based treatment practices and by removing barriers to the use of those practices;

(4) Expand the authority for and use of therapeutic courts including drug courts, mental health courts, and therapeutic courts for dependency proceedings;

(5) Improve access to treatment for persons who are not enrolled in Medicaid by improving and creating consistency in the application processes, and by minimizing the numbers of eligible confined persons who leave confinement without medical assistance;

(6) Improve access to inpatient treatment by creating expanded services facilities for persons needing intensive treatment in a secure setting who do not need inpatient care, but are unable to access treatment under current licensing restrictions in other settings;

(7) Establish secure detoxification centers for persons involuntarily detained as gravely disabled or presenting a likelihood of serious harm due to chemical dependency and authorize combined crisis responders for both mental disorders and chemical dependency disorders on a pilot basis and study the outcomes;

(8) Slow or stop the loss of inpatient and intensive residential beds and children's long-term inpatient placements and refine the balance of state hospital and community inpatient and residential beds;

(9) Improve cross-system collaboration including collaboration with first responders and hospital emergency rooms, schools, primary care, developmental disabilities, law enforcement and corrections, and federally funded and licensed programs;

(10) Following the receipt of outcomes from the pilot programs in Part II of this act, if directed by future legislative enactment, implement a single, comprehensive, involuntary treatment act with a unified set of standards, rights, obligations, and procedures for adults and children with mental disorders, chemical dependency disorders, and co-occurring disorders; and

(11) Amend existing state law to address organizational and structural barriers to effective use of state funds for treating persons with mental and substance abuse disorders, minimize internal inconsistencies, clarify policy and requirements, and maximize the opportunity for effective and cost-effective outcomes." [2005 c 504 § 101.]

**Severability—2005 c 504:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 504 § 807.]

**Application—Construction—2005 c 504:** "This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it." [2005 c 504 § 808.]

**Captions, part headings, subheadings not law—2005 c 504:** "Captions, part headings, and subheadings used in this act are not part of the law." [2005 c 504 § 809.]

**Adoption of rules—2005 c 504:** "(1) The secretary of the department of social and health services may adopt rules as necessary to implement the provisions of this act.

(2) The secretary of corrections may adopt rules as necessary to implement the provisions of this act." [2005 c 504 § 812.]

**Effective dates—2005 c 504:** "(1) Except for section 503 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005.

(2) Section 503 of this act takes effect July 1, 2006." [2005 c 504 § 813.]

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.030 Commitment laws applicable.** Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW, chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW

72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1998 c 297 § 4; 1985 c 354 § 31; 1983 c 3 § 179; 1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Severability—Effective date—1985 c 354:** See RCW 71.34.900 and 71.34.901.

**71.05.032 Joinder of petitions for commitment.** A petition for commitment under this chapter may be joined with a petition for commitment under chapter 70.96A RCW. [2005 c 504 § 115.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.** Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm: Provided however, That persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone. [2004 c 166 § 2; 1997 c 112 § 4; 1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

**Severability—2004 c 166:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 166 § 23.]

**Effective dates—2004 c 166:** "This act takes effect July 1, 2004, except for sections 6, 20, and 22 of this act, which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 26, 2004]." [2004 c 166 § 24.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.** Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate discharge, and further advised of such rights in writing as are secured to them pursuant to this

chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment or possible discharge, at which time they shall again be advised of their right to discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the \*county designated mental health professional of such person's condition to enable the \*county designated mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the \*county designated mental health professional of such person's condition to enable the \*county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the \*county designated mental health professional is necessary. [2000 c 94 § 3; 1998 c 297 § 6; 1997 c 112 § 5; 1979 ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.100 Financial responsibility.** In addition to the responsibility provided for by RCW 43.20B.330, any person, or his or her estate, or his or her spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his or her family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department shall, pursuant to chapter 34.05 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship, and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department

services and facilities shall continue to be as provided in RCW 43.20B.320 through 43.20B.360 and 43.20B.370. [1997 c 112 § 6; 1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**71.05.110 Compensation of appointed counsel.** Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in \*RCW 71.05.320(2). [1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.120 Exemptions from liability.** (1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any \*county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2000 c 94 § 4; 1991 c 105 § 2; 1989 c 120 § 3; 1987 c 212 § 301; 1979 ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.130 Duties of prosecuting attorney and attorney general.** In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or

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detention and shall defend all challenges to such commitment or detention: PROVIDED, That the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention. [1998 c 297 § 7; 1991 c 105 § 3; 1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.132 Court-ordered treatment—Required notifications.** When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's mental health treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision, under RCW 71.05.445. Upon a petition by a person who does not have a history of one or more violent acts, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 12.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.135 Mental health commissioners—Appointment.** In each county the superior court may appoint the following persons to assist the superior court in disposing of its business: PROVIDED, That such positions may not be created without prior consent of the county legislative authority:

- (1) One or more attorneys to act as mental health commissioners; and
- (2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law. [1993 c 15 § 2; 1991 c 363 § 146; 1989 c 174 § 1.]

**Effective date—1993 c 15:** See note following RCW 26.12.050.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1989 c 174:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 174 § 4.]

**71.05.137 Mental health commissioners—Authority.** The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed

pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 2.]

**Severability—1989 c 174:** See note following RCW 71.05.135.

**71.05.140 Records maintained.** A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated. [1973 1st ex.s. c 142 § 19.]

**71.05.145 Dangerous mentally ill offenders—Less restrictive alternative.** The legislature intends that, when evaluating a person who is identified under RCW 72.09.370(7), the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment. [1999 c 214 § 4.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure.** (1) When a designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility or in a crisis stabilization unit.

(2)(a) An order to detain to a designated evaluation and treatment facility for not more than a seventy-two-hour evaluation and treatment period may be issued by a judge of the superior court upon request of a designated mental health

professional, whenever it appears to the satisfaction of a judge of the superior court:

(i) That there is probable cause to support the petition; and

(ii) That the person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(3) The designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated mental health professional may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention. [2007 c 375 § 7; 1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Captions not law—2007 c 375:** See note following RCW 10.77.084.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.153 Emergent detention of persons with mental disorders—Procedure.** (1) When a designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the designated mental health professional may take such per-

son, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(2) A peace officer may take or cause such person to be taken into custody and immediately delivered to a crisis stabilization unit, an evaluation and treatment facility, or the emergency department of a local hospital under the following circumstances:

(a) Pursuant to subsection (1) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(3) Persons delivered to a crisis stabilization unit, evaluation and treatment facility, or the emergency department of a local hospital by peace officers pursuant to subsection (2) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the designated mental health professional must determine whether the individual meets detention criteria. If the individual is detained, the designated mental health professional shall file a petition for detention or a supplemental petition as appropriate and commence service on the designated attorney for the detained person. [2007 c 375 § 8.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Captions not law—2007 c 375:** See note following RCW 10.77.084.

**71.05.157 Evaluation by designated mental health professional—When required—Required notifications.**

(1) When a designated mental health professional is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated mental health professional and the department of corrections of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated mental health professional detains a person under this chapter, the designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or

other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated mental health professional to provide offender supervision.

(6) No jail or state correctional facility may be considered a less restrictive alternative to an evaluation and treatment facility. [2007 c 375 § 9; 2005 c 504 § 507; 2004 c 166 § 16.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.160 Petition for initial detention.** Any facility receiving a person pursuant to RCW 71.05.150 or 71.05.153 shall require the designated mental health professional to prepare a petition for initial detention stating the circumstances under which the person's condition was made known and stating that there is evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150 or 71.05.153, on the next judicial day following the initial detention, the designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [2007 c 375 § 13; 1998 c 297 § 9; 1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.170 Acceptance of petition—Notice—Duty of state hospital.** Whenever the \*county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the \*county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW. [2000 c 94 § 5; 1998 c 297 § 10; 1997 c 112 § 11; 1989 c 205 § 10; 1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.180 Detention period for evaluation and treatment.** If the evaluation and treatment facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays. [1997 c 112 § 12; 1979 ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

**71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.** If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody. [1997 c 112 § 13; 1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

**71.05.210 Evaluation—Treatment and care—Release or other disposition.** Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or \*71.05.370, the individual may refuse psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pur-

suant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the \*\*county designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

**Reviser's note:** \*(1) RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.

\*\*\*(2) The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.212 Evaluation—Consideration of information and records.** Whenever a \*county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

In addition, when conducting an evaluation for offenders identified under RCW 72.09.370, the \*county designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [1999 c 214 § 5; 1998 c 297 § 19.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.214 Protocols—Development—Submission to governor and legislature.** The department shall develop statewide protocols to be utilized by professional persons and

\*county designated mental health professionals in administration of this chapter and chapter 10.77 RCW. The protocols shall be updated at least every three years. The protocols shall provide uniform development and application of criteria in evaluation and commitment recommendations, of persons who have, or are alleged to have, mental disorders and are subject to this chapter.

The initial protocols shall be developed not later than September 1, 1999. The department shall develop and update the protocols in consultation with representatives of \*county designated mental health professionals, local government, law enforcement, county and city prosecutors, public defenders, and groups concerned with mental illness. The protocols shall be submitted to the governor and legislature upon adoption by the department. [1998 c 297 § 26.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

#### **71.05.215 Right to refuse antipsychotic medicine—**

**Rules.** (1) A person found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder has a right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The department shall adopt rules to carry out the purposes of this chapter. These rules shall include:

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication.

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication by a psychiatrist, psychiatric advanced registered nurse practitioner, or physician in consultation with a mental health professional with prescriptive authority.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.217, the right to periodic review of the decision to medicate by the medical director or designee.

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician or psychiatric advanced registered nurse practitioner, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the attempt by the physician or psychiatric advanced registered nurse practitioner to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent. [2008 c 156 § 2; 1997 c 112 § 16; 1991 c 105 § 1.]

(2008 Ed.)

**Severability—1991 c 105:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 105 § 6.]

**71.05.217 Rights—Posting of list.** Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(3) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to pre-

pare for the hearing. The court may appoint a psychiatrist, psychiatric advanced registered nurse practitioner, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychiatric advanced registered nurse practitioner, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication.

(e) Any person detained pursuant to RCW 71.05.320(3), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in this subsection.

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician or psychiatric advanced registered nurse practitioner with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician or psychiatric advanced registered nurse practitioner with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances. [2008 c 156 § 3; 1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42. Formerly RCW 71.05.370.]

**Severability—1991 c 105:** See note following RCW 71.05.215.

**71.05.220 Property of committed person.** At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person.

For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1997 c 112 § 17; 1973 1st ex.s. c 142 § 27.]

**71.05.230 Procedures for additional treatment.** A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment. There shall be no fee for filing petitions for fourteen days of involuntary intensive treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The court has ordered a fourteen day involuntary intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [2006 c 333 § 302; 1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.232 Discharge reviews—Consultations, notifications required.** (1) When a state hospital admits a person for evaluation or treatment under this chapter who has a history of one or more violent acts and:

(a) Has been transferred from a correctional facility; or  
 (b) Is or has been under the authority of the department of corrections or the indeterminate sentence review board, the state hospital shall consult with the appropriate corrections and chemical dependency personnel and the appropriate forensic staff at the state hospital to conduct a discharge review to determine whether the person presents a likelihood of serious harm and whether the person is appropriate for release to a less restrictive alternative.

(2) When a state hospital returns a person who was reviewed under subsection (1) of this section to a correctional facility, the hospital shall notify the correctional facility that the person was subject to a discharge review pursuant to this section. [2004 c 166 § 18.]

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**71.05.235 Examination, evaluation of criminal defendant—Hearing.** (1) If an individual is referred to a designated mental health professional under RCW 10.77.088(1)(b)(i), the designated mental health professional shall examine the individual within forty-eight hours. If the designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.088(1)(b)(ii), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.088(1)(b)(ii), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recom-

mendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recommendation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.360 (8) and (9). [2008 c 213 § 5; 2005 c 504 § 708; 2000 c 74 § 6; 1999 c 11 § 1; 1998 c 297 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective date—1999 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 1, 1999, or upon approval by the governor, whichever occurs later [April 15, 1999]." [1999 c 11 § 2.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.237 Judicial proceedings—Court to enter findings when recommendations of professional person not followed.** In any judicial proceeding in which a professional person has made a recommendation regarding whether an individual should be committed for treatment under this chapter, and the court does not follow the recommendation, the court shall enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm. [1998 c 297 § 25.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.** If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also provide written notice that the person is barred from the possession of firearms.

[1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

**Severability—1992 c 168:** See note following RCW 9.41.070.

**71.05.245 Determination of likelihood of serious harm—Use of recent history evidence.** In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing. [1999 c 13 § 6; 1998 c 297 § 14.]

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.260 Release from involuntary intensive treatment—Exception.** (1) Involuntary intensive treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his or her professional designee, (a) the person no longer constitutes a likelihood of serious harm, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable. [1997 c 112 § 20; 1987 c 439 § 7; 1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

**71.05.270 Temporary release.** Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his or her professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate. [1997 c 112 § 21; 1973 1st ex.s. c 142 § 32.]

**71.05.280 Additional confinement—Grounds.** At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of

another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.086(4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime; or

(4) Such person is gravely disabled. [2008 c 213 § 6; 1998 c 297 § 15; 1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.285 Additional confinement—Prior history evidence.** In determining whether an inpatient or less restrictive alternative commitment under the process provided in RCW 71.05.280 and \*71.05.320(2) is appropriate, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety. [2001 c 12 § 1; 1997 c 112 § 23.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.290 Petition for additional confinement—Affidavit.** (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.086(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or

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fourteen day detention is required before such a petition may be filed. [2008 c 213 § 7; 1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of attorney, expert, or professional person.** (1) The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the designated mental health professional. The designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, the prosecuting attorney, and the regional support network administrator, and provide a copy of the petition to such persons as soon as possible. The regional support network administrator or designee may review the petition and may appear and testify at the full hearing on the petition.

(2) At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney and of his or her right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

(3) The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a person with a developmental disability who has been determined to be incompetent pursuant to RCW 10.77.086(4), then the appointed professional person under this section shall be a developmental disabilities professional.

(4) The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [2008 c 213 § 8; 2006 c 333 § 303; 1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment.** The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance

shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.360 (8) and (9).

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released. [2005 c 504 § 709; 1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.320 Remand for additional treatment—Duration—Committed persons with developmental disabilities—Grounds—Hearing.** (1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment: PROVIDED, That

(a) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department.

(b) If the committed person has a developmental disability and has been determined incompetent pursuant to RCW 10.77.086(4), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training of persons with developmental disabilities. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of persons with developmental disabilities. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible

persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(3) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and

heard in the same manner as provided in this subsection. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(4) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [2008 c 213 § 9; 2006 c 333 § 304; 1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**71.05.325 Release—Authorized leave—Notice to prosecuting attorney.** (1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released because a new petition for involuntary treatment has not been filed under \*RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county of the person's destination and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. The notice shall be provided at least forty-five days before the anticipated leave and shall describe the conditions under which the leave is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the leave date in the event the leave plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical transfers.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425. [2000 c 94 § 7; 1994 c 129 § 8; 1990 c 3 § 111; 1989 c 401 § 1; 1986 c 67 § 2.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

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**71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing.** (1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or \*71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter. [1998 c 297 § 20; 1997 c 112 § 27; 1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney.** In any proceeding under this chapter to modify a commitment order of a person committed to inpatient treatment under grounds set forth in RCW 71.05.280(3) or \*71.05.320(2)(c) in which the requested relief includes treatment less restrictive than detention, the prosecuting attorney shall be entitled to intervene. The party initiating the motion to modify the commitment order shall serve the prosecuting attorney of the county in

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which the criminal charges against the committed person were dismissed with written notice and copies of the initiating papers. [1986 c 67 § 7.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.** (1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the \*county designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or \*\*71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on

the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the \*county designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the \*county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or \*county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The \*county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The \*county designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the \*county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her

conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the \*county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [2000 c 94 § 8; 1998 c 297 § 21; 1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

**Reviser's note:** \*(1) The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104. \*\*(2) RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.350 Assistance to released persons.** No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he or she deems necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt

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rules and regulations to do so. [1997 c 112 § 29; 1973 1st ex.s. c 142 § 40.]

**71.05.360 Rights of involuntarily detained persons.**

(1)(a) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter, which shall be prominently posted in the facility, and shall retain all rights not denied him or her under this chapter except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license.

(b) No person shall be presumed incompetent as a consequence of receiving an evaluation or voluntary or involuntary treatment for a mental disorder, under this chapter or any prior laws of this state dealing with mental illness. Competency shall not be determined or withdrawn except under the provisions of chapter 10.77 or 11.88 RCW.

(c) Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment.

(3) The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services.

(5) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, personal representative, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) A judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) The person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney that the mental health professional has designated pursuant to this chapter;

(c) The person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) The person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) The person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(6) When proceedings are initiated under RCW 71.05.153, no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(7) The judicial hearing described in subsection (5) of this section is hereby authorized, and shall be held according to the provisions of subsection (5) of this section and rules promulgated by the supreme court.

(8) At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

(a) To present evidence on his or her behalf;

(b) To cross-examine witnesses who testify against him or her;

(c) To be proceeded against by the rules of evidence;

(d) To remain silent;

(e) To view and copy all petitions and reports in the court file.

(9) The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contain opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination.

(10) Insofar as danger to the person or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(c) To have access to individual storage space for his or her private use;

(d) To have visitors at reasonable times;

(e) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(f) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(g) To discuss treatment plans and decisions with professional persons;

(h) Not to consent to the administration of antipsychotic medications and not to thereafter be administered antipsychotic medications unless ordered by a court under RCW 71.05.217 or pursuant to an administrative hearing under RCW 71.05.215;

(i) Not to consent to the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court under RCW 71.05.217;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue.

(11) Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her.

(12) A person challenging his or her detention or his or her attorney shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert examination, otherwise such expert examination shall be at public expense.

(13) Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release.

(14) Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement.

(15) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or an active condition of supervision by the department of corrections. [2007 c 375 § 14; 2005 c 504 § 107; 1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.05.380 Rights of voluntarily committed persons.**

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and \*71.05.370. [1973 1st ex.s. c 142 § 43.]

\*Reviser's note: RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.

**71.05.390 Confidential information and records—Disclosure.** Except as provided in this section, RCW 71.05.445, 71.05.630, 70.96A.150, or pursuant to a valid release under RCW 70.02.030, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the person, or his or her personal representative or guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing services to the operator of a facility in which the patient resides or will reside.

(3)(a) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(b) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

- (i) The information that the person is presently a patient in the facility or that the person is seriously physically ill;
- (ii) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and
- (iii) Such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5)(a) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ . . . . . "

(b) Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary.

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7)(a) When a mental health professional is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(b) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW

71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320 (3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(ii) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(iii) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(iv) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(v) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and

imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(3)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) Upon the death of a person, his or her next of kin, personal representative, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.56 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

(17) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(18) When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee.

Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services.

(19) The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2007 c 375 § 15. Prior: 2005 c 504 § 109; 2005 c 453 § 5; 2005 c 274 § 346; prior: 2004 c 166 § 6; 2004 c 157 § 5; 2004 c 33 § 2; prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Findings—Intent—Severability—Effective date—2004 c 157:** See notes following RCW 10.77.010.

**Finding—Intent—2004 c 33:** "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Severability—2000 c 74:** See note following RCW 10.77.060.

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**Effective date—1993 c 448:** See note following RCW 70.02.010.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.420 Records of disclosure.** Except as provided in RCW 71.05.425, when any disclosure of information or records is made as authorized by RCW 71.05.390, the physician in charge of the patient or the professional person in

charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [2005 c 504 § 110; 1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.** (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(3)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.086(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of

police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.086(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(3) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.390(18). If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2008 c 213 § 10; 2005 c 504 § 710; 2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

**Severability—1992 c 186:** See note following RCW 9A.46.110.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.427 Persons committed following dismissal of sex offense—Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or \*71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [1990 c 3 § 110.]

**\*Reviser's note:** RCW 71.05.320 was amended by 2006 c 333 § 304, changing subsection (2) to subsection (3).

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction.** Except as provided in RCW 4.24.550,

any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he or she prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1990 c 3 § 114; 1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**71.05.445 Mental health services information—Release to department of corrections—Initial assessment inquiry—Required notifications—Rules.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2)(a) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed to report for department of corrections supervision or in the event of an emergent situation that poses a significant risk to the public or the offender, information related to mental health services delivered to the offender and, if

known, information regarding where the offender is likely to be found shall be released by the mental health services provider to the department of corrections upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health services provider and the address or information about the location or whereabouts of the offender. Information released in response to a written request may include information identified by rule as provided in subsections (4) and (5) of this section. For purposes of this subsection a written request includes requests made by e-mail or facsimile so long as the requesting person at the department of corrections is clearly identified. The request must specify the information being requested. Disclosure of the information requested does not require the consent of the subject of the records unless the offender has received relief from disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

(3)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health services provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health services provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health services provider is not required to notify the department of corrections that the mental health services provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(4) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, includ-

ing accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.440.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(10) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2005 c 504 § 711; 2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

**71.05.500 Liability of applicant.** Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith. [1973 1st ex.s. c 142 § 55.]

**71.05.510 Damages for excessive detention.** Any individual who knowingly, wilfully or through gross negligence

violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages. [1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

**71.05.520 Protection of rights—Staff.** The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

**71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles.** When, in the judgment of the department, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his or her designee, is authorized to order and effect such move or transfer: PROVIDED, HOWEVER, That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: PROVIDED, FURTHER, That the secretary shall notify the original committing court of such transfer. [1997 c 112 § 36; 1975 1st ex.s. c 199 § 12.]

**71.05.530 Facilities part of comprehensive mental health program.** Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof. [1998 c 297 § 23; 1973 1st ex.s. c 142 § 58.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.560 Adoption of rules.** The department shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and

facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1998 c 297 § 24; 1973 1st ex.s. c 142 § 61.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71.05.5601 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.** See RCW 72.09.380.

**71.05.5602 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.** See RCW 72.09.381.

**71.05.570 Rules of court.** The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

**71.05.575 Less restrictive alternative treatment—Consideration by court.** (1) When making a decision under this chapter whether to require a less restrictive alternative treatment, the court shall consider whether it is appropriate to include or exclude time spent in confinement when determining whether the person has committed a recent overt act.

(2) When determining whether an offender is a danger to himself or herself or others under this chapter, a court shall give great weight to any evidence submitted to the court regarding an offender's recent history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement. [1999 c 214 § 6.]

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.05.620 Court files and records closed—Exceptions.** The files and records of court proceedings under this chapter and chapters 70.96A, 71.34, and 70.96B RCW shall be closed but shall be accessible to any person who is the subject of a petition and to the person's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services. [2005 c 504 § 111; 1989 c 205 § 12.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Contingent effective date—1989 c 205 §§ 11-19:** "Sections 10 [11] through 19 of this act shall take effect on July 1, 1995, or when regional support networks are established." [1989 c 205 § 24.] See note following chapter digest.

**71.05.630 Treatment records—Confidential—Release.** (1) Except as otherwise provided by law, all treatment records shall remain confidential and may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of a person may be released without informed written consent in the following circumstances:

(a) To a person, organization, or agency as necessary for management or financial audits, or program monitoring and

evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the person whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of persons who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the person is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of a person who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.345, release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When a person is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the person's treatment plan or the level or

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kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(m) For purposes of coordinating health care, the department may release without informed written consent of the patient, information acquired for billing and collection purposes as described in (b) of this subsection to all current treating providers of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. The department shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. The department shall not release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for chemical dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2007 c 191 § 1; 2005 c 504 § 112; 2000 c 75 § 5; 1989 c 205 § 13.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.620.

#### **71.05.640 Treatment records—Access procedures.**

(1) Procedures shall be established by resource management

services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the person.

(2) Following discharge, the person shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all persons shall be informed by resource management services of their rights as provided in RCW 71.05.390 and 71.05.620 through 71.05.690. [2005 c 504 § 712; 2005 c 504 § 113; 2000 c 94 § 11; 1999 c 13 § 9. Prior: 1989 c 205 § 14.]

**Reviser's note:** This section was amended by 2005 c 504 § 113 and by 2005 c 504 § 712, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.620.

**71.05.660 Treatment records—Privileged communications unaffected.** Nothing in this chapter or chapter 70.96A, 71.05, 71.34, or 70.96B RCW shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients. [2005 c 504 § 114; 1989 c 205 § 16.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.620.

**71.05.680 Treatment records—Access under false pretenses, penalty.** Any person who requests or obtains confidential information pursuant to RCW 71.05.620 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor. [2005 c 504 § 713; 1999 c 13 § 11. Prior: 1989 c 205 § 18.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

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**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.620.

**71.05.690 Treatment records—Rules.** The department shall adopt rules to implement RCW 71.05.620 through 71.05.680. [2005 c 504 § 714; 1999 c 13 § 12. Prior: 1989 c 205 § 19.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

**Contingent effective date—1989 c 205 §§ 11-19:** See note following RCW 71.05.620.

**71.05.700 Home visit by designated mental health professional or crisis intervention worker—Accompaniment by second trained individual.** No designated mental health professional or crisis intervention worker shall be required to respond to a private home or other private location to stabilize or treat a person in crisis, or to evaluate a person for potential detention under the state's involuntary treatment act, unless a second trained individual, determined by the clinical team supervisor, on-call supervisor, or individual professional acting alone based on a risk assessment for potential violence, accompanies them. The second individual may be a law enforcement officer, a mental health professional, a mental health paraprofessional who has received training under RCW 71.05.715, or other first responder, such as fire or ambulance personnel. No retaliation may be taken against a worker who, following consultation with the clinical team, refuses to go on a home visit alone. [2007 c 360 § 2.]

**Findings—2007 c 360:** "The legislature finds that designated mental health professionals go out into the community to evaluate people for potential detention under the state's involuntary treatment act. Also, designated mental health professionals and other mental health workers do crisis intervention work intended to stabilize a person in crisis and provide immediate treatment and intervention in communities throughout Washington state. In many cases, the presence of a second trained individual on outreach to a person's private home or other private location will enhance safety for consumers, families, and mental health professionals and will advance the legislature's interest in quality mental health care services." [2007 c 360 § 1.]

**Short title—2007 c 360:** "This act may be known and cited as the Marty Smith law." [2007 c 360 § 7.]

**71.05.705 Provider of designated mental health professional or crisis outreach services—Policy for home visits.** Each provider of designated mental health professional or crisis outreach services shall maintain a written policy that, at a minimum, describes the organization's plan for training, staff back-up, information sharing, and communication for crisis outreach staff who respond to private homes or non-public settings. [2007 c 360 § 3.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.710 Home visit by mental health professional—Wireless telephone to be provided.** Any mental health professional who engages in home visits to clients shall be provided by their employer with a wireless telephone

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or comparable device for the purpose of emergency communication. [2007 c 360 § 4.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.715 Crisis visit by mental health professional—Access to information.** Any mental health professional who is dispatched on a crisis visit, as described in RCW 71.05.700, shall have prompt access to information about any history of dangerousness or potential dangerousness on the client they are being sent to evaluate that is documented in crisis plans or commitment records and is available without unduly delaying a crisis response. [2007 c 360 § 5.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.720 Training for community mental health employees.** Annually, all community mental health employees who work directly with clients shall be provided with training on safety and violence prevention topics described in RCW 49.19.030. The curriculum for the training shall be developed collaboratively among the department of social and health services, contracted mental health providers, and employee organizations that represent community mental health workers. [2007 c 360 § 6.]

**Findings—Short title—2007 c 360:** See notes following RCW 71.05.700.

**71.05.900 Severability—1973 1st ex.s. c 142.** If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 142 § 63.]

**71.05.910 Construction—1973 1st ex.s. c 142.** Sections 6 through 63 of this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered the successor to those sections of chapter 71.02 RCW repealed by this 1973 amendatory act. [1973 1st ex.s. c 142 § 64.]

**71.05.920 Section headings not part of the law.** Section headings as used in sections 6 through 63 of this 1973 amendatory act shall not constitute any part of law. [1973 1st ex.s. c 142 § 65.]

**71.05.930 Effective date—1973 1st ex.s. c 142.** This 1973 amendatory act shall take effect on January 1, 1974. [1973 1st ex.s. c 142 § 67.]

**71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability.** The provisions of chapter 420, Laws of 1989 shall apply equally to persons in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for

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placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1999 c 13 § 13; 1989 c 420 § 18.]

**Purpose—Construction—1999 c 13:** See note following RCW 10.77.010.

## Chapter 71.06 RCW SEXUAL PSYCHOPATHS

### Sections

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71.06.070	Preliminary hearing—Jury trial.
71.06.080	Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane.
71.06.091	Postcommitment proceedings, releases, and further dispositions.
71.06.100	Postcommitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles.
71.06.120	Credit for time served in hospital.
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71.06.270	Availability of records.

*Council for children and families: Chapter 43.121 RCW.*

*Nonresident sexual psychopaths and psychopathic delinquents: Chapter 72.25 RCW.*

*Telephone calls soliciting immoral acts: RCW 9.61.230 through 9.61.250.*

**71.06.005 Application of chapter.** With respect to sexual psychopaths, this chapter applies only to crimes or offenses committed before July 1, 1984. [1984 c 209 § 27.]

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**71.06.010 Definitions.** As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents. [1985 c 354 § 32; 1977 ex.s. c 80 § 42; 1971 ex.s. c 292 § 65; 1961 c 65 § 1; 1959 c 25 § 71.06.010. Prior: 1957 c 184 § 1; 1951 c 223 § 2; 1949 c 198 §§ 25 and 40; Rem. Supp. 1949 §§ 6953-25 and 6953-40.]

**Severability—Effective date—1985 c 354:** See RCW 71.34.900 and 71.34.901.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**71.06.020 Sexual psychopaths—Petition.** Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge. [1959 c 25 § 71.06.020. Prior: 1951 c 223 § 3; 1949 c 198 § 26; Rem. Supp. 1949 § 6953-26.]

**71.06.030 Procedure on petition—Effect of acquittal on criminal charge.** The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not operate to suspend the hearing on the allegation of sexual psychopathy: PROVIDED, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge. [1967 c 104 § 1; 1959 c 25 § 71.06.030. Prior: 1951 c 223 § 4.]

**71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation.** At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians who have examined the defendant. If the court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

**71.06.050 Preliminary hearing—Report of findings.**

Upon completion of said observation period the superintendent of the state hospital shall return the defendant to the court, together with a written report of his findings as to whether or not the defendant is a sexual psychopath and the facts upon which his opinion is based. [1959 c 25 § 71.06.050. Prior: 1951 c 223 § 6.]

**71.06.060 Preliminary hearing—Commitment, or other disposition of charge.**

After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit. [1979 c 141 § 129; 1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

**71.06.070 Preliminary hearing—Jury trial.**

A jury may be demanded to determine the question of sexual psychopathy upon hearing after return of the superintendent's report. Such demand must be in writing and filed with the court within ten days after filing of the petition alleging the defendant to be a sexual psychopath. [1959 c 25 § 71.06.070. Prior: 1951 c 223 § 14; 1949 c 198 § 38; Rem. Supp. 1949 § 6953-38.]

**71.06.080 Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane.**

Nothing in this chapter shall be construed as to affect the procedure for the ordinary conduct of criminal trials as otherwise set up by law. Nothing in this chapter shall be construed to prevent the defendant, his attorney or the court of its own motion, from producing evidence and witnesses at the hearing on the probable existence of sexual psychopathy or at the hearing after the return of the superintendent's report. Nothing in this chapter shall be construed as affecting the laws relating to the criminally insane or the insane criminal, nor shall this chapter be construed as preventing the defendant from raising the defense of insanity as in other criminal cases. [1959 c 25 § 71.06.080. Prior: 1951 c 223 § 15.]

*Criminally insane: Chapter 10.77 RCW.*

**71.06.091 Postcommitment proceedings, releases, and further dispositions.**

A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together

with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or transferred to the department of corrections to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state \*board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: PROVIDED, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth. [1981 c 136 § 64; 1979 c 141 § 130; 1967 c 104 § 3.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**71.06.100 Post commitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles.** Where under RCW 71.06.091 the superintendent renders his opinion to the committing court, he shall provide the committing court, and, in the event of conditional release, the Washington state \*board of prison terms and paroles, with a copy of the hospital medical record concerning the sexual psychopath. [1967 c 104 § 4; 1959 c 25 § 71.06.100. Prior: 1951 c 223 § 10.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**71.06.120 Credit for time served in hospital.** Time served by a sexual psychopath in a state hospital shall count as part of his sentence whether such sentence is pronounced before or after adjudication of his sexual psychopathy. [1959 c 25 § 71.06.120. Prior: 1951 c 223 § 13.]

**71.06.130 Discharge pursuant to conditional release.** Where a sexual psychopath has been conditionally released by the committing court, as provided by RCW 71.06.091 for a period of five years, the court shall review his record and when the court is satisfied that the sexual psychopath is safe to be at large, said sexual psychopath shall be discharged. [1967 c 104 § 5; 1959 c 25 § 71.06.130. Prior: 1951 c 223 § 12; 1949 c 198 § 28, part; Rem. Supp. 1949 § 6953-28, part.]

**71.06.135 Sexual psychopaths—Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexual psychopath committed under this chapter. [1990 c 3 § 120.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

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**71.06.140 State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports.** The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: PROVIDED, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services, with the consent of the secretary of corrections, to one of the correctional institutions within the department of corrections which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psychopath so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution. [1981 c 136 § 65; 1979 c 141 § 131; 1967 c 104 § 6; 1959 c 25 § 71.06.140. Prior: 1951 c 223 § 11; 1949 c 198 § 37; Rem. Supp. 1949 § 6953-37.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**71.06.260 Hospitalization costs—Sexual psychopaths—Financial responsibility.** At any time any person is committed as a sexual psychopath the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into and determine the financial ability of said person, or his parents if he is a minor, or other relatives to pay the cost of care, meals and lodging during his period of hospitalization. Such cost shall be determined by the department of social and health services. Findings of fact shall be made relative to the ability to pay such cost and a judgment entered against the person or persons found to be financially responsible and directing the payment of said cost or such part thereof as the court may direct. The person committed, or his parents or relatives, may apply for modification of said judgment, or the order last entered by the court, if a proper showing of equitable grounds is made therefor. [1985 c 354 § 33; 1979 c 141 § 132; 1959 c 25 § 71.06.260. Prior: 1957 c 26 § 1; 1951 c 223 § 27.]

**Severability—Effective date—1985 c 354:** See RCW 71.34.900 and 71.34.901.

**71.06.270 Availability of records.** The records, files, and other written information prepared by the department of social and health services for individuals committed under this chapter shall be made available upon request to the department of corrections or the \*board of prison terms and paroles for persons who are the subject of the records who are committed to the custody of the department of corrections or the board of prison terms and paroles. [1983 c 196 § 5.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

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## Chapter 71.09 RCW

## SEXUALLY VIOLENT PREDATORS

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71.09.902	Effective dates—Application—1990 c 3.

**71.09.010 Findings.** The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders

them appropriate for the existing involuntary treatment act, chapter 71.05 RCW, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment act, chapter 71.05 RCW, is inadequate to address the risk to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. The legislature further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the involuntary treatment act. [2001 c 286 § 3; 1990 c 3 § 1001.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.015 Finding—Intent—Clarification.** The legislature finds that presentation of evidence related to conditions of a less restrictive alternative that are beyond the authority of the court to order, and that would not exist in the absence of a court order, reduces the public respect for the rule of law and for the authority of the courts. Consequently, the legislature finds that the decision in *In re the Detention of Casper Ross*, 102 Wn. App 108 (2000), is contrary to the legislature's intent. The legislature hereby clarifies that it intends, and has always intended, in any proceeding under this chapter that the court and jury be presented only with conditions that would exist or that the court would have the authority to order in the absence of a finding that the person is a sexually violent predator. [2001 c 286 § 1.]

**Recommendations—2001 c 286:** "The department of social and health services shall, in consultation with interested stakeholders, develop recommendations for improving the procedures used to notify victims when a sexually violent predator is conditionally released to a less restrictive alternative under chapter 71.09 RCW, while at the same time maintaining the confidentiality of victim information." [2001 c 286 § 10.]

**Application—2001 c 286:** "This act applies to all individuals currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after May 14, 2001, whether confined in a secure facility or on conditional release." [2001 c 286 § 14.]

**Effective date—2001 c 286:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 286 § 15.]

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

(1) "Department" means the department of social and health services.

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health

maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092. A less restrictive alternative may not include placement in the community protection program as pursuant to RCW 71A.12.230.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an objective person who knows of the history and mental condition of the person engaging in the act.

(11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities,

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secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(16) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(17) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary. [2006 c 303 § 10. Prior: 2003 c 216 § 2; 2003 c 50 § 1; 2002 c 68 § 4; 2002 c 58 § 2; 2001 2nd sp.s. c 12 § 102; 2001 c 286 § 4; 1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Application—2003 c 50:** "This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to April 17, 2003." [2003 c 50 § 3.]

**Effective date—2003 c 50:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 50 § 4.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Effective date—2002 c 58:** See note following RCW 71.09.085.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Effective date—1990 1st ex.s. c 12:** See note following RCW 13.40.020.

**71.09.025 Notice to prosecuting attorney prior to release.** (1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in RCW 71.09.020(16), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.086(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to \*RCW 10.77.020(3).

(b) The agency shall provide the prosecutor with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [2008 c 213 § 11; 2001 c 286 § 5; 1995 c 216 § 2; 1992 c 45 § 3.]

**\*Reviser's note:** RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

### 71.09.030 Sexually violent predator petition—Filing.

When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement on, before, or after July 1, 1990; (2) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW 10.77.086(4); (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW \*10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (5) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation. [2008 c 213 § 12; 1995 c 216 § 3; 1992 c 45 § 4; 1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

**\*Reviser's note:** RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

**Effective date—1990 1st ex.s. c 12:** See note following RCW 13.40.020.

### 71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation.

(1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted

by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone. [2001 c 286 § 6; 1995 c 216 § 4; 1990 c 3 § 1004.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.050 Trial—Rights of parties.** (1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court. [1995 c 216 § 5; 1990 c 3 § 1005.]

**71.09.060 Trial—Determination—Commitment procedures.** (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. The community protection program under RCW 71A.12.230 may not be considered as a placement condition or treatment option available to the person if unconditionally released from detention on a sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person

had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in RCW 71.09.020(15)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to [be] or has been released pursuant to RCW 10.77.086(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the court did not enter a finding prior to dismissal under RCW 10.77.086(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. The department shall not place the person,

even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter. [2008 c 213 § 13; 2006 c 303 § 11; 2001 c 286 § 7; 1998 c 146 § 1; 1995 c 216 § 6; 1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Effective date—1998 c 146:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 1998]." [1998 c 146 § 2.]

**Effective date—1990 1st ex.s. c 12:** See note following RCW 13.40.020.

**71.09.070 Annual examinations of persons committed under chapter.** Each person committed under this chapter shall have a current examination of his or her mental condition made by the department of social and health services at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. The department of social and health services shall file this periodic report with the court that committed the person under this chapter. The report shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as defined by rules adopted by the secretary. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person and his or her counsel. The committed person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. [2001 c 286 § 8; 1995 c 216 § 7; 1990 c 3 § 1007.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.080 Rights of persons committed under this chapter.** (1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person

who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so. [1995 c 216 § 8; 1990 c 3 § 1008.]

**71.09.085 Medical care—Contracts for services.** (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to residents. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [2002 c 58 § 1.]

**Effective date—2002 c 58:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [2002 c 58 § 3.]

**71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures.** (1) If the secretary determines that the person's condition has so changed that either: (a) The person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the

best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether the person's condition has so changed that: (i) He or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecuting attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a proposed less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately

protect the community, without considering whether the person's condition has changed.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible.

(c) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4)(a) Probable cause exists to believe that a person's condition has "so changed," under subsection (2) of this section, only when evidence exists, since the person's last commitment trial proceeding, of a substantial change in the person's physical or mental condition such that the person either no longer meets the definition of a sexually violent predator or that a conditional release to a less restrictive alternative is in the person's best interest and conditions can be imposed to adequately protect the community.

(b) A new trial proceeding under subsection (3) of this section may be ordered, or held, only when there is current evidence from a licensed professional of one of the following and the evidence presents a change in condition since the person's last commitment trial proceeding:

(i) An identified physiological change to the person, such as paralysis, stroke, or dementia, that renders the committed person unable to commit a sexually violent act and this change is permanent; or

(ii) A change in the person's mental condition brought about through positive response to continuing participation in treatment which indicates that the person meets the standard for conditional release to a less restrictive alternative or that the person would be safe to be at large if unconditionally released from commitment.

(c) For purposes of this section, a change in a single demographic factor, without more, does not establish probable cause for a new trial proceeding under subsection (3) of this section. As used in this section, a single demographic factor includes, but is not limited to, a change in the chronological age, marital status, or gender of the committed person.

(5) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time as the person is unconditionally discharged. [2005 c 344 § 2; 2001 c 286 § 9; 1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

**Findings—Intent—2005 c 344:** "The legislature finds that the decisions in *In re Young*, 120 Wn. App. 753, review denied, \_\_ Wn.2d \_\_ (2004) and *In re Ward*, \_\_ Wn. App. \_\_ (2005) illustrate an unintended consequence of language in chapter 71.09 RCW.

The *Young* and *Ward* decisions are contrary to the legislature's intent set forth in RCW 71.09.010 that civil commitment pursuant to chapter 71.09 RCW address the "very long-term" needs of the sexually violent predator population for treatment and the equally long-term needs of the community for protection from these offenders. The legislature finds that the mental abnormalities and personality disorders that make a person subject to commitment under chapter 71.09 RCW are severe and chronic and do not remit due solely to advancing age or changes in other demographic factors.

The legislature finds, although severe medical conditions like stroke, paralysis, and some types of dementia can leave a person unable to commit further sexually violent acts, that a mere advance in age or a change in gender or some other demographic factor after the time of commitment does not merit a new trial proceeding under RCW 71.09.090. To the contrary, the legislature finds that a new trial ordered under the circumstances set forth in *Young* and *Ward* subverts the statutory focus on treatment and reduces community safety by removing all incentive for successful treatment participation in favor of passive aging and distracting committed persons from fully engaging in sex offender treatment.

The *Young* and *Ward* decisions are contrary to the legislature's intent that the risk posed by persons committed under chapter 71.09 RCW will generally require prolonged treatment in a secure facility followed by intensive community supervision in the cases where positive treatment gains are sufficient for community safety. The legislature has, under the guidance of the federal court, provided avenues through which committed persons who successfully progress in treatment will be supported by the state in a conditional release to a less restrictive alternative that is in the best interest of the committed person and provides adequate safeguards to the community and is the appropriate next step in the person's treatment.

The legislature also finds that, in some cases, a committed person may appropriately challenge whether he or she continues to meet the criteria for commitment. Because of this, the legislature enacted RCW 71.09.070 and 71.09.090, requiring a regular review of a committed person's status and permitting the person the opportunity to present evidence of a relevant change in condition from the time of the last commitment trial proceeding. These provisions are intended only to provide a method of revisiting the indefinite commitment due to a relevant change in the person's condition, not an alternate method of collaterally attacking a person's indefinite commitment for reasons unrelated to a change in condition. Where necessary, other existing statutes and court rules provide ample opportunity to resolve any concerns about prior commitment trials. Therefore, the legislature intends to clarify the "so changed" standard." [2005 c 344 § 1.]

**Severability—2005 c 344:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 344 § 3.]

**Effective date—2005 c 344:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 344 § 4.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

**71.09.092 Conditional release to less restrictive alternative—Findings.** Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of

treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person is willing to comply with supervision requirements imposed by the department of corrections. [1995 c 216 § 10.]

**71.09.094 Conditional release to less restrictive alternative—Verdict.** (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090 or through summary judgment proceedings prior to such a hearing, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in RCW 71.09.092 have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that either: (a) The proposed less restrictive alternative is not in the best interests of respondent; or (b) does not include conditions that would adequately protect the community? Answer: Yes or No. [2001 c 286 § 11; 1995 c 216 § 11.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review.** (1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met, the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections,

then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecutor of the county in which the person was found to be a sexually violent predator, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting attorney so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secretary and other experts or professional persons. [2001 c 286 § 12; 1995 c 216 § 12.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.098 Conditional release to less restrictive alternative—Hearing on revocation or modification—Authority to apprehend conditionally released person.** (1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the

released person is not complying with the terms and conditions of his or her release or is in need of additional care, monitoring, supervision, or treatment.

(2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. A law enforcement officer, who has responded to a request for assistance from a department employee, may apprehend and take into custody the conditionally released person if the law enforcement officer reasonably believes that the conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative. The conditionally released person may be detained in the county jail or returned to the secure community transition facility. The court shall be notified before the close of the next judicial day of the person's apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter. [2006 c 282 § 1; 2001 c 286 § 13; 1995 c 216 § 13.]

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**71.09.110 Department of social and health services—Duties—Reimbursement.** The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under a less restrictive alternative pursuant to RCW 43.20B.330 through 43.20B.370. [1995 c 216 § 14; 1990 c 3 § 1011.]

**71.09.112 Department of social and health services—Jurisdiction continues after criminal conviction—Exception.** A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense

remains under the jurisdiction of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state or local correctional facility, and shall be returned to the custody of the department.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release. [2002 c 19 § 1.]

**71.09.115 Record check required for employees of secure facility.** (1) The safety and security needs of the secure facility operated by the department of social and health services pursuant to RCW 71.09.060(1) make it vital that employees working in the facility meet necessary character, suitability, and competency qualifications. The secretary shall require a record check through the Washington state patrol criminal identification system under chapter 10.97 RCW and through the federal bureau of investigation. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card. The criminal history record checks shall be at the expense of the department. The secretary shall use the information only in making the initial employment or engagement decision, except as provided in subsection (2) of this section. Further dissemination or use of the record is prohibited.

(2) This section applies to all current employees hired prior to June 6, 1996, who have not previously submitted to a department of social and health services criminal history records check. The secretary shall use the information only in determining whether the current employee meets the necessary character, suitability, and competency requirements for employment or engagement. [1996 c 27 § 1.]

**71.09.120 Release of information authorized.** In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexually violent predator committed under this chapter. [1990 c 3 § 1012.]

**71.09.130 Notice of escape or disappearance.** In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [1995 c 216 § 16.]

**71.09.135 McNeil Island—Escape planning, response.** The emergency response team for McNeil Island shall plan, coordinate, and respond in the event of an escape from the special commitment center or the secure community transition facility. [2003 c 216 § 6.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture.** (1) At

the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The

requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1995 c 216 § 17.]

**71.09.200 Escorted leave—Definitions.** For purposes of RCW 71.09.210 through 71.09.230:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter. [1995 c 216 § 18.]

**71.09.210 Escorted leave—Conditions.** The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution. [1995 c 216 § 19.]

**71.09.220 Escorted leave—Notice.** A resident shall not be allowed to start a leave of absence under RCW 71.09.210 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the resident's destination. [1995 c 216 § 20.]

**71.09.230 Escorted leave—Rules.** (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under RCW 71.09.210, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 71.09.210 (1) and (2). No state funds shall be expended in connection with leaves of absence granted under RCW 71.09.210 (1) and (2) unless the resident and the resident's immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1995 c 216 § 21.]

**71.09.250 Transition facility—Siting.** (1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for

persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to twenty-four, consisting of up to fifteen transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority

may be exercised. [2003 c 216 § 3; 2001 2nd sp.s. c 12 § 201.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Intent—2001 2nd sp.s. c 12:** "The legislature intends the following omnibus bill to address the management of sex offenders in the civil commitment and criminal justice systems for purposes of public health, safety, and welfare. Provisions address siting of and continued operation of facilities for persons civilly committed under chapter 71.09 RCW and sentencing of persons who have committed sex offenses. Other provisions address the need for sex offender treatment providers with specific credentials. Additional provisions address the continued operation or authorized expansion of criminal justice facilities at McNeil Island, because these facilities are impacted by the civil facilities on McNeil Island for persons committed under chapter 71.09 RCW." [2001 2nd sp.s. c 12 § 101.]

**Severability—2001 2nd sp.s. c 12:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 12 § 504.]

**Effective dates—2001 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001], except for sections 301 through 363, 501, and 503 of this act which take effect September 1, 2001." [2001 2nd sp.s. c 12 § 505.]

**71.09.2501 "All other laws" defined. (Expires June 30, 2009.)** An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under this chapter. To meet this emergency, for purposes of RCW 71.09.250 and 71.09.342, "all other laws" means the state environmental policy act, the shoreline management act, the hydraulics code, and all other state laws regulating the protection and use of the water, land, and air.

This section expires June 30, 2009. [2002 c 68 § 11.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.252 Transition facilities—Agreements for regional facilities.** (1) To encourage economies of scale in the siting and operation of secure community transition facilities, the department may enter into an agreement with two or more counties to create a regional secure community transition facility. The agreement must clearly identify the number of beds from each county that will be contained in the regional secure community transition facility. The agreement must specify which county must contain the regional secure community transition facility and the facility must be sited accordingly. No county may withdraw from an agreement under this section unless it has provided an alternative acceptable secure community transition facility to house any displaced residents that meets the criteria established for such facilities in this chapter and the guidelines established by the department.

(2) A regional secure community transition facility must meet the criteria established for secure community transition facilities in this chapter and the guidelines established by the department.

(3) The department shall count the beds identified for each participating county in a regional secure community transition facility against the maximum number of beds that could be required for each county under RCW 71.09.250(7)(a).

(4) An agreement for a regional secure community transition facility does not alter the maximum number of beds for purposes of the incentive grants under RCW 71.09.255 for the county containing the regional facility. [2002 c 68 § 18.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.255 Transition facilities—Incentive grants and payments.** (1) Upon receiving the notification required by RCW 71.09.250, counties must promptly notify the cities within the county of the maximum number of secure community transition facility beds that may be required and the projected number of beds to be needed in that county.

(2) The incentive grants and payments provided under this section are subject to the following provisions:

(a) Counties and the cities within the county must notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities;

(b) Development regulations, ordinances, plans, laws, and criteria established for siting must be consistent with statutory requirements and rules applicable to siting and operating secure community transition facilities;

(c) The minimum size for any facility is three beds; and

(d) The department must approve any sites selected.

(3) Any county or city that makes a commitment to initiate the process to site one or more secure community transition facilities by one hundred twenty days after March 21, 2002, shall receive a planning grant as proposed and approved by the department of community, trade, and economic development.

(4) Any county or city that has issued all necessary permits by May 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive an incentive grant in the amount of fifty thousand dollars for each bed sited.

(5) To encourage the rapid permitting of sites, any county or city that has issued all necessary permits by January 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive a bonus in the amount of twenty percent of the amount provided under subsection (4) of this section.

(6) Any county or city that establishes secure community transition facility beds in excess of the maximum number that could be required to be sited in that county shall receive a bonus payment of one hundred thousand dollars for each bed established in excess of the maximum requirement.

(7) No payment shall be made under subsection (4), (5), or (6) of this section until all necessary permits have been issued.

(8) The funds available to counties and cities under this section are contingent upon funds being appropriated by the legislature. [2002 c 68 § 8; 2001 2nd sp.s. c 12 § 204.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.260 Transition facilities not limited to residential neighborhoods.** The provisions of chapter 12, Laws of 2001 2nd sp. sess. shall not be construed to limit siting of (2008 Ed.)

secure community transition facilities to residential neighborhoods. [2001 2nd sp.s. c 12 § 206.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.265 Transition facilities—Distribution of impact.** (1) The department shall make reasonable efforts to distribute the impact of the employment, education, and social services needs of the residents of the secure community transition facility established pursuant to RCW 71.09.250(1) among the adjoining counties and not to concentrate the residents' use of resources in any one community.

(2) The department shall develop policies to ensure that, to the extent possible, placement of persons eligible in the future for conditional release to a setting less restrictive than the facility established pursuant to RCW 71.09.250(1) will be equitably distributed among the counties and within jurisdictions in the county. [2001 2nd sp.s. c 12 § 208.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.275 Transition facility—Transportation of residents.** (1) If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in RCW 71.09.250(1) between McNeil Island and the mainland, the department shall:

(a) Separate residents from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) Not transport residents during times when children are normally coming to and from the mainland for school.

(2) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

(3) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i) regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons. [2003 c 216 § 4; 2001 2nd sp.s. c 12 § 211.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.280 Transition facility—Release to less restrictive placement.** When considering whether a person civilly committed under this chapter and conditionally released to a secure community transition facility is appropriate for release to a placement that is less restrictive than that facility, the court shall comply with the procedures set forth in RCW 71.09.090 through 71.09.096. In addition, the court shall consider whether the person has progressed in treatment to the point that a significant change in the person's routine, including but not limited to a change of employment, education, residence, or sex offender treatment provider will not cause the person to regress to the point that the person presents a greater risk to the community than can reasonably be

addressed in the proposed placement. [2001 2nd sp.s. c 12 § 212.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.285 Transition facility—Siting policy guidelines.** (1) Except with respect to the secure community transition facility established pursuant to RCW 71.09.250, the secretary shall develop policy guidelines that balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed site to risk potential activities and facilities in existence at the time the site is listed for consideration.

(2) In no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(3) The policy guidelines shall require that great weight be given to sites that are the farthest removed from any risk potential activity.

(4) The policy guidelines shall specify how distance from the location is measured and any variations in the measurement based on the size of the property within which a proposed facility is to be located.

(5) The policy guidelines shall establish a method to analyze and compare the criteria for each site in terms of public safety and security, site characteristics, and program components. In making a decision regarding a site following the analysis and comparison, the secretary shall give priority to public safety and security considerations. The analysis and comparison of the criteria are to be documented and made available at the public hearings prescribed in RCW 71.09.315.

(6) Policy guidelines adopted by the secretary under this section shall be considered by counties and cities when providing for the siting of secure community transition facilities as required under RCW 36.70A.200. [2002 c 68 § 5; 2001 2nd sp.s. c 12 § 213.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.290 Other transition facilities—Siting policy guidelines.** The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i), which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under RCW 71.09.285;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in RCW 71.09.285.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the policies adopted under RCW 71.09.285;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services. [2003 c 216 § 5; 2001 2nd sp.s. c 12 § 214.]

**Severability—Effective date—2003 c 216:** See notes following RCW 71.09.300.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.295 Transition facilities—Security systems.** (1) Security systems for all secure community transition facilities shall meet the following minimum qualifications:

(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(c) The system must include personal panic devices for all staff.

(d) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(e) The department shall issue photo-identification badges to all staff which must be worn at all times.

(2) Security systems for the secure community transition facility established pursuant to RCW 71.09.250(1) shall also include a fence and provide the maximum protection appropriate in a civil facility for persons in less than total confinement. [2001 2nd sp.s. c 12 § 215.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.300 Transition facilities—Staffing.** Secure community transition facilities shall meet the following minimum staffing requirements:

(1)(a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(2) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

(3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a resident of the facility. [2003 c 216 § 1; 2001 2nd sp.s. c 12 § 216.]

**Severability—2003 c 216:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 216 § 8.]

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**Effective date—2003 c 216:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 216 § 9.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.305 Transition facility residents—Monitoring, escorting.** (1) Unless otherwise ordered by the court:

(a) Residents of a secure community transition facility shall wear electronic monitoring devices at all times. To the extent that electronic monitoring devices that employ global positioning system technology are available and funds for this purpose are appropriated by the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in RCW 71.09.325, by the resident and must immediately notify law enforcement of any violation of law by the resident. The escort may not be a relative of the resident or a person with whom the resident has, or has had, a dating relationship as defined in RCW 26.50.010.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting.

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections. [2002 c 68 § 6; 2001 2nd sp.s. c 12 § 217.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.310 Transition facility residents—Mandatory escorts.** Notwithstanding the provisions of RCW 71.09.305, residents of the secure community transition facility established pursuant to RCW 71.09.250(1) must be escorted at any time the resident leaves the facility. [2001 2nd sp.s. c 12 § 218.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.315 Transition facilities—Public notice, review, and comment.** (1) Whenever the department operates, or the secretary enters into a contract to operate, a secure community transition facility except the secure community transition facility established pursuant to RCW 71.09.250(1), the secure community transition facility may be operated

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only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating secure community transition facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a secure community transition facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a secure community transition facility may be sited.

(b) When the secretary or service provider has determined the secure community transition facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the secure community transition facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the secure community transition facility would be sited or whose boundary is within two miles of a proposed secure community transition facility, any library district in which the secure community transition facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed secure community transition facility. Before initiating this process, the department of social and health services shall contact local government planning agencies in the communities containing the proposed secure community transition facility. The department of social and health services shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) If local government land use regulations require that a special use or conditional use permit be submitted and approved before a secure community transition facility can be sited, and the process for obtaining such a permit includes public notice and hearing requirements similar to those required under this section, the requirements of this section shall not apply to the extent they would duplicate requirements under the local land use regulations.

(4) This section applies only to secure community transition facilities sited after June 26, 2001. [2001 2nd sp.s. c 12 § 219.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.320 Transition facilities—Operational advisory boards.** (1) The secretary shall develop a process with local governments that allows each community in which a secure community transition facility is located to establish operational advisory boards of at least seven persons for the secure community transition facilities. The department may conduct community awareness activities to publicize this opportunity. The operational advisory boards developed under this section shall be implemented following the decision to locate a secure community transition facility in a particular community.

(2) The operational advisory boards may review and make recommendations regarding the security and operations of the secure community transition facility and conditions or modifications necessary with relation to any person who the secretary proposes to place in the secure community transition facility.

(3) The facility management must consider the recommendations of the community advisory boards. Where the facility management does not implement an operational advisory board recommendation, the management must provide a written response to the operational advisory board stating its reasons for its decision not to implement the recommendation.

(4) The operational advisory boards, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its recommendations unless the advisory board acts with gross negligence or bad faith in making a recommendation. [2001 2nd sp.s. c 12 § 220.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.325 Transition facilities—Conditional release—Reports—Violations.** (1) The secretary shall adopt a violation reporting policy for persons conditionally released to less restrictive alternative placements. The policy shall require written documentation by the department and service providers of all violations of conditions set by the department, the department of corrections, or the court and establish criteria for returning a violator to the special commitment center or a secure community transition facility with a higher degree of security. Any conditionally released person who commits a serious violation of conditions shall be returned to the special commitment center, unless arrested by a law enforcement officer, and the court shall be notified immediately and shall initiate proceedings under RCW 71.09.098 to revoke or modify the less restrictive alternative placement. Nothing in this section limits the authority of the department to return a person to the special commitment center based on a violation that is not a serious violation as defined in this section. For the purposes of this section, "serious violation" includes but is not limited to:

(a) The commission of any criminal offense;

(b) Any unlawful use or possession of a controlled substance; and

(c) Any violation of conditions targeted to address the person's documented pattern of offense that increases the risk to public safety.

(2) When a person is conditionally released to a less restrictive alternative under this chapter and is under the supervision of the department of corrections, notice of any

violation of the person's conditions of release must also be made to the department of corrections.

(3) Whenever the secretary contracts with a service provider to operate a secure community transition facility, the contract shall include a requirement that the service provider must report to the department of social and health services any known violation of conditions committed by any resident of the secure community transition facility.

(4) The secretary shall document in writing all violations, penalties, actions by the department of social and health services to remove persons from a secure community transition facility, and contract terminations. The secretary shall compile this information and submit it to the appropriate committees of the legislature on an annual basis. The secretary shall give great weight to a service provider's record of violations, penalties, actions by the department of social and health services or the department of corrections to remove persons from a secure community transition facility, and contract terminations in determining whether to execute, renew, or renegotiate a contract with a service provider. [2001 2nd sp.s. c 12 § 221.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.330 Transition facilities—Contracted operation—Enforcement remedies.** Whenever the secretary contracts with a provider to operate a secure community transition facility, the secretary shall include in the contract provisions establishing intermediate contract enforcement remedies. [2001 2nd sp.s. c 12 § 222.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.335 Conditional release from total confinement—Community notification.** A conditional release from a total confinement facility to a less restrictive alternative is a release that subjects the conditionally released person to the registration requirements specified in RCW 9A.44.130 and to community notification under RCW 4.24.550.

When a person is conditionally released to the secure community transition facility established pursuant to RCW 71.09.250(1), the sheriff must provide each household on McNeil Island with the community notification information provided for under RCW 4.24.550. [2001 2nd sp.s. c 12 § 223.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.340 Conditionally released persons—Employment, educational notification.** An employer who hires a person who has been conditionally released to a less restrictive alternative must notify all other employees of the conditionally released person's status. Notification for conditionally released persons who enroll in an institution of higher education shall be made pursuant to the provisions of RCW 9A.44.130 related to sex offenders enrolled in institutions of higher education and RCW 4.24.550. This section applies only to conditionally released persons whose court-approved treatment plan includes permission or a requirement for the person to obtain education or employment and to employ-

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ment positions or educational programs that meet the requirements of the court-approved treatment plan. [2001 2nd sp.s. c 12 § 224.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.341 Transition facilities—Authority of department—Effect of local regulations.** The minimum requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by the department. Nothing in this section is intended to prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents the department from adding requirements to enhance public safety. [2002 c 68 § 7.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures.** (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department

shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the preemption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning, construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an

environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1). [2003 c 50 § 2; 2002 c 68 § 9.]

**Application—Effective date—2003 c 50:** See notes following RCW 71.09.020.

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

"All other laws" defined: RCW 71.09.2501.

**71.09.343 Transition facilities—Contract between state and local governments.** (1) At the request of the local government of the city or county in which a secure community transition facility is initially sited after January 1, 2002, the department shall enter into a long-term contract memorializing the agreements between the state and the city or county for the operation of the facility. This contract shall be separate from any contract regarding mitigation due to the facility. The contract shall include a clause that states:

(a) The contract does not obligate the state to continue operating any aspect of the civil commitment program under this chapter;

(b) The operation of any secure community transition facility is contingent upon sufficient appropriation by the legislature. If sufficient funds are not appropriated, the department is not obligated to operate the secure community transition facility and may close it; and

(c) This contract does not obligate the city or county to operate a secure community transition facility.

(2) Any city or county may, at their option, contract with the department to operate a secure community transition facility. [2002 c 68 § 16.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.344 Transition facilities—Mitigation agreements.** (1) Subject to funds appropriated by the legislature, the department may enter into negotiation for a mitigation agreement with:

(a) The county and/or city in which a secure community transition facility sited after January 1, 2002, is located;

(b) Each community in which the persons from those facilities will reside or regularly spend time, pursuant to court orders, for regular work or education, or to receive social services, or through which the person or persons will regularly be transported to reach other communities; and

(c) Educational institutions in the communities identified in (a) and (b) of this subsection.

(2) Mitigation agreements are limited to the following:

(a) One-time training for local law enforcement and administrative staff, upon the establishment of a secure community transition facility.

(i) Training between local government staff and the department includes training in coordination, emergency procedures, program and facility information, legal requirements, and resident profiles.

(ii) Reimbursement for training under this subsection is limited to:

(A) The salaries or hourly wages and benefits of those persons who receive training directly from the department; and

(B) Costs associated with preparation for, and delivery of, training to the department or its contracted staff by local government staff or contractors;

(b) Information coordination:

(i) Information coordination includes database infrastructure establishment and programming for the dissemination of information among law enforcement and the department related to facility residents.

(ii) Reimbursement for information coordination is limited to start-up costs;

(c) One-time capital costs:

(i) One-time capital costs are off-site costs associated with the need for increased security in specific locations.

(ii) Reimbursement for one-time capital costs is limited to actual costs; and

(d) Incident response:

(i) Incident response costs are law enforcement and criminal justice costs associated with violations of conditions of release or crimes by residents of the secure community transition facility.

(ii) Reimbursement for incident response does not include private causes of action. [2002 c 68 § 17.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**71.09.345 Alternative placement—Authority of court.** Nothing in chapter 12, Laws of 2001 2nd sp. sess. shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's individual residence or to a setting less restrictive than a secure community transition facility. A court-ordered less restrictive alternative placement to a committed person's individual residence is not a less restrictive alternative placement to a secure community transition facility. [2001 2nd sp.s. c 12 § 226.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.350 Examination and treatment only by certified providers—Exceptions.** (1) Examinations and treatment of sexually violent predators who are conditionally released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The court-

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ordered less restrictive alternative placement is located in another state; (b) the treatment provider is employed by the department; or (c)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (c) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings. [2004 c 38 § 14; 2001 2nd sp.s. c 12 § 404.]

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**71.09.800 Rules.** The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, for the oversight and operation of the program established pursuant to this chapter. Such rules shall include provisions for an annual inspection of the special commitment center and requirements for treatment plans and the retention of records. [2000 c 44 § 1.]

**Effective date—2000 c 44:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 44 § 2.]

**71.09.900 Index, part headings not law—1990 c 3.** See RCW 18.155.900.

**71.09.901 Severability—1990 c 3.** See RCW 18.155.901.

**71.09.902 Effective dates—Application—1990 c 3.** See RCW 18.155.902.

## Chapter 71.12 RCW

## PRIVATE ESTABLISHMENTS

## Sections

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71.12.670	Licensing, operation, inspection—Adoption of rules.

*Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.*

*Cost of services, disclosure: RCW 70.41.250.*

*Individuals with mental illness, commitment procedures, rights, etc.: Chapter 71.05 RCW.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

*State hospitals for individuals with mental illness: Chapter 72.23 RCW.*

**71.12.455 Definitions.** As used in this chapter, "establishment" and "institution" mean and include every private or county or municipal hospital, including public hospital districts, sanitarium, home, or other place receiving or caring for any mentally ill, mentally incompetent person, or chemically dependent person. [2001 c 254 § 1; 2000 c 93 § 21; 1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**71.12.460 License to be obtained—Penalty.** No person, association, county, municipality, public hospital district, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, complied with rules adopted under this chapter, and paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [2001 c 254 § 2; 2000 c 93 § 22; 1989 1st ex.s. c 9 § 226; 1979 c 141 §

133; 1959 c 25 § 71.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953-53.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.470 License application—Fees.** Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department of health requires. The application shall be accompanied by the proper license fee. The amount of the license fee shall be established by the department of health under RCW 43.70.110. [2000 c 93 § 23; 1987 c 75 § 19; 1982 c 201 § 14; 1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953-55.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**71.12.480 Examination of operation of establishment and premises before granting license.** The department of health shall not grant any such license until it has made an examination of all phases of the operation of the establishment necessary to determine compliance with rules adopted under this chapter including the premises proposed to be licensed and is satisfied that the premises are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. [2000 c 93 § 24; 1989 1st ex.s. c 9 § 227; 1979 c 141 § 134; 1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953-56.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.485 Fire protection—Duties of chief of the Washington state patrol.** Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the establishment and the department of health as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department of health, applicant or licensee shall notify the chief of the Washington state patrol, through

the director of fire protection, upon completion of any requirements made by him or her, and the director of fire protection or his or her deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the chief of the Washington state patrol, through the director of fire protection, as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the chief of the Washington state patrol, through the director of fire protection, for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, and they shall jointly approve the premises before a full license can be issued. [1995 c 369 § 61; 1989 1st ex.s. c 9 § 228; 1986 c 266 § 122; 1979 c 141 § 135; 1959 c 224 § 1.]

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**71.12.490 Expiration and renewal of license.** All licenses issued under the provisions of this chapter shall expire on a date to be set by the department of health. No license issued pursuant to this chapter shall exceed thirty-six months in duration. Application for renewal of the license, accompanied by the necessary fee as established by the department of health under RCW 43.70.110, shall be filed with that department, not less than thirty days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1989 1st ex.s. c 9 § 229; 1987 c 75 § 20; 1982 c 201 § 15; 1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953-58.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**71.12.500 Examination of premises as to compliance with the chapter, rules, and license—License changes.** The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with this chapter, the rules adopted under this chapter, and the requirements of the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and

provides the right to an adjudicative proceeding. [2000 c 93 § 25. Prior: 1989 1st ex.s. c 9 § 230; 1989 c 175 § 137; 1979 c 141 § 136; 1959 c 25 § 71.12.500; prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953-57.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71.12.510 Examination and visitation in general.** The department of health may at any time cause any establishment as defined in this chapter to be visited and examined. [2000 c 93 § 26; 1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953-59.]

**71.12.520 Scope of examination.** Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department of health may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [2000 c 93 § 27; 1989 1st ex.s. c 9 § 231; 1979 c 141 § 137; 1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953-60.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.530 Conference with management—Improvement.** The representatives of the department of health may, from time to time, at times and places designated by the department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1989 1st ex.s. c 9 § 232; 1979 c 141 § 138; 1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953-61.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.540 Recommendations to be kept on file—Records of inmates.** The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician, diagnosis, and date of discharge. [1989 1st ex.s. c 9 § 233; 1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.550 Local authorities may also prescribe standards.** This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953-63.]

**71.12.560 Voluntary patients—Receipt authorized—Application—Report.** The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. At the expiration of fourteen continuous days of treatment of a patient voluntarily committed in a private institution, hospital, or sanitarium, if the period of voluntary commitment is to continue, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, date of birth, sex, place of birth, occupation, social security number, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services. [1994 sp.s. c 7 § 441; 1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953-64.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Severability—Construction—Effective date—1973 1st ex.s. c 142:** See RCW 71.05.900 through 71.05.930.

**71.12.570 Communications by patients—Rights.** No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and \*71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2; 1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

**\*Reviser's note:** RCW 71.05.370 was recodified as RCW 71.05.217 pursuant to 2005 c 504 § 108, effective July 1, 2005.

**Severability—Construction—Effective date—1973 1st ex.s. c 142:** See RCW 71.05.900 through 71.05.930.

**71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments.** Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

**71.12.595 Suspension of license—Noncompliance with support order—Reissuance.** The department of health shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of health's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 860.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for noncompliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**71.12.640 Prosecuting attorney shall prosecute violations.** The prosecuting attorney of every county shall, upon application by the department of social and health services, the department of health, or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1989 1st ex.s. c 9 § 234; 1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953-54.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**71.12.670 Licensing, operation, inspection—Adoption of rules.** The department of health shall adopt rules for the licensing, operation, and inspections of establishments and institutions and the enforcement thereof. [2000 c 93 § 28.]

## Chapter 71.20 RCW

## LOCAL FUNDS FOR COMMUNITY SERVICES

(Formerly: State and local services for mentally retarded and developmentally disabled)

## Sections

- 71.20.100 Expenditures of county funds subject to county fiscal laws.  
71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.

**71.20.100 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

**71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes.** In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: PROVIDED, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1988 c 176 § 910; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

**Severability—1988 c 176:** See RCW 71A.10.900.

**Effective date—Applicability—1980 c 155:** See notes following RCW 84.40.030.

**Severability—1974 ex.s. c 71:** "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 71 § 13.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

## Chapter 71.24 RCW

## COMMUNITY MENTAL HEALTH SERVICES ACT

## Sections

- 71.24.011 Short title.  
71.24.015 Legislative intent and policy.  
71.24.016 Intent—Regional support networks programs.  
71.24.025 Definitions.

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- 71.24.030 Grants, purchasing of services, for community mental health programs.  
71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.  
71.24.037 Licensed service providers, residential services, community support services—Minimum standards.  
71.24.045 Regional support network powers and duties.  
71.24.049 Identification by regional support network—Children's mental health services.  
71.24.055 Regional support network services—Children's access to care standards and benefit package—Recommendations to legislature.  
71.24.061 Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program.  
71.24.065 Wraparound model of integrated children's mental health services delivery—Contracts—Evaluation—Report.  
71.24.100 Joint agreements of county authorities—Required provisions.  
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71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW.  
71.24.320 Regional support networks—Procurement process—Penalty for voluntary termination or refusal to renew contract.  
71.24.330 Regional support networks—Contracts with department—Requirements.  
71.24.340 Regional support networks—Eligibility for medical assistance upon release from confinement—Interlocal agreements.  
71.24.350 Mental health ombudsman office.  
71.24.360 Establishment of new regional support networks.  
71.24.370 Regional support networks contracts—Limitation on state liability.  
71.24.400 Streamlining delivery system—Finding.  
71.24.405 Streamlining delivery system.  
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71.24.420 Expenditure of federal funds.  
71.24.430 Collaborative service delivery.  
71.24.450 Mentally ill offenders—Findings and intent.  
71.24.455 Mentally ill offenders—Contracts for specialized access and services.  
71.24.460 Mentally ill offenders—Report to legislature—Contingent termination of program.  
71.24.470 Dangerous mentally ill offenders—Contract for case management—Use of appropriated funds.  
71.24.480 Dangerous mentally ill offenders—Limitation on liability due to treatment—Reporting requirements.  
71.24.805 Mental health system review—Performance audit recommendations affirmed.  
71.24.810 Mental health system review—Implementation of performance audit recommendations.  
71.24.840 Mental health system review—Study of long-term outcomes.  
71.24.900 Effective date—1967 ex.s. c 111.  
71.24.901 Severability—1982 c 204.  
71.24.902 Construction.

**Reviser's note:** The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

*Comprehensive community health centers: Chapter 70.10 RCW.*

*Funding: RCW 43.79.201 and 79.02.410.*

**71.24.011 Short title.** This chapter may be known and cited as the community mental health services act. [1982 c 204 § 1.]

**71.24.015 Legislative intent and policy.** It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs that focus on resilience and recovery, and practices that are evidence-based, research-based, consensus-based, or, where these do not exist, promising or emerging best practices, which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. Access to mental health services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early identification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) The involvement of persons with mental illness, their family members, and advocates in designing and implementing mental health services that reduce unnecessary hospitalization and incarceration and promote the recovery and employment of persons with mental illness. To improve the quality of services available and promote the rehabilitation, recovery, and reintegration of persons with mental illness, consumer and advocate participation in mental health services is an integral part of the community mental health system and shall be supported;

(3) Accountability of efficient and effective services through state of the art outcome and performance measures and statewide standards for monitoring client and system outcomes, performance, and reporting of client and system outcome information. These processes shall be designed so as to maximize the use of available resources for direct care of people with a mental illness and to assure uniform data collection across the state;

(4) Minimum service delivery standards;

(5) Priorities for the use of available resources for the care of the mentally ill consistent with the priorities defined in the statute;

(6) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, regional support networks, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(7) Coordination of services aimed at reducing duplication in service delivery and promoting complementary ser-

vices among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders including services operated by consumers and advocates. The legislature intends to encourage the development of regional mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care. Regional systems of care, whether operated by a county, group of counties, or another entity shall integrate planning, administration, and service delivery duties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs. The legislature hereby finds and declares that sound fiscal management requires vigilance to ensure that funds appropriated by the legislature for the provision of needed community mental health programs and services are ultimately expended solely for the purpose for which they were appropriated, and not for any other purpose.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [2005 c 503 § 1. Prior: 2001 c 334 § 6; 2001 c 323 § 1; 1999 c 214 § 7; 1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

**Correction of references—2005 c 503:** "The code reviser shall replace all references to "county designated mental health professional" with "designated mental health professional" in the Revised Code of Washington." [2005 c 503 § 16.]

**Savings—2005 c 503:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2005 c 503 § 17.]

**Severability—2005 c 503:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 503 § 18.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Conflict with federal requirements—1991 c 306:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no state funds appropriated to the division of mental health shall be expended or transferred for this purpose." [1991 c 306 § 7.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987." [1986 c 274 § 11.]

**71.24.016 Intent—Regional support networks programs.** (1) The legislature intends that eastern and western state hospitals shall operate as clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. It is further the intent of the legislature that the community mental health service delivery system focus on maintaining mentally ill individuals in the community. The program shall be evaluated and managed through a limited number of performance measures designed to hold each regional support network accountable for program success.

(2) The legislature intends to address the needs of people with mental disorders with a targeted, coordinated, and comprehensive set of evidence-based practices that are effective in serving individuals in their community and will reduce the need for placements in state mental hospitals. The legislature further intends to explicitly hold regional support networks accountable for serving people with mental disorders within their geographic boundaries and for not exceeding their allocation of state hospital beds. Within funds appropriated by the legislature for this purpose, regional support networks shall develop the means to serve the needs of people with mental disorders within their geographic boundaries. Elements of the program may include:

- (a) Crisis triage;
- (b) Evaluation and treatment and community hospital beds;
- (c) Residential beds;
- (d) Programs for community treatment teams; and
- (e) Outpatient services.

(3) The regional support network shall have the flexibility, within the funds appropriated by the legislature for this purpose, to design the mix of services that will be most effective within their service area of meeting the needs of people with mental disorders and avoiding placement of such individuals at the state mental hospital. Regional support networks are encouraged to maximize the use of evidence-based practices and alternative resources with the goal of substantially reducing and potentially eliminating the use of institutions for mental diseases. [2006 c 333 § 102; 2001 c 323 § 4.]

**Finding—Purpose—Intent—2006 c 333:** "(1) The legislature finds that ambiguities have been identified regarding the appropriation and allocation of federal and state funds, and the responsibilities of the department of social and health services and the regional support networks with regard to the provision of inpatient mental health services under the community mental health services act, chapter 71.24 RCW, and the involuntary treatment act, chapter 71.05 RCW. The purpose of this 2006 act is to make retroactive, remedial, curative, and technical amendments in order to resolve such ambiguities.

(2) In enacting the community mental health services act, the legislature intended the relationship between the state and the regional support networks to be governed solely by the terms of the regional support network contracts and did not intend these relationships to create statutory causes of action not expressly provided for in the contracts. Therefore, the legislature's intent is that, except to the extent expressly provided in contracts entered after March 29, 2006, the department of social and health services and regional support networks shall resolve existing and future disagreements regarding the subject matter identified in sections 103 and 301 of this act through nonjudicial means." [2006 c 333 § 101.]

**Severability—2006 c 333:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 333 § 402.]

**Part headings not law—2006 c 333:** "Part headings used in this act are not part of the law." [2006 c 333 § 403.]

(2008 Ed.)

**Effective dates—2006 c 333:** "This act takes effect July 1, 2006, except that sections 101 through 103, 107, 202, and 301 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 29, 2006]." [2006 c 333 § 404.]

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals.

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" or "adult who is chronically mentally ill" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substantial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Clubhouse" means a community-based program that provides rehabilitation services and is certified by the department of social and health services.

(6) "Community mental health program" means all mental health services, activities, or programs using available resources.

(7) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(8) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for persons who are mentally ill being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential ser-

vices, diagnosis and treatment for children who are acutely mentally ill or severely emotionally disturbed discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, recovery services, and other services determined by regional support networks.

(9) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(10) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

(11) "Department" means the department of social and health services.

(12) "Designated mental health professional" means a mental health professional designated by the county or other authority authorized in rule to perform the duties specified in this chapter.

(13) "Emerging best practice" or "promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(14) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(15) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or persons licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(16) "Long-term inpatient care" means inpatient services for persons committed for, or voluntarily receiving intensive treatment for, periods of ninety days or greater under chapter 71.05 RCW. "Long-term inpatient care" as used in this chapter does not include: (a) Services for individuals committed under chapter 71.05 RCW who are receiving services pursuant to a conditional release or a court-ordered less restrictive alternative to detention; or (b) services for individuals voluntarily receiving less restrictive alternative treatment on the grounds of the state hospital.

(17) "Mental health services" means all services provided by regional support networks and other services provided by the state for persons who are mentally ill.

(18) "Mentally ill persons," "persons who are mentally ill," and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (27), and (28) of this section.

(19) "Recovery" means the process in which people are able to live, work, learn, and participate fully in their communities.

(20) "Regional support network" means a county authority or group of county authorities or other entity recognized by the secretary in contract in a defined region.

(21) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify persons who are receiving or who at any time have received services for mental illness.

(22) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(23) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for persons who are acutely mentally ill, adults who are chronically mentally ill, children who are severely emotionally disturbed, or adults who are seriously disturbed and determined by the regional support network to be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service persons who are mentally ill in nursing homes, boarding homes, and adult family homes, and may include outpatient services provided as an element in a package of services in a supported housing model. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(24) "Resilience" means the personal and community qualities that enable individuals to rebound from adversity, trauma, tragedy, threats, or other stresses, and to live productive lives.

(25) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Adults and children who are acutely mentally ill; (b) adults who are chronically mentally ill; (c) children who are severely emotionally disturbed; or (d) adults who are seriously disturbed and determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven day a week, twenty-four hour a day availability of information regarding enrollment of adults and children who are mentally ill in services and their individual service plan to designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(26) "Secretary" means the secretary of social and health services.

(27) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(28) "Severely emotionally disturbed child" or "child who is severely emotionally disturbed" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a caretaker who is mentally ill or inadequate;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(29) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(30) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others.

(31) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized

Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2008 c 261 § 2; 2007 c 414 § 1; 2006 c 333 § 104. Prior: 2005 c 504 § 105; 2005 c 503 § 2; 2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4; prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Purpose—Intent—1999 c 10:** "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

**Alphabetization of section—1999 c 10 § 2:** "The code reviser shall alphabetize the definitions in RCW 71.24.025 and correct any cross-references." [1999 c 10 § 14.]

**Effective date—1995 c 96:** See note following RCW 71.24.400.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.030 Grants, purchasing of services, for community mental health programs.** The secretary is authorized to make grants and/or purchase services from counties, combinations of counties, or other entities, to establish and operate community mental health programs. [2005 c 503 § 3; 2001 c 323 § 9; 1999 c 10 § 3; 1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Effective date—1972 ex.s. c 122:** See note following RCW 70.96A.010.

**71.24.035 Secretary's powers and duties as state mental health authority—Secretary designated as regional support network, when.** (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the regional support network if the regional support network fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045, until such time as a new regional support network is designated under RCW 71.24.320.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates regional biennial needs assessments and regional mental health service plans and state services for adults and children with mental illness. The secretary shall also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the region's residents, including parents who are respondents in dependency cases, in the following order of priority: (i) Persons with acute mental illness; (ii) adults with chronic mental illness and children who are severely emotionally disturbed; and (iii) persons who are seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for persons with mental illness which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in persons with mental illness becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. These rules shall permit a county-operated mental health program to be licensed as a service provider subject to compliance with applicable statutes and rules. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of persons who are minorities, elderly, disabled, children, low-income, and parents who are respondents in dependency cases are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, RCW 71.24.320 and 71.24.330, which shall be used in contracting with regional support networks. The standard contract shall include a maximum fund balance, which shall be consistent with that required by federal regulations or waiver stipulations;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of regional support networks and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.420, and 71.05.440;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit regional support networks and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter;

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter;

(n) Assure the availability of an appropriate amount, as determined by the legislature in the operating budget by amounts appropriated for this specific purpose, of community-based, geographically distributed residential services;

(o) Certify crisis stabilization units that meet state minimum standards; and

(p) Certify clubhouses that meet state minimum standards.

(6) The secretary shall use available resources only for regional support networks, except to the extent authorized, and in accordance with any priorities or conditions specified, in the biennial appropriations act.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable

rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13) The standards for certification of crisis stabilization units shall include standards that:

(a) Permit location of the units at a jail facility if the unit is physically separate from the general population of the jail;

(b) Require administration of the unit by mental health professionals who direct the stabilization and rehabilitation efforts; and

(c) Provide an environment affording security appropriate with the alleged criminal behavior and necessary to protect the public safety.

(14) The standards for certification of a clubhouse shall at a minimum include:

(a) The facilities may be peer-operated and must be recovery-focused;

(b) Members and employees must work together;

(c) Members must have the opportunity to participate in all the work of the clubhouse, including administration, research, intake and orientation, outreach, hiring, training and evaluation of staff, public relations, advocacy, and evaluation of clubhouse effectiveness;

(d) Members and staff and ultimately the clubhouse director must be responsible for the operation of the clubhouse, central to this responsibility is the engagement of members and staff in all aspects of clubhouse operations;

(e) Clubhouse programs must be comprised of structured activities including but not limited to social skills training, vocational rehabilitation, employment training and job placement, and community resource development;

(f) Clubhouse programs must provide in-house educational programs that significantly utilize the teaching and tutoring skills of members and assist members by helping them to take advantage of adult education opportunities in the community;

(g) Clubhouse programs must focus on strengths, talents, and abilities of its members;

(h) The work-ordered day may not include medication clinics, day treatment, or other therapy programs within the clubhouse.

(15) The department shall distribute appropriated state and federal funds in accordance with any priorities, terms, or conditions specified in the appropriations act.

(16) The secretary shall assume all duties assigned to the nonparticipating regional support networks under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties in regions where there are not participating regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(17) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(d) Deny all or part of the funding allocations to regional support networks based solely upon formal findings of non-compliance with the terms of the regional support network's contract with the department. Regional support networks disputing the decision of the secretary to withhold funding allocations are limited to the remedies provided in the department's contracts with the regional support networks.

(18) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2008 c 267 § 5; 2008 c 261 § 3. Prior: 2007 c 414 § 2; 2007 c 410 § 8; 2007 c 375 § 12; 2006 c 333 § 201; prior: 2005 c 504 § 715; 2005 c 503 § 7; prior: 2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137; prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

**Reviser's note:** This section was amended by 2008 c 261 § 3 and by 2008 c 267 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Short title—2007 c 410:** See note following RCW 13.34.138.

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1987 c 105:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.037 Licensed service providers, residential services, community support services—Minimum standards.** (1) The secretary shall by rule establish state minimum standards for licensed service providers and services.

(2) Minimum standards for licensed service providers shall, at a minimum, establish: Qualifications for staff providing services directly to mentally ill persons, the intended result of each service, and the rights and responsibilities of persons receiving mental health services pursuant to this chapter. The secretary shall provide for deeming of licensed service providers as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

(3) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [2001 c 323 § 11; 1999 c 10 § 5.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.045 Regional support network powers and duties.** The regional support network shall:

(1) Contract as needed with licensed service providers. The regional support network may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(2) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the regional support network shall comply with rules promulgated by the secretary that shall provide measurements to determine when a regional support network provided service is more efficient and cost effective;

(3) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the regional support network to provide services required by this

chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts;

(4) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(5) Maintain patient tracking information in a central location as required for resource management services and the department's information system;

(6) Collaborate to ensure that policies do not result in an adverse shift of mentally ill persons into state and local correctional facilities;

(7) Work with the department to expedite the enrollment or re-enrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases;

(8) If a regional support network is not operated by the county, work closely with the county designated mental health professional or county designated crisis responder to maximize appropriate placement of persons into community services; and

(9) Coordinate services for individuals who have received services through the community mental health system and who become patients at a state mental hospital to ensure they are transitioned into the community in accordance with mutually agreed upon discharge plans and upon determination by the medical director of the state mental hospital that they no longer need intensive inpatient care. [2006 c 333 § 105; 2005 c 503 § 8; 2001 c 323 § 12; 1992 c 230 § 5. Prior: 1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Effective date—1992 c 230 § 5:** "Section 5 of this act shall take effect July 1, 1995." [1992 c 230 § 8.]

**Intent—1992 c 230:** See note following RCW 72.23.025.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Conflict with federal requirements—1991 c 306:** See note following RCW 71.24.015.

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.049 Identification by regional support network—Children's mental health services.** By January 1st of each odd-numbered year, the regional support network shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter, (2) the amount of funds under this chapter used for children's mental health services, (3) an estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families. [2001 c 323 § 13; 1999 c 10 § 6; 1986 c 274 § 6.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.055 Regional support network services—Children's access to care standards and benefit package—Recommendations to legislature.** As part of the system

transformation initiative, the department of social and health services shall undertake the following activities related specifically to children's mental health services:

(1) The development of recommended revisions to the access to care standards for children. The recommended revisions shall reflect the policies and principles set out in RCW 71.36.005, 71.36.010, and 71.36.025, and recognize that early identification, intervention and prevention services, and brief intervention services may be provided outside of the regional support network system. Revised access to care standards shall assess a child's need for mental health services based upon the child's diagnosis and its negative impact upon his or her persistent impaired functioning in family, school, or the community, and should not solely condition the receipt of services upon a determination that a child is engaged in high risk behavior or is in imminent need of hospitalization or out-of-home placement. Assessment and diagnosis for children under five years of age shall be determined using a nationally accepted assessment tool designed specifically for children of that age. The recommendations shall also address whether amendments to RCW \*71.24.025 (26) and (27) and 71.24.035(5) are necessary to implement revised access to care standards;

(2) Development of a revised children's mental health benefit package. The department shall ensure that services included in the children's mental health benefit package reflect the policies and principles included in RCW 71.36.005 and 71.36.025, to the extent allowable under medicaid, Title XIX of the federal social security act. Strong consideration shall be given to developmentally appropriate evidence-based and research-based practices, family-based interventions, the use of natural and peer supports, and community support services. This effort shall include a review of other states' efforts to fund family-centered children's mental health services through their medicaid programs;

(3) Consistent with the timeline developed for the system transformation initiative, recommendations for revisions to the children's access to care standards and the children's mental health services benefits package shall be presented to the legislature by January 1, 2009. [2007 c 359 § 4.]

\*Reviser's note: RCW 71.24.025 was amended by 2007 c 414 § 1, changing subsections (26) and (27) to subsections (27) and (28).

Captions not law—2007 c 359: See note following RCW 71.36.005.

**71.24.061 Children's mental health providers—Children's mental health evidence-based practice institute—Pilot program.**

(1) The department shall provide flexibility in provider contracting to regional support networks for children's mental health services. Beginning with 2007-2009 biennium contracts, regional support network contracts shall authorize regional support networks to allow and encourage licensed community mental health centers to subcontract with individual licensed mental health professionals when necessary to meet the need for an adequate, culturally competent, and qualified children's mental health provider network.

(2) To the extent that funds are specifically appropriated for this purpose or that nonstate funds are available, a children's mental health evidence-based practice institute shall be established at the University of Washington division of public behavioral health and justice policy. The institute shall closely collaborate with entities currently engaged in

evaluating and promoting the use of evidence-based, research-based, promising, or consensus-based practices in children's mental health treatment, including but not limited to the University of Washington department of psychiatry and behavioral sciences, children's hospital and regional medical center, the University of Washington school of nursing, the University of Washington school of social work, and the Washington state institute for public policy. To ensure that funds appropriated are used to the greatest extent possible for their intended purpose, the University of Washington's indirect costs of administration shall not exceed ten percent of appropriated funding. The institute shall:

(a) Improve the implementation of evidence-based and research-based practices by providing sustained and effective training and consultation to licensed children's mental health providers and child-serving agencies who are implementing evidence-based or researched-based practices for treatment of children's emotional or behavioral disorders, or who are interested in adapting these practices to better serve ethnically or culturally diverse children. Efforts under this subsection should include a focus on appropriate oversight of implementation of evidence-based practices to ensure fidelity to these practices and thereby achieve positive outcomes;

(b) Continue the successful implementation of the "partnerships for success" model by consulting with communities so they may select, implement, and continually evaluate the success of evidence-based practices that are relevant to the needs of children, youth, and families in their community;

(c) Partner with youth, family members, family advocacy, and culturally competent provider organizations to develop a series of information sessions, literature, and online resources for families to become informed and engaged in evidence-based and research-based practices;

(d) Participate in the identification of outcome-based performance measures under RCW 71.36.025(2) and partner in a statewide effort to implement statewide outcomes monitoring and quality improvement processes; and

(e) Serve as a statewide resource to the department and other entities on child and adolescent evidence-based, research-based, promising, or consensus-based practices for children's mental health treatment, maintaining a working knowledge through ongoing review of academic and professional literature, and knowledge of other evidence-based practice implementation efforts in Washington and other states.

(3) To the extent that funds are specifically appropriated for this purpose, the department in collaboration with the evidence-based practice institute shall implement a pilot program to support primary care providers in the assessment and provision of appropriate diagnosis and treatment of children with mental and behavioral health disorders and track outcomes of this program. The program shall be designed to promote more accurate diagnoses and treatment through timely case consultation between primary care providers and child psychiatric specialists, and focused educational learning collaboratives with primary care providers. [2007 c 359 § 7.]

Captions not law—2007 c 359: See note following RCW 71.36.005.

**71.24.065 Wraparound model of integrated children's mental health services delivery—Contracts—Evaluation—Report.** To the extent funds are specifically appropriated for this purpose, the department of social and health services shall contract for implementation of a wraparound model of integrated children's mental health services delivery in up to four regional support network regions in Washington state in which wraparound programs are not currently operating, and in up to two regional support network regions in which wraparound programs are currently operating. Contracts in regions with existing wraparound programs shall be for the purpose of expanding the number of children served.

(1) Funding provided may be expended for: Costs associated with a request for proposal and contracting process; administrative costs associated with successful bidders' operation of the wraparound model; the evaluation under subsection (5) of this section; and funding for services needed by children enrolled in wraparound model sites that are not otherwise covered under existing state programs. The services provided through the wraparound model sites shall include, but not be limited to, services covered under the medicaid program. The department shall maximize the use of medicaid and other existing state-funded programs as a funding source. However, state funds provided may be used to develop a broader service package to meet needs identified in a child's care plan. Amounts provided shall supplement, and not supplant, state, local, or other funding for services that a child being served through a wraparound site would otherwise be eligible to receive.

(2) The wraparound model sites shall serve children with serious emotional or behavioral disturbances who are at high risk of residential or correctional placement or psychiatric hospitalization, and who have been referred for services from the department, a county juvenile court, a tribal court, a school, or a licensed mental health provider or agency.

(3) Through a request for proposal process, the department shall contract, with regional support networks, alone or in partnership with either educational service districts or entities licensed to provide mental health services to children with serious emotional or behavioral disturbances, to operate the wraparound model sites. The contractor shall provide care coordination and facilitate the delivery of services and other supports to families using a strength-based, highly individualized wraparound process. The request for proposal shall require that:

(a) The regional support network agree to use its medicaid revenues to fund services included in the existing regional support network's benefit package that a medicaid-eligible child participating in the wraparound model site is determined to need;

(b) The contractor provide evidence of commitments from at least the following entities to participate in wraparound care plan development and service provision when appropriate: Community mental health agencies, schools, the department of social and health services children's administration, juvenile courts, the department of social and health services juvenile rehabilitation administration, and managed health care systems contracting with the department under RCW 74.09.522; and

(c) The contractor will operate the wraparound model site in a manner that maintains fidelity to the wraparound process as defined in RCW 71.36.010.

(4) Contracts for operation of the wraparound model sites shall be executed on or before April 1, 2008, with enrollment and service delivery beginning on or before July 1, 2008.

(5) The evidence-based practice institute established in RCW 71.24.061 shall evaluate the wraparound model sites, measuring outcomes for children served. Outcomes measured shall include, but are not limited to: Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, school attendance, school performance, recidivism, emergency room utilization, involvement with the juvenile justice system, decreased use of psychotropic medication, and decreased hospitalization.

(6) The evidence-based practice institute shall provide a report and recommendations to the appropriate committees of the legislature by December 1, 2010. [2007 c 359 § 10.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.24.100 Joint agreements of county authorities—Required provisions.** A county authority or a group of county authorities may enter into a joint operating agreement to form a regional support network. Any agreement between two or more county authorities for the establishment of a regional support network shall provide:

(1) That each county shall bear a share of the cost of mental health services; and

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [2005 c 503 § 9; 1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.110 Joint agreements of county authorities—Permissive provisions.** An agreement for the establishment of a community mental health program under RCW 71.24.100 may also provide:

(1) For the joint supervision or operation of services and facilities, or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1999 c 10 § 7; 1982 c 204 § 8; 1967 ex.s. c 111 § 11.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.155 Grants to regional support networks—Accounting.** Grants shall be made by the department to regional support networks for community mental health programs totaling not less than ninety-five percent of available resources. The department may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emer-

agency needs and technical assistance under this chapter. [2001 c 323 § 14; 1987 c 505 § 65; 1986 c 274 § 9; 1982 c 204 § 9.]

**Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9:** See note following RCW 71.24.015.

**71.24.160 Proof as to uses made of state funds.** The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. [2001 c 323 § 15; 1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

**71.24.200 Expenditures of county funds subject to county fiscal laws.** Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

**71.24.215 Clients to be charged for services.** Clients receiving mental health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the department. Fees shall not exceed the actual cost of care. [1982 c 204 § 11.]

**71.24.220 Reimbursement may be withheld for non-compliance with chapter or related rules.** The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or the related rules adopted by the department. [1999 c 10 § 8; 1982 c 204 § 12; 1967 ex.s. c 111 § 22.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**71.24.240 County program plans to be approved by secretary prior to submittal to federal agency.** In order to establish eligibility for funding under this chapter, any regional support network seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [2005 c 503 § 10; 1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.250 Regional support network may accept and expend gifts and grants.** The regional support network may accept and expend gifts and grants received from private, county, state, and federal sources. [2001 c 323 § 16; 1982 c 204 § 14; 1967 ex.s. c 111 § 25.]

**71.24.260 Waiver of postgraduate educational requirements.** The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986:

(1) Are employed by an agency subject to licensure under this chapter, the community mental health services act, in a capacity involving the treatment of mental illness; and

(2) Have at least ten years of full-time experience in the treatment of mental illness. [1986 c 274 § 10.]

**71.24.300 Regional support networks—Inclusion of tribal authorities—Roles and responsibilities.** (1) Upon the request of a tribal authority or authorities within a regional support network the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(2) The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served.

(3) The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that counties and the regional support network do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(4) If a regional support network is a private entity, the department shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network.

(5) The roles and responsibilities of the private entity and the tribal authorities shall be determined by the department, through negotiation with the tribal authority.

(6) Regional support networks shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(c) Provide within the boundaries of each regional support network evaluation and treatment services for at least ninety percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks may contract to purchase evaluation and treatment services from other networks if they are unable to provide for appropriate resources within their boundaries. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to:

(i) Contracts with neighboring or contiguous regions; or

(ii) Individuals detained or committed for periods up to seventeen days at the state hospitals at the discretion of the secretary.

(d) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children.

(e) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(7) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the persons with mental illness and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(8) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter, provide local oversight regarding the activities of the regional support network, and work with the regional support network to resolve significant concerns regarding service delivery and outcomes. The department shall establish statewide procedures for the operation of regional advisory committees including mechanisms for advisory board feedback to the department regarding regional support network performance. The composition of the board shall be broadly representative of the demographic character of the region and shall include, but not be limited to, representatives of consumers and families, law enforcement, and where the county is not the regional support network, county elected officials. Composition and length of terms of board members may differ between regional support networks but shall be included in each regional support network's contract and approved by the secretary.

(9) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(10) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (6) of this section. [2008 c 261 § 4; 2006 c 333 § 106; 2005 c 503 § 11; 2001 c 323 § 17. Prior: 1999 c 214 § 8; 1999 c 10 § 9; 1994 c 204 § 2; 1992 c 230 § 6; prior: 1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Intent—1992 c 230:** See note following RCW 72.23.025.

**Evaluation of transition to regional systems—1989 c 205:** See note following RCW 71.24.015.

**71.24.310 Administration of chapters 71.05 and 71.24 RCW through regional support networks—Implementation of chapter 71.05 RCW.** The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that the department and the regional support networks shall work together to implement chapter 71.05 RCW as follows:

(1) By June 1, 2006, regional support networks shall recommend to the department the number of state hospital beds that should be allocated for use by each regional support network. The statewide total allocation shall not exceed the number of state hospital beds offering long-term inpatient care, as defined in this chapter, for which funding is provided in the biennial appropriations act.

(2) If there is consensus among the regional support networks regarding the number of state hospital beds that should be allocated for use by each regional support network, the department shall contract with each regional support network accordingly.

(3) If there is not consensus among the regional support networks regarding the number of beds that should be allocated for use by each regional support network, the department shall establish by emergency rule the number of state hospital beds that are available for use by each regional support network. The emergency rule shall be effective September 1, 2006. The primary factor used in the allocation shall be the estimated number of acutely and chronically mentally ill adults in each regional support network area, based upon population-adjusted incidence and utilization.

(4) The allocation formula shall be updated at least every three years to reflect demographic changes, and new evidence regarding the incidence of acute and chronic mental illness and the need for long-term inpatient care. In the updates, the statewide total allocation shall include (a) all state hospital beds offering long-term inpatient care for which funding is provided in the biennial appropriations act; plus (b) the estimated equivalent number of beds or comparable diversion services contracted in accordance with subsection (5) of this section.

(5) The department is encouraged to enter performance-based contracts with regional support networks to provide some or all of the regional support network's allocated long-term inpatient treatment capacity in the community, rather than in the state hospital. The performance contracts shall specify the number of patient days of care available for use by the regional support network in the state hospital.

(6) If a regional support network uses more state hospital patient days of care than it has been allocated under subsection (3) or (4) of this section, or than it has contracted to use under subsection (5) of this section, whichever is less, it shall reimburse the department for that care. The reimbursement rate per day shall be the hospital's total annual budget for long-term inpatient care, divided by the total patient days of care assumed in development of that budget.

(7) One-half of any reimbursements received pursuant to subsection (6) of this section shall be used to support the cost

of operating the state hospital. The department shall distribute the remaining half of such reimbursements among regional support networks that have used less than their allocated or contracted patient days of care at that hospital, proportional to the number of patient days of care not used. [2006 c 333 § 107; 1989 c 205 § 6.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Evaluation of transition to regional systems—1989 c 205:** See note following RCW 71.24.015.

**71.24.320 Regional support networks—Procurement process—Penalty for voluntary termination or refusal to renew contract.** (1) If an existing regional support network chooses not to respond to a request for qualifications, or is unable to substantially meet the requirements of a request for qualifications, or notifies the department of social and health services it will no longer serve as a regional support network, the department shall utilize a procurement process in which other entities recognized by the secretary may bid to serve as the regional support network.

(a) The request for proposal shall include a scoring factor for proposals that include additional financial resources beyond that provided by state appropriation or allocation.

(b) The department shall provide detailed briefings to all bidders in accordance with department and state procurement policies.

(c) The request for proposal shall also include a scoring factor for proposals submitted by nonprofit entities that include a component to maximize the utilization of state provided resources and the leverage of other funds for the support of mental health services to persons with mental illness.

(2) A regional support network that voluntarily terminates, refuses to renew, or refuses to sign a mandatory amendment to its contract to act as a regional support network is prohibited from responding to a procurement under this section or serving as a regional support network for five years from the date that the department signs a contract with the entity that will serve as the regional support network. [2008 c 261 § 5; 2006 c 333 § 202; 2005 c 503 § 4.]

**Intent—Findings—2008 c 261:** "In the event that an existing regional support network will no longer be contracting to provide services, it is the intent of the legislature to provide flexibility to the department to facilitate a stable transition which avoids disruption of services to consumers and families, maximizes efficiency and public safety, and maintains the integrity of the public mental health system. By granting this authority and flexibility, the legislature finds that the department will be able to maximize purchasing power within allocated resources and attract high quality organizations with optimal infrastructure to perform regional support network functions through competitive procurement processes. The legislature intends for the department of social and health services to partner with political subdivisions and other entities to provide quality, coordinated, and integrated services to address the needs of individuals with behavioral health needs." [2008 c 261 § 1.]

**Retroactive application—2008 c 261 § 5:** "Section 5 of this act applies retroactively to July 1, 2007." [2008 c 261 § 7.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Effective date—2005 c 503 § 4:** "Section 4 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 503 § 19.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

(2008 Ed.)

**71.24.330 Regional support networks—Contracts with department—Requirements.** (1) Contracts between a regional support network and the department shall include mechanisms for monitoring performance under the contract and remedies for failure to substantially comply with the requirements of the contract including, but not limited to, financial penalties, termination of the contract, and reprocurement of the contract.

(2) The regional support network procurement processes shall encourage the preservation of infrastructure previously purchased by the community mental health service delivery system, the maintenance of linkages between other services and delivery systems, and maximization of the use of available funds for services versus profits. However, a regional support network selected through the procurement process is not required to contract for services with any county-owned or operated facility. The regional support network procurement process shall provide that public funds appropriated by the legislature shall not be used to promote or deter, encourage, or discourage employees from exercising their rights under Title 29, chapter 7, subchapter II, United States Code or chapter 41.56 RCW.

(3) In addition to the requirements of RCW 71.24.035, contracts shall:

(a) Define administrative costs and ensure that the regional support network does not exceed an administrative cost of ten percent of available funds;

(b) Require effective collaboration with law enforcement, criminal justice agencies, and the chemical dependency treatment system;

(c) Require substantial implementation of department adopted integrated screening and assessment process and matrix of best practices;

(d) Maintain the decision-making independence of designated mental health professionals;

(e) Except at the discretion of the secretary or as specified in the biennial budget, require regional support networks to pay the state for the costs associated with individuals who are being served on the grounds of the state hospitals and who are not receiving long-term inpatient care as defined in RCW 71.24.025;

(f) Include a negotiated alternative dispute resolution clause; and

(g) Include a provision requiring either party to provide one hundred eighty days' notice of any issue that may cause either party to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to act as a regional support network. If either party decides to voluntarily terminate, refuse to renew, or refuse to sign a mandatory amendment to the contract to serve as a regional support network they shall provide ninety days' advance notice in writing to the other party. [2008 c 261 § 6; 2006 c 333 § 203; 2005 c 503 § 6.]

**Intent—Findings—2008 c 261:** See note following RCW 71.24.320.

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.340 Regional support networks—Eligibility for medical assistance upon release from confinement—**

[Title 71 RCW—page 65]

**Interlocal agreements.** The secretary shall require the regional support networks to develop interlocal agreements pursuant to RCW 74.09.555. To this end, the regional support networks shall accept referrals for enrollment on behalf of a confined person, prior to the person's release. [2005 c 503 § 13.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**71.24.350 Mental health ombudsman office.** The department shall require each regional support network to provide for a separately funded mental health ombudsman office in each regional support network that is independent of the regional support network. The ombudsman office shall maximize the use of consumer advocates. [2005 c 504 § 803.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.24.360 Establishment of new regional support networks.** The department may establish new regional support network boundaries in any part of the state where more than one network chooses not to respond to, or is unable to substantially meet the requirements of, the request for qualifications under section 4, chapter 503, Laws of 2005 or where a regional support network is subject to reprourement under section 6, chapter 503, Laws of 2005. The department may establish no fewer than eight and no more than fourteen regional support networks under this chapter. No entity shall be responsible for more than three regional support networks. [2005 c 504 § 805.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**71.24.370 Regional support networks contracts—Limitation on state liability.** (1) Except for monetary damage claims which have been reduced to final judgment by a superior court, this section applies to all claims against the state, state agencies, state officials, or state employees that exist on or arise after March 29, 2006.

(2) Except as expressly provided in contracts entered into between the department and the regional support networks after March 29, 2006, the entities identified in subsection (3) of this section shall have no claim for declaratory relief, injunctive relief, judicial review under chapter 34.05 RCW, or civil liability against the state or state agencies for actions or inactions performed pursuant to the administration of this chapter with regard to the following: (a) The allocation or payment of federal or state funds; (b) the use or allocation of state hospital beds; or (c) financial responsibility for the provision of inpatient mental health care.

(3) This section applies to counties, regional support networks, and entities which contract to provide regional support network services and their subcontractors, agents, or employees. [2006 c 333 § 103.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**71.24.400 Streamlining delivery system—Finding.** The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. The legislature finds that the department and the community mental health service delivery system must make ongoing efforts to achieve the purposes set forth in RCW 71.24.015 related to reduced administrative layering, duplication, elimination of process measures not specifically required by the federal government for the receipt of federal funds, and reduced administrative costs. [2001 c 323 § 18; 1999 c 10 § 10; 1995 c 96 § 1; 1994 c 259 § 1.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Effective date—1995 c 96:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 96 § 5.]

**71.24.405 Streamlining delivery system.** The department shall establish a comprehensive and collaborative effort within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The department must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients under \*section 5 of this act; and

(6) An independent evaluation component to measure the success of the department in fully implementing the provisions of RCW 71.24.400 and this section. [2001 c 323 § 19; 1999 c 10 § 11; 1995 c 96 § 2; 1994 c 259 § 2.]

**\*Reviser's note:** Section 5 of this act was vetoed by the governor.

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Effective date—1995 c 96:** See note following RCW 71.24.400.

**71.24.415 Streamlining delivery system—Department duties to achieve outcomes.** To carry out the purposes specified in RCW 71.24.400, the department is encouraged to utilize its authority to eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services. [1999 c 10 § 12; 1995 c 96 § 3; 1994 c 259 § 4.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Effective date—1995 c 96:** See note following RCW 71.24.400.

**71.24.420 Expenditure of federal funds.** The department shall operate the community mental health service delivery system authorized under this chapter within the following constraints:

(1) The full amount of federal funds for mental health services, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the community mental health service delivery system authorized in this chapter.

(2) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in \*section 5 of this act.

(3) The department shall implement strategies that accomplish the outcome measures identified in \*section 5 of this act that are within the funding constraints in this section.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. [2001 c 323 § 2.]

**\*Reviser's note:** Section 5 of this act was vetoed by the governor.

**71.24.430 Collaborative service delivery.** (1) The department shall ensure the coordination of allied services for mental health clients. The department shall implement strategies for resolving organizational, regulatory, and funding issues at all levels of the system, including the state, the regional support networks, and local service providers.

(2) The department shall propose, in operating budget requests, transfers of funding among programs to support collaborative service delivery to persons who require services from multiple department programs. The department shall

report annually to the appropriate committees of the senate and house of representatives on actions and projects it has taken to promote collaborative service delivery. [2001 c 323 § 3.]

**71.24.450 Mentally ill offenders—Findings and intent.** (1) Many acute and chronically mentally ill offenders are delayed in their release from Washington correctional facilities due to their inability to access reasonable treatment and living accommodations prior to the maximum expiration of their sentences. Often the offender reaches the end of his or her sentence and is released without any follow-up care, funds, or housing. These delays are costly to the state, often lead to psychiatric relapse, and result in unnecessary risk to the public.

These offenders rarely possess the skills or emotional stability to maintain employment or even complete applications to receive entitlement funding. Nation-wide only five percent of diagnosed schizophrenics are able to maintain part-time or full-time employment. Housing and appropriate treatment are difficult to obtain.

This lack of resources, funding, treatment, and housing creates additional stress for the mentally ill offender, impairing self-control and judgment. When the mental illness is instrumental in the offender's patterns of crime, such stresses may lead to a worsening of his or her illness, reoffending, and a threat to public safety.

(2) It is the intent of the legislature to create a pilot program to provide for postrelease mental health care and housing for a select group of mentally ill offenders entering community living, in order to reduce incarceration costs, increase public safety, and enhance the offender's quality of life. [1997 c 342 § 1.]

**Severability—1997 c 342:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 342 § 6.]

**71.24.455 Mentally ill offenders—Contracts for specialized access and services.** (1) The secretary shall select and contract with a regional support network or private provider to provide specialized access and services to mentally ill offenders upon release from total confinement within the department of corrections who have been identified by the department of corrections and selected by the regional support network or private provider as high-priority clients for services and who meet service program entrance criteria. The program shall enroll no more than twenty-five offenders at any one time, or a number of offenders that can be accommodated within the appropriated funding level, and shall seek to fill any vacancies that occur.

(2) Criteria shall include a determination by department of corrections staff that:

(a) The offender suffers from a major mental illness and needs continued mental health treatment;

(b) The offender's previous crime or crimes have been determined by either the court or department of corrections staff to have been substantially influenced by the offender's mental illness;

(c) It is believed the offender will be less likely to commit further criminal acts if provided ongoing mental health care;

(d) The offender is unable or unlikely to obtain housing and/or treatment from other sources for any reason; and

(e) The offender has at least one year remaining before his or her sentence expires but is within six months of release to community housing and is currently housed within a work release facility or any department of corrections' division of prisons facility.

(3) The regional support network or private provider shall provide specialized access and services to the selected offenders. The services shall be aimed at lowering the risk of recidivism. An oversight committee composed of a representative of the department, a representative of the selected regional support network or private provider, and a representative of the department of corrections shall develop policies to guide the pilot program, provide dispute resolution including making determinations as to when entrance criteria or required services may be waived in individual cases, advise the department of corrections and the regional support network or private provider on the selection of eligible offenders, and set minimum requirements for service contracts. The selected regional support network or private provider shall implement the policies and service contracts. The following services shall be provided:

(a) Intensive case management to include a full range of intensive community support and treatment in client-to-staff ratios of not more than ten offenders per case manager including: (i) A minimum of weekly group and weekly individual counseling; (ii) home visits by the program manager at least two times per month; and (iii) counseling focusing on relapse prevention and past, current, or future behavior of the offender.

(b) The case manager shall attempt to locate and procure housing appropriate to the living and clinical needs of the offender and as needed to maintain the psychiatric stability of the offender. The entire range of emergency, transitional, and permanent housing and involuntary hospitalization must be considered as available housing options. A housing subsidy may be provided to offenders to defray housing costs up to a maximum of six thousand six hundred dollars per offender per year and be administered by the case manager. Additional funding sources may be used to offset these costs when available.

(c) The case manager shall collaborate with the assigned prison, work release, or community corrections staff during release planning, prior to discharge, and in ongoing supervision of the offender while under the authority of the department of corrections.

(d) Medications including the full range of psychotropic medications including atypical antipsychotic medications may be required as a condition of the program. Medication prescription, medication monitoring, and counseling to support offender understanding, acceptance, and compliance with prescribed medication regimens must be included.

(e) A systematic effort to engage offenders to continuously involve themselves in current and long-term treatment and appropriate rehabilitative activities shall be made.

(f) Classes appropriate to the clinical and living needs of the offender and appropriate to his or her level of understanding.

(g) The case manager shall assist the offender in the application and qualification for entitlement funding, including medicaid, state assistance, and other available government and private assistance at any point that the offender is qualified and resources are available.

(h) The offender shall be provided access to daily activities such as drop-in centers, prevocational and vocational training and jobs, and volunteer activities.

(4) Once an offender has been selected into the pilot program, the offender shall remain in the program until the end of his or her sentence or unless the offender is released from the pilot program earlier by the department of corrections.

(5) Specialized training in the management and supervision of high-crime risk mentally ill offenders shall be provided to all participating mental health providers by the department and the department of corrections prior to their participation in the program and as requested thereafter.

(6) The pilot program provided for in this section must be providing services by July 1, 1998. [1997 c 342 § 2.]

**Severability—1997 c 342:** See note following RCW 71.24.450.

**71.24.460 Mentally ill offenders—Report to legislature—Contingent termination of program.** The department, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature annual reports regarding services and outcomes. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004. [1999 c 10 § 13; 1997 c 342 § 4.]

**Purpose—Intent—1999 c 10:** See note following RCW 71.24.025.

**Severability—1997 c 342:** See note following RCW 71.24.450.

**71.24.470 Dangerous mentally ill offenders—Contract for case management—Use of appropriated funds.** (1) The secretary shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the secretary deems necessary to assist offenders identified under RCW 72.09.370. The contracts may be with regional support networks or any other qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining chem-

ical dependency treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section and distributed to the regional support networks are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the statutory distribution formula established pursuant to \*RCW 71.24.035. [1999 c 214 § 9.]

**\*Reviser's note:** RCW 71.24.035 was amended by 2006 c 333 § 201, changing "distribution formula" to "priorities, terms, or conditions in the appropriations act."

**Intent—Effective date—1999 c 214:** See notes following RCW 72.09.370.

**71.24.480 Dangerous mentally ill offenders—Limitation on liability due to treatment—Reporting requirements.** (1) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a dangerous mentally ill offender who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a dangerous mentally ill offender is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "dangerous mentally ill offender" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder. [2002 c 173 § 1.]

**71.24.805 Mental health system review—Performance audit recommendations affirmed.** The legislature affirms its support for those recommendations of the performance audit of the public mental health system conducted by the joint legislative audit and review committee relating to: Improving the coordination of services for clients with multi-

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ple needs; improving the consistency of client, service, and fiscal data collected by the mental health division; replacing process-oriented accountability activities with a uniform statewide outcome measurement system; and using outcome information to identify and provide incentives for best practices in the provision of public mental health services. [2001 c 334 § 1.]

**Effective date—2001 c 334:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2001]." [2001 c 334 § 10.]

**71.24.810 Mental health system review—Implementation of performance audit recommendations.** The legislature supports recommendations 1 through 10 and 12 through 14 of the mental health system performance audit conducted by the joint legislative audit and review committee. The legislature expects the department of social and health services to work diligently within available funds to implement these recommendations. [2001 c 334 § 2.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**71.24.840 Mental health system review—Study of long-term outcomes.** The Washington institute for public policy shall conduct a longitudinal study of long-term client outcomes to assess any changes in client status at two, five, and ten years. The measures tracked shall include client change as a result of services, employment and/or education, housing stability, criminal justice involvement, and level of services needed. The institute shall report these long-term outcomes to the appropriate policy and fiscal committee of the legislature annually beginning not later than December 31, 2005. [2001 c 334 § 5.]

**Effective date—2001 c 334:** See note following RCW 71.24.805.

**71.24.900 Effective date—1967 ex.s. c 111.** This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

**71.24.901 Severability—1982 c 204.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 204 § 28.]

**71.24.902 Construction.** Nothing in this chapter shall be construed as prohibiting the secretary from consolidating within the department children's mental health services with other departmental services related to children. [1986 c 274 § 7.]

## Chapter 71.28 RCW

### MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES— INTERSTATE CONTRACTS

#### Sections

71.28.010 Contracts by boundary counties or cities therein.

*Council for children and families: Chapter 43.121 RCW.*

**71.28.010 Contracts by boundary counties or cities therein.** Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1988 c 176 § 911; 1977 ex.s. c 80 § 44; 1967 c 84 § 1.]

**Severability—1988 c 176:** See RCW 71A.10.900.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

## Chapter 71.32 RCW

### MENTAL HEALTH ADVANCE DIRECTIVES

#### Sections

71.32.010	Legislative declaration—Findings.
71.32.020	Definitions.
71.32.030	Construction of definitions.
71.32.040	Adult presumed to have capacity.
71.32.050	Execution of directive—Scope.
71.32.060	Execution of directive—Elements—Effective date—Expiration.
71.32.070	Prohibited elements.
71.32.080	Revocation—Waiver.
71.32.090	Witnesses.
71.32.100	Appointment of agent.
71.32.110	Determination of capacity.
71.32.120	Action to contest directive.
71.32.130	Determination of capacity—Reevaluations of capacity.
71.32.140	Refusal of admission to inpatient treatment—Effect of directive.
71.32.150	Compliance with directive—Conditions for noncompliance.
71.32.160	Electroconvulsive therapy.
71.32.170	Providers—Immunity from liability—Conditions.
71.32.180	Multiple directives, agents—Effect—Disclosure of court orders.
71.32.190	Preexisting, foreign directives—Validity.
71.32.200	Fraud, duress, undue influence—Appointment of guardian.
71.32.210	Execution of directive not evidence of mental disorder or lack of capacity.
71.32.220	Requiring directive prohibited.
71.32.230	Coercion, threats prohibited.
71.32.240	Other authority not limited.
71.32.250	Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.
71.32.260	Form.
71.32.900	Severability—2003 c 283.
71.32.901	Part headings not law—2003 c 283.

**71.32.010 Legislative declaration—Findings.** (1) The legislature declares that an individual with capacity has the ability to control decisions relating to his or her own mental health care. The legislature finds that:

(a) Some mental illnesses cause individuals to fluctuate between capacity and incapacity;

(b) During periods when an individual's capacity is unclear, the individual may be unable to access needed treatment because the individual may be unable to give informed consent;

(c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and

(d) Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

The legislature recognizes that a mental health advance directive can be an essential tool for an individual to express his or her choices at a time when the effects of mental illness have not deprived him or her of the power to express his or her instructions or preferences.

(2) The legislature further finds that:

(a) A mental health advance directive must provide the individual with a full range of choices;

(b) Mentally ill individuals have varying perspectives on whether they want to be able to revoke a directive during periods of incapacity;

(c) For a mental health advance directive to be an effective tool, individuals must be able to choose how they want their directives treated during periods of incapacity; and

(d) There must be clear standards so that treatment providers can readily discern an individual's treatment choices.

Consequently, the legislature affirms that, pursuant to other provisions of law, a validly executed mental health advance directive is to be respected by agents, guardians, and other surrogate decision makers, health care providers, professional persons, and health care facilities. [2003 c 283 § 1.]

**71.32.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature, character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW. [2003 c 283 § 2.]

**71.32.030 Construction of definitions.** (1) The definition of informed consent is to be construed to be consistent with that term as it is used in chapter 7.70 RCW.

(2) The definitions of mental disorder, mental health professional, and professional person are to be construed to be consistent with those terms as they are defined in RCW 71.05.020. [2003 c 283 § 3.]

**71.32.040 Adult presumed to have capacity.** For the purposes of this chapter, an adult is presumed to have capacity. [2003 c 283 § 4.]

**71.32.050 Execution of directive—Scope.** (1) An adult with capacity may execute a mental health advance directive.

(2) A directive executed in accordance with this chapter is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(3) A directive may include any provision relating to mental health treatment or the care of the principal or the principal's personal affairs. Without limitation, a directive may include:

- (a) The principal's preferences and instructions for mental health treatment;
- (b) Consent to specific types of mental health treatment;
- (c) Refusal to consent to specific types of mental health treatment;
- (d) Consent to admission to and retention in a facility for mental health treatment for up to fourteen days;
- (e) Descriptions of situations that may cause the principal to experience a mental health crisis;
- (f) Suggested alternative responses that may supplement or be in lieu of direct mental health treatment, such as treatment approaches from other providers;

(g) Appointment of an agent pursuant to chapter 11.94 RCW to make mental health treatment decisions on the principal's behalf, including authorizing the agent to provide con-

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sent on the principal's behalf to voluntary admission to inpatient mental health treatment; and

(h) The principal's nomination of a guardian or limited guardian as provided in RCW 11.94.010 for consideration by the court if guardianship proceedings are commenced.

(4) A directive may be combined with or be independent of a nomination of a guardian or other durable power of attorney under chapter 11.94 RCW, so long as the processes for each are executed in accordance with its own statutes. [2003 c 283 § 5.]

**71.32.060 Execution of directive—Elements—Effective date—Expiration.** (1) A directive shall:

- (a) Be in writing;
- (b) Contain language that clearly indicates that the principal intends to create a directive;
- (c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;
- (d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and

(e) Be witnessed in writing by at least two adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

(2) A directive that includes the appointment of an agent under chapter 11.94 RCW shall contain the words "This power of attorney shall not be affected by the incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the principal's intent that the authority conferred shall be exercisable notwithstanding the principal's incapacity.

(3) A directive is valid upon execution, but all or part of the directive may take effect at a later time as designated by the principal in the directive.

(4) A directive may:

- (a) Be revoked, in whole or in part, pursuant to the provisions of RCW 71.32.080; or
- (b) Expire under its own terms. [2003 c 283 § 6.]

**71.32.070 Prohibited elements.** A directive may not:

- (1) Create an entitlement to mental health or medical treatment or supersede a determination of medical necessity;
- (2) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested;
- (3) Obligate any health care provider, professional person, or health care facility to be responsible for the nontreatment personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides;
- (4) Replace or supersede the provisions of any will or testamentary document or supersede the provisions of intestate succession;

(5) Be revoked by an incapacitated principal unless that principal selected the option to permit revocation while incapacitated at the time his or her directive was executed; or

(6) Be used as the authority for inpatient admission for more than fourteen days in any twenty-one day period. [2003 c 283 § 7.]

**71.32.080 Revocation—Waiver.** (1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned. In the case of a directive that is stored in the health care declarations registry created by RCW 70.122.130, the revocation may be by an online method established by the department of health. Failure to use the online method of revocation for a directive that is stored in the registry does not invalidate a revocation that is made by another method described under this section.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW 71.32.150. A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the

provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision. [2006 c 108 § 5; 2003 c 283 § 8.]

**Finding—Intent—2006 c 108:** See note following RCW 70.122.130.

**71.32.090 Witnesses.** A witness may not be any of the following:

(1) A person designated to make health care decisions on the principal's behalf;

(2) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

(3) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;

(4) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship, as defined in RCW 26.50.010;

(5) A person who is declared to be an incapacitated person; or

(6) A person who would benefit financially if the principal making the directive undergoes mental health treatment. [2003 c 283 § 9.]

**71.32.100 Appointment of agent.** (1) If a directive authorizes the appointment of an agent, the provisions of chapter 11.94 RCW and RCW 7.70.065 shall apply unless otherwise stated in this chapter.

(2) The principal who appoints an agent must notify the agent in writing of the appointment.

(3) An agent must act in good faith.

(4) An agent may make decisions on behalf of the principal. Unless the principal has revoked the directive, the decisions must be consistent with the instructions and preferences the principal has expressed in the directive, or if not expressed, as otherwise known to the agent. If the principal's instructions or preferences are not known, the agent shall make a decision he or she determines is in the best interest of the principal.

(5) Except to the extent the right is limited by the appointment or any federal or state law, the agent has the same right as the principal to receive, review, and authorize the use and disclosure of the principal's health care information when the agent is acting on behalf of the principal and to the extent required for the agent to carry out his or her duties. This subsection shall be construed to be consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW, and with federal law regarding health care information.

(6) Unless otherwise provided in the appointment and agreed to in writing by the agent, the agent is not, as a result of acting in the capacity of agent, personally liable for the cost of treatment provided to the principal.

(7) An agent may resign or withdraw at any time by giving written notice to the principal. The agent must also give written notice to any health care provider, professional person, or health care facility providing treatment to the principal. The resignation or withdrawal is effective upon receipt unless otherwise specified in the resignation or withdrawal.

(8) If the directive gives the agent authority to act while the principal has capacity, the decisions of the principal supersede those of the agent at any time the principal has capacity.

(9) Unless otherwise provided in the durable power of attorney, the principal may revoke the agent's appointment as provided under other state law. [2003 c 283 § 10.]

**71.32.110 Determination of capacity.** (1) For the purposes of this chapter, a principal, agent, professional person, or health care provider may seek a determination whether the principal is incapacitated or has regained capacity.

(2)(a) For the purposes of this chapter, no adult may be declared an incapacitated person except by:

(i) A court, if the request is made by the principal or the principal's agent;

(ii) One mental health professional and one health care provider; or

(iii) Two health care providers.

(b) One of the persons making the determination under (a)(ii) or (iii) of this subsection must be a psychiatrist, psychologist, or a psychiatric advanced registered nurse practitioner.

(3) When a professional person or health care provider requests a capacity determination, he or she shall promptly inform the principal that:

(a) A request for capacity determination has been made; and

(b) The principal may request that the determination be made by a court.

(4) At least one mental health professional or health care provider must personally examine the principal prior to making a capacity determination.

(5)(a) When a court makes a determination whether a principal has capacity, the court shall, at a minimum, be informed by the testimony of one mental health professional familiar with the principal and shall, except for good cause, give the principal an opportunity to appear in court prior to the court making its determination.

(b) To the extent that local court rules permit, any party or witness may testify telephonically.

(6) When a court has made a determination regarding a principal's capacity and there is a subsequent change in the principal's condition, subsequent determinations whether the principal is incapacitated may be made in accordance with any of the provisions of subsection (2) of this section. [2003 c 283 § 11.]

**71.32.120 Action to contest directive.** A principal may bring an action to contest the validity of his or her directive. If an action under this section is commenced while an action to determine the principal's capacity is pending, the court shall consolidate the actions and decide the issues simultaneously. [2003 c 283 § 12.]

**71.32.130 Determination of capacity—Reevaluations of capacity.** (1) An initial determination of capacity must be completed within forty-eight hours of a request made by a person authorized in RCW 71.32.110. During the period between the request for an initial determination of the principal's

capacity and completion of that determination, the principal may not be treated unless he or she consents at the time or treatment is otherwise authorized by state or federal law.

(2)(a)(i) When an incapacitated principal is admitted to inpatient treatment pursuant to the provisions of his or her directive, his or her capacity must be reevaluated within seventy-two hours or when there has been a change in the principal's condition that indicates that he or she appears to have regained capacity, whichever occurs first.

(ii) When an incapacitated principal has been admitted to and remains in inpatient treatment for more than seventy-two hours pursuant to the provisions of his or her directive, the principal's capacity must be reevaluated when there has been a change in his or her condition that indicates that he or she appears to have regained capacity.

(iii) When a principal who is being treated on an inpatient basis and has been determined to be incapacitated requests, or his or her agent requests, a redetermination of the principal's capacity the redetermination must be made within seventy-two hours.

(b) When a principal who has been determined to be incapacitated is being treated on an outpatient basis and there is a request for a redetermination of his or her capacity, the redetermination must be made within five days of the first request following a determination.

(3)(a) When a principal who has appointed an agent for mental health treatment decisions requests a determination or redetermination of capacity, the agent must make reasonable efforts to obtain the determination or redetermination.

(b) When a principal who does not have an agent for mental health treatment decisions is being treated in an inpatient facility and requests a determination or redetermination of capacity, the mental health professional or health care provider must complete the determination or, if the principal is seeking a determination from a court, must make reasonable efforts to notify the person authorized to make decisions for the principal under RCW 7.70.065 of the principal's request.

(c) When a principal who does not have an agent for mental health treatment decisions is being treated on an outpatient basis, the person requesting a capacity determination must arrange for the determination.

(4) If no determination has been made within the time frames established in subsection (1) or (2) of this section, the principal shall be considered to have capacity.

(5) When an incapacitated principal is being treated pursuant to his or her directive, a request for a redetermination of capacity does not prevent treatment. [2003 c 283 § 13.]

**71.32.140 Refusal of admission to inpatient treatment—Effect of directive.** (1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted, may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admis-

sion, a physician member of the treating facility's professional staff:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief for release from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge. Nothing in this subsection shall be construed to prevent detention and evaluation for civil commitment under chapter 71.05 RCW.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment. [2004 c 39 § 2; 2003 c 283 § 14.]

**Finding—Intent—2004 c 39:** "Questions have been raised about the intent of the legislature in cross-referencing RCW 71.05.050 without further

clarification in RCW 71.32.140. The legislature finds that because RCW 71.05.050 pertains to a variety of rights as well as the procedures for detaining a voluntary patient for evaluation for civil commitment, and the legislature intended only to address the right of release upon request, there is ambiguity as to whether an incapacitated person admitted pursuant to his or her mental health advance directive and seeking release can be held for evaluation for civil commitment under chapter 71.05 RCW. The legislature therefore intends to clarify the ambiguity without making any change to its intended policy as laid out in chapter 71.32 RCW." [2004 c 39 § 1.]

**71.32.150 Compliance with directive—Conditions for noncompliance.** (1) Upon receiving a directive, a health care provider, professional person, or health care facility providing treatment to the principal, or persons acting under the direction of the health care provider, professional person, or health care facility, shall make the directive a part of the principal's medical record and shall be deemed to have actual knowledge of the directive's contents.

(2) When acting under authority of a directive, a health care provider, professional person, or health care facility shall act in accordance with the provisions of the directive to the fullest extent possible, unless in the determination of the health care provider, professional person, or health care facility:

(a) Compliance with the provision would violate the accepted standard of care established in RCW 7.70.040;

(b) The requested treatment is not available;

(c) Compliance with the provision would violate applicable law; or

(d) It is an emergency situation and compliance would endanger any person's life or health.

(3)(a) In the case of a principal committed or detained under the involuntary treatment provisions of chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW, those provisions of a principal's directive that, in the determination of the health care provider, professional person, or health care facility, are inconsistent with the purpose of the commitment or with any order of the court relating to the commitment are invalid during the commitment.

(b) Remaining provisions of a principal's directive are advisory while the principal is committed or detained.

The treatment provider is encouraged to follow the remaining provisions of the directive, except as provided in (a) of this subsection or subsection (2) of this section.

(4) In the case of a principal who is incarcerated or committed in a state or local correctional facility, provisions of the principal's directive that are inconsistent with reasonable penological objectives or administrative hearings regarding involuntary medication are invalid during the period of incarceration or commitment. In addition, treatment may be given despite refusal of the principal or the provisions of the directive: (a) For any reason under subsection (2) of this section; or (b) if, without the benefit of the specific treatment measure, there is a significant possibility that the person will harm self or others before an improvement of the person's condition occurs.

(5)(a) If the health care provider, professional person, or health care facility is, at the time of receiving the directive, unable or unwilling to comply with any part or parts of the directive for any reason, the health care provider, professional person, or health care facility shall promptly notify the

principal and, if applicable, his or her agent and shall document the reason in the principal's medical record.

(b) If the health care provider, professional person, or health care facility is acting under authority of a directive and is unable to comply with any part or parts of the directive for the reasons listed in subsection (2) or (3) of this section, the health care provider, professional person, or health care facility shall promptly notify the principal and if applicable, his or her agent, and shall document the reason in the principal's medical record.

(6) In the event that one or more parts of the directive are not followed because of one or more of the reasons set forth in subsection (2) or (4) of this section, all other parts of the directive shall be followed.

(7) If no provider-patient relationship has previously been established, nothing in this chapter requires the establishment of a provider-patient relationship. [2003 c 283 § 15.]

**71.32.160 Electroconvulsive therapy.** Where a principal consents in a directive to electroconvulsive therapy, the health care provider, professional person, or health care facility, or persons acting under the direction of the health care provider, professional person, or health care facility, shall document the therapy and the reason it was used in the principal's medical record. [2003 c 283 § 16.]

**71.32.170 Providers—Immunity from liability—Conditions.** (1) For the purposes of this section, "provider" means a private or public agency, government entity, health care provider, professional person, health care facility, or person acting under the direction of a health care provider or professional person, health care facility, or long-term care facility.

(2) A provider is not subject to civil liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides treatment to a principal in the absence of actual knowledge of the existence of a directive, or provides treatment pursuant to a directive in the absence of actual knowledge of the revocation of the directive;

(b) A health care provider or mental health professional determines that the principal is or is not incapacitated for the purpose of deciding whether to proceed according to a directive, and acts upon that determination;

(c) The provider administers or does not administer mental health treatment according to the principal's directive in good faith reliance upon the validity of the directive and the directive is subsequently found to be invalid;

(d) The provider does not provide treatment according to the directive for one of the reasons authorized under RCW 71.32.150; or

(e) The provider provides treatment according to the principal's directive. [2003 c 283 § 17.]

**71.32.180 Multiple directives, agents—Effect—Disclosure of court orders.** (1) Where an incapacitated principal has executed more than one valid directive and has not revoked any of the directives:

(a) The directive most recently created shall be treated as the principal's mental health treatment preferences and instructions as to any inconsistent or conflicting provisions, unless provided otherwise in either document.

(b) Where a directive executed under this chapter is inconsistent with a directive executed under any other chapter, the most recently created directive controls as to the inconsistent provisions.

(2) Where an incapacitated principal has appointed more than one agent under chapter 11.94 RCW with authority to make mental health treatment decisions, RCW 11.94.010 controls.

(3) The treatment provider shall inquire of a principal whether the principal is subject to any court orders that would affect the implementation of his or her directive. [2003 c 283 § 18.]

**71.32.190 Preexisting, foreign directives—Validity.**

(1) Directives validly executed before July 27, 2003, shall be given full force and effect until revoked, superseded, or expired.

(2) A directive validly executed in another political jurisdiction is valid to the extent permitted by Washington state law. [2003 c 283 § 19.]

**71.32.200 Fraud, duress, undue influence—Appointment of guardian.** Any person with reasonable cause to believe that a directive has been created or revoked under circumstances amounting to fraud, duress, or undue influence may petition the court for appointment of a guardian for the person or to review the actions of the agent or person alleged to be involved in improper conduct under RCW 11.94.090 or 74.34.110. [2003 c 283 § 20.]

**71.32.210 Execution of directive not evidence of mental disorder or lack of capacity.** The fact that a person has executed a directive does not constitute an indication of mental disorder or that the person is not capable of providing informed consent. [2003 c 283 § 21.]

**71.32.220 Requiring directive prohibited.** A person shall not be required to execute or to refrain from executing a directive, nor shall the existence of a directive be used as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of admission to or discharge from a health care facility or long-term care facility. [2003 c 283 § 22.]

**71.32.230 Coercion, threats prohibited.** No person or health care facility may use or threaten abuse, neglect, financial exploitation, or abandonment of the principal, as those terms are defined in RCW 74.34.020, to carry out the directive. [2003 c 283 § 23.]

**71.32.240 Other authority not limited.** A directive does not limit any authority otherwise provided in Title 10, 70, or 71 RCW, or any other applicable state or federal laws to detain a person, take a person into custody, or to admit, retain, or treat a person in a health care facility. [2003 c 283 § 24.]

**71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.** (1) If a principal who is a resident of a long-term care facility is admitted to inpatient mental health treatment pursuant to his or her directive, the principal shall be allowed to be readmitted to the same long-term care facility as if his or her inpatient admission had been for a physical condition on the same basis that the principal would be readmitted under state or federal statute or rule when:

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist or by a mental health professional and a physician; or

(b) The person's consent to admission in his or her directive has expired.

(2)(a) If the long-term care facility does not have a bed available at the time of discharge, the treating facility may discharge the resident, in consultation with the resident and

agent if any, and in accordance with a medically appropriate discharge plan, to another long-term care facility.

(b) This section shall apply to inpatient mental health treatment admission of long-term care facility residents, regardless of whether the admission is directly from a facility, hospital emergency room, or other location.

(c) This section does not restrict the right of the resident to an earlier release from the inpatient treatment facility. This section does not restrict the right of a long-term care facility to initiate transfer or discharge of a resident who is readmitted pursuant to this section, provided that the facility has complied with the laws governing the transfer or discharge of a resident.

(3) The joint legislative audit and review committee shall conduct an evaluation of the operation and impact of this section. The committee shall report its findings to the appropriate committees of the legislature by December 1, 2004. [2003 c 283 § 25.]

**71.32.260 Form.** The directive shall be in substantially the following form:

Mental Health Advance Directive

**NOTICE TO PERSONS**

**CREATING A MENTAL HEALTH ADVANCE DIRECTIVE**

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

(1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

**YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.  
IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.**

If you choose to complete and sign this document, you may still decide to leave some items blank.

(2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.

(3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.

(4) You have the right to revoke this document in writing at any time you have capacity.

**YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE  
INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT  
YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.**

(5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.

(6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.

(7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.

(8) You should be aware that there are some circumstances where your provider may not have to follow your directive.

(9) You should discuss any treatment decisions in your directive with your provider.

(10) You may ask the court to rule on the validity of your directive.

**PART I.  
STATEMENT OF INTENT TO CREATE A  
MENTAL HEALTH ADVANCE DIRECTIVE**

I, . . . . . being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

**PART II.  
WHEN THIS DIRECTIVE IS EFFECTIVE**

*YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

- . . . . . Immediately upon my signing of this directive.
- . . . . . If I become incapacitated.
- . . . . . When the following circumstances, symptoms, or behaviors occur: . . . . .
- . . . . .
- . . . . .

**PART III.  
DURATION OF THIS DIRECTIVE**

*YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.*

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

- . . . . . Remain valid and in effect for an indefinite period of time.
- . . . . . Automatically expire . . . . . years from the date it was created.

**PART IV.  
WHEN I MAY REVOKE THIS DIRECTIVE**

*YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.*

I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

- . . . . . Only when I have capacity.  
I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this directive, even if I object at the time.
- . . . . . Even if I am incapacitated.  
I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I specify in this directive, even if I want the treatment.

**PART V.  
PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

**A. Preferences and Instructions About Physician(s) to be Involved in My Treatment**

I would like the physician(s) named below to be involved in my treatment decisions:

- Dr. . . . . . Contact information: . . . . .
- Dr. . . . . . Contact information: . . . . .

I do not wish to be treated by Dr. . . . . .

**B. Preferences and Instructions About Other Providers**

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

Name ..... Profession ..... Contact information.....  
Name ..... Profession ..... Contact information.....

**C. Preferences and Instructions About Medications for Psychiatric Treatment** *(initial and complete all that apply)*

- ..... I consent, and authorize my agent (if appointed) to consent, to the following medications: .....
- ..... I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following medications: .....
- ..... I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include..... and these side effects can be eliminated by dosage adjustment or other means
- ..... I am willing to try any other medication the hospital doctor recommends
- ..... I am willing to try any other medications my outpatient doctor recommends
- ..... I do not want to try any other medications.

**Medication Allergies**

I have allergies to, or severe side effects from, the following: .....

**Other Medication Preferences or Instructions**

..... I have the following other preferences or instructions about medications .....

**D. Preferences and Instructions About Hospitalization and Alternatives**

*(initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on)*

..... In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as alternatives to psychiatric hospitalizations.

..... I would also like the interventions below to be tried before hospitalization is considered:

- ..... Calling someone or having someone call me when needed.  
Name: ..... Telephone: .....
- ..... Staying overnight with someone  
Name: ..... Telephone: .....
- ..... Having a mental health service provider come to see me
- ..... Going to a crisis triage center or emergency room
- ..... Staying overnight at a crisis respite (temporary) bed
- ..... Seeing a service provider for help with psychiatric medications
- ..... Other, specify: .....

**Authority to Consent to Inpatient Treatment**

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for ..... days *(not to exceed 14 days)*

(Sign one):

..... If deemed appropriate by my agent (if appointed) and treating physician

.....  
(Signature)

or

..... Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for hospitalization) .....

.....  
(Signature)

..... I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

.....  
(Signature)

**Hospital Preferences and Instructions**

If hospitalization is required, I prefer the following hospitals: .....

I do not consent to be admitted to the following hospitals: .....

**E. Preferences and Instructions About Preemergency**

I would like the interventions below to be tried before use of seclusion or restraint is considered  
(*initial all that apply*):

- ..... "Talk me down" one-on-one
- ..... More medication
- ..... Time out/privacy
- ..... Show of authority/force
- ..... Shift my attention to something else
- ..... Set firm limits on my behavior
- ..... Help me to discuss/vent feelings
- ..... Decrease stimulation
- ..... Offer to have neutral person settle dispute
- ..... Other, specify .....

**F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications**

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of medication, I prefer these interventions in the order I have chosen (*choose "1" for first choice, "2" for second choice, and so on*):

- ..... Seclusion
- ..... Seclusion and physical restraint (combined)
- ..... Medication by injection
- ..... Medication in pill or liquid form

In the event that my attending physician decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

**G. Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)**

My wishes regarding electroconvulsive therapy are (*sign one*):

..... I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

.....  
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy

.....  
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but only under the following conditions: .....

.....  
(Signature)

**H. Preferences and Instructions About Who is Permitted to Visit**

If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

- Name: .....
- Name: .....
- Name: .....

I understand that persons not listed above may be permitted to visit me.

**I. Additional Instructions About My Mental Health Care**

Other instructions about my mental health care: .....

In case of emergency, please contact:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Physician: ..... Address: .....

Telephone: .....

The following may help me to avoid a hospitalization: .....

I generally react to being hospitalized as follows: .....

Staff of the hospital or crisis unit can help me by doing the following: .....

**J. Refusal of Treatment**

I do not consent to any mental health treatment.

.....  
(Signature)

**PART VI.  
DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**

*(Fill out this part only if you wish to appoint an agent or nominate a guardian.)*

I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure, consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this durable power of attorney, I may revoke it unless prohibited by other state law.

**A. Designation of an Agent**

I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document and request that this person be notified immediately when this directive becomes effective:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Relationship: .....

**B. Designation of Alternate Agent**

If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified immediately when this directive becomes effective or when my original agent is no longer my agent:

Name: ..... Address: .....

Work telephone: ..... Home telephone: .....

Relationship: .....

**C. When My Spouse is My Agent (initial if desired)**

..... If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is dissolved, unless there is a court order to the contrary or I have remarried.

**D. Limitations on My Agent's Authority**

I do not grant my agent the authority to consent on my behalf to the following:

.....  
.....

**E. Limitations on My Ability to Revoke this Durable Power of Attorney**

I choose to limit my ability to revoke this durable power of attorney as follows:

.....  
.....

**F. Preference as to Court-Appointed Guardian**

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the following person **as my guardian**:

Name: ..... Address: .....  
Work telephone: ..... Home telephone: .....  
Relationship: .....

The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by law.

.....  
(Signature required if nomination is made)

**PART VII.  
OTHER DOCUMENTS**

*(Initial all that apply)*

I have executed the following documents that include the power to make decisions regarding health care services for myself:

- ..... Health care power of attorney (chapter 11.94 RCW)
- ..... "Living will" (Health care directive; chapter 70.122 RCW)
- ..... I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated below:

**PART VIII.  
NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

*(Fill out this part only if you wish to provide nontreatment instructions.)*

I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no treatment provider is required to act on them.

**A. Who Should Be Notified**

I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....  
Name: ..... Address: .....  
Day telephone: ..... Evening telephone: .....

**B. Preferences or Instructions About Personal Affairs**

I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am admitted to a mental health treatment facility:

.....  
.....

**C. Additional Preferences and Instructions:**

.....  
.....  
.....

**PART IX.  
SIGNATURE**

By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I intend that my consent in this directive be construed as being consistent with the elements of informed consent under chapter 7.70 RCW.

Signature: ..... Date: .....  
Printed Name: .....

This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

- (A) A person designated to make medical decisions on the principal's behalf;
- (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;
- (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;
- (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating relationship as defined in RCW 26.50.010;
- (E) An incapacitated person;
- (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- (G) A minor.

Witness 1: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....  
 Witness 2: Signature: ..... Date: .....  
 Printed Name: .....  
 Telephone: ..... Address: .....

**PART X.  
RECORD OF DIRECTIVE**

I have given a copy of this directive to the following persons: .....

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE

**PART XI.  
REVOCATION OF THIS DIRECTIVE**

(Initial any that apply):

..... I am revoking the following part(s) of this directive (specify): .....

..... I am revoking all of this directive.

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

Signature: ..... Date: .....  
 Printed Name: .....

**DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE**

[2003 c 283 § 26.]

**71.32.900 Severability—2003 c 283.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 283 § 35.]

**71.32.901 Part headings not law—2003 c 283.** Part headings used in this act are not any part of the law. [2003 c 283 § 38.]

**Chapter 71.34 RCW  
MENTAL HEALTH SERVICES FOR MINORS**

Sections

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71.34.020 Definitions.

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- 71.34.790 Transportation for minors committed to state facility for one hundred eighty-day treatment.

- 71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.
- 71.34.900 Severability—1985 c 354.
- 71.34.901 Effective date—1985 c 354.

*Court files and records closed—Exceptions: RCW 71.05.620.*

**71.34.010 Purpose—Parental participation in treatment decisions—Parental control of minor children during treatment.** It is the purpose of this chapter to assure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and involuntary treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide mental health services to minors shall jointly plan and deliver those services.

It is also the purpose of this chapter to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment. The mental health care and treatment providers shall encourage the use of voluntary services and, whenever clinically appropriate, the providers shall offer less restrictive alternatives to inpatient treatment. Additionally, all mental health care and treatment providers shall assure that minors' parents are given an opportunity to participate in the treatment decisions for their minor children. The mental health care and treatment providers shall, to the extent possible, offer services that involve minors' parents or family.

It is also the purpose of this chapter to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under this chapter. [1998 c 296 § 7; 1992 c 205 § 302; 1985 c 354 § 1.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

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

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or

treatment or that the minor is in need of less restrictive alternative treatment.

(4) "Designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a designated mental health professional described in this chapter.

(5) "Department" means the department of social and health services.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by RCW 71.24.025.

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [2006 c 93 § 2; 1998 c 296 § 8; 1985 c 354 § 2.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:**  
See notes following RCW 74.13.025.

## GENERAL

**71.34.300 Responsibility of counties for evaluation and treatment services for minors.** (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14. Formerly RCW 71.34.140.]

**71.34.305 Notice to parents, school contacts for referring students to inpatient treatment.** School district personnel who contact a mental health inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 6. Formerly RCW 71.34.032.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**71.34.310 Jurisdiction over proceedings under chapter—Venue.** (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26. Formerly RCW 71.34.250.]

**71.34.315 Mental health commissioners—Authority.** The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3. Formerly RCW 71.34.280.]

**Severability—1989 c 174:** See note following RCW 71.05.135.

**71.34.320 Transfer of superior court proceedings to juvenile department.** For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28. Formerly RCW 71.34.260.]

**71.34.325 Court proceedings under chapter subject to rules of state supreme court.** Court procedures and proceedings provided for in this chapter shall be in accordance with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24. Formerly RCW 71.34.240.]

**71.34.330 Attorneys appointed for minors—Compensation.** Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23. Formerly RCW 71.34.230.]

**71.34.335 Court records and files confidential—Availability.** The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21. Formerly RCW 71.34.210.]

**71.34.340 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.** The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To persons with medical responsibility for the minor's care;

(4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;

(5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;

(6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;

(7) To the courts as necessary to the administration of this chapter;

(8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;

(9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I, . . . . , agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . . "

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its

employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside;

(16) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(ii). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), shall be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(ii);

(c) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pursuant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [2005 c 453 § 6; 2000 c 75 § 7; 1985 c 354 § 18. Formerly RCW 71.34.200.]

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**71.34.345 Mental health services information—Release to department of corrections—Rules.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities

conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.340, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW. [2004 c 166 § 8; 2002 c 39 § 1; 2000 c 75 § 2. Formerly RCW 71.34.225.]

(2008 Ed.)

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**71.34.350 Disclosure of information or records—Required entries in minor's clinical record.** When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22. Formerly RCW 71.34.220.]

**71.34.355 Rights of minors undergoing treatment—Posting.** Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

(1) To wear their own clothes and to keep and use personal possessions;

(2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;

(3) To have individual storage space for private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) To discuss treatment plans and decisions with mental health professionals;

(8) To have the right to adequate care and individualized treatment;

(9) Not to consent to the performance of electro-convulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electro-convulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [1985 c 354 § 16. Formerly RCW 71.34.160.]

**71.34.360 No detention of minors after eighteenth birthday—Exceptions.** No minor received as a voluntary patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: PROVIDED, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20. Formerly RCW 71.34.190.]

**71.34.365 Release of minor—Requirements.** (1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17. Formerly RCW 71.34.170.]

**71.34.370 Antipsychotic medication and shock treatment.** For the purposes of administration of antipsychotic medication and shock treatment, the provisions of chapter 120, Laws of 1989 apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9. Formerly RCW 71.34.290.]

**71.34.375 Parent-initiated treatment—Notice to parents of available treatment options.** (1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. [2003 c 107 § 1. Formerly RCW 71.34.056.]

**71.34.380 Department to adopt rules to effectuate chapter.** The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25. Formerly RCW 71.34.800.]

**71.34.385 Uniform application of chapter—Training for \*county-designated mental health professionals.** The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible

within available funds, the \*county-designated mental health professionals are specifically trained in adolescent mental health issues, the mental health civil commitment laws, and the criteria for civil commitment. [1992 c 205 § 304. Formerly RCW 71.34.805.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**71.34.390 Redirection of Title XIX funds to fund placements within the state.** For the purpose of encouraging the expansion of existing evaluation and treatment facilities and the creation of new facilities, the department shall endeavor to redirect federal Title XIX funds which are expended on out-of-state placements to fund placements within the state. [1992 c 205 § 303. Formerly RCW 71.34.810.]

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**71.34.395 Availability of treatment does not create right to obtain public funds.** The ability of a parent to bring his or her minor child to a certified evaluation and treatment program for evaluation and treatment does not create a right to obtain or benefit from any funds or resources of the state. The state may provide services for indigent minors to the extent that funds are available. [1998 c 296 § 21. Formerly RCW 71.34.015.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.400 Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.** For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient mental health treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 11. Formerly RCW 71.34.027.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.405 Liability for costs of minor's treatment and care—Rules.** (1) A minor receiving treatment under the provisions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13. Formerly RCW 71.34.130.]

**71.34.410 Liability for performance of duties under this chapter limited.** No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any \*county designated mental health professional, nor professional person, nor evaluation and treatment facility, shall be civilly or criminally liable for performing actions authorized in this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence. [2005 c 371 § 5; 1985 c 354 § 27. Formerly RCW 71.34.270.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

#### MINOR-INITIATED TREATMENT

**71.34.500 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required.** (1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for inpatient treatment of a minor under the age of thirteen.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days. [2006 c 93 § 3; 2005 c 371 § 2; 1998 c 296 § 14. Formerly RCW 71.34.042.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.510 Notice to parents when minor admitted to inpatient treatment without parental consent.** The administrator of the treatment facility shall provide notice to the parents of a minor when the minor is voluntarily admitted to inpatient treatment under RCW 71.34.500. The notice shall be in the form most likely to reach the parent within twenty-

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four hours of the minor's voluntary admission and shall advise the parent: (1) That the minor has been admitted to inpatient treatment; (2) of the location and telephone number of the facility providing such treatment; (3) of the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent; and (4) of the medical necessity for admission. [1998 c 296 § 15. Formerly RCW 71.34.044.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.520 Minor voluntarily admitted may give notice to leave at any time.** (1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.500 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the \*county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility by the second judicial day following receipt of the minor's notice of intent to leave. [2003 c 106 § 1; 1998 c 296 § 16. Formerly RCW 71.34.046.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.530 Age of consent—Outpatient treatment of minors.** Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization, or authorization from a person who may consent on behalf of the minor pursuant to RCW 7.70.065, is required for outpatient treatment of a minor under the age of thirteen. [2006 c 93 § 4; 1998 c 296 § 12; 1995 c 312 § 52; 1985 c 354 § 3. Formerly RCW 71.34.030.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

#### PARENT-INITIATED TREATMENT

**71.34.600 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.** (1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility or an inpatient facility licensed under chapter 70.41, 71.12, or 72.23 RCW and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section except that no provider may refuse to treat a minor under the provisions of this section solely on the basis that the minor has not consented to the treatment. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.610, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" means "professional person" as defined in RCW 71.05.020. [2007 c 375 § 11; 2005 c 371 § 4; 1998 c 296 § 17. Formerly RCW 71.34.052.]

**Findings—Purpose—Construction—Severability—2007 c 375:** See notes following RCW 10.31.110.

**Finding—Intent—2005 c 371:** "The legislature finds that, despite explicit statements in statute that the consent of a minor child is not required for a parent-initiated admission to inpatient or outpatient mental health treatment, treatment providers consistently refuse to accept a minor aged thirteen or over if the minor does not also consent to treatment. The legislature intends that the parent-initiated treatment provisions, with their accompanying due process provisions for the minor, be made fully available to parents." [2005 c 371 § 1.]

**Severability—2005 c 371:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 371 § 7.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.610 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.** (1) The department shall assure that, for any minor admitted to inpatient treatment under RCW 71.34.600, a review is conducted by a physician or other mental health professional who is employed by the department, or an agency under contract with the department, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physi-

cian or other mental health professional shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 71.34.600 to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section, the department shall consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. The department shall consult with the parent in advance of making its determination.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the facility. The facility shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) If the evaluation conducted under RCW 71.34.600 is done by the department, the reviews required by subsection (1) of this section shall be done by contract with an independent agency.

(5) The department may, subject to available funds, contract with other governmental agencies to conduct the reviews under this section. The department may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(6) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 9; 1995 c 312 § 56. Formerly RCW 71.34.025.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.620 Minor may petition court for release from facility.** Following the review conducted under RCW 71.34.610, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 19. Formerly RCW 71.34.162.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.630 Minor not released by petition under RCW 71.34.620—Release within thirty days—Professional may initiate proceedings to stop release.** If the minor is not

released as a result of the petition filed under RCW 71.34.620, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 71.34.610(2); or (2) the filing of a petition for judicial review under RCW 71.34.620, unless a professional person or the \*county designated mental health professional initiates proceedings under this chapter. [1998 c 296 § 20. Formerly RCW 71.34.164.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.640 Evaluation of treatment of minors.** The department shall randomly select and review the information on children who are admitted to inpatient treatment on application of the child's parent regardless of the source of payment, if any. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment. [1996 c 133 § 36; 1995 c 312 § 58. Formerly RCW 71.34.035.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.650 Parent may request determination whether minor has mental disorder requiring outpatient treatment—Consent of minor not required—Discharge of minor.** (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.500 or 71.34.600 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 18. Formerly RCW 71.34.054.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**71.34.660 Limitation on liability for admitting or accepting minor child.** A minor child shall have no cause of action against an evaluation and treatment facility, inpatient facility, or provider of outpatient mental health treatment for admitting or accepting the minor in good faith for evaluation or treatment under RCW 71.34.600 or 71.34.650 based solely upon the fact that the minor did not consent to evaluation or treatment if the minor's parent has consented to the evaluation or treatment. [2005 c 371 § 3.]

**Finding—Intent—Severability—2005 c 371:** See notes following RCW 71.34.600.

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## INVOLUNTARY COMMITMENT

**71.34.700 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.** If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immediate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a \*county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4. Formerly RCW 71.34.040.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**71.34.710 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.** (1) When a \*county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the \*county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the \*county designated mental health professional in court. The parent shall file notice with the court and provide a copy of the \*county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the \*county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The \*county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The \*county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the \*county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and

treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the \*county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1995 c 312 § 53; 1985 c 354 § 5. Formerly RCW 71.34.050.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.720 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.** (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient

treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1991 c 364 § 12; 1985 c 354 § 6. Formerly RCW 71.34.060.]

**Findings—Construction—Conflict with federal requirements—1991 c 364:** See notes following RCW 70.96A.020.

**71.34.730 Petition for fourteen-day commitment—Requirements.** (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

(i) The name and address of the petitioner;

(ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;

(iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;

(iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1995 c 312 § 54; 1985 c 354 § 7. Formerly RCW 71.34.070.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**71.34.740 Commitment hearing—Requirements—Findings by court—Commitment—Release.** (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

(a) To be represented by an attorney;

(b) To present evidence on his or her own behalf;

(c) To question persons testifying in support of the petition.

(7) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(8) Rules of evidence shall not apply in fourteen-day commitment hearings.

(9) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

(a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";

(b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and

(c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(10) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(11) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(12) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [1985 c 354 § 8. Formerly RCW 71.34.080.]

**71.34.750 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.** (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment.

The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same proce-

dures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [1985 c 354 § 9. Formerly RCW 71.34.090.]

**71.34.760 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.** (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10. Formerly RCW 71.34.100.]

**71.34.770 Release of minor—Conditional release—Discharge.** (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.780 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician or professional person in charge concludes that the minor no longer meets commitment criteria. [1985 c 354 § 12. Formerly RCW 71.34.120.]

**71.34.780 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension**

**and detention—Revocation of alternative treatment or conditional release—Hearings.** (1) If the professional person in charge of an outpatient treatment program, a \*county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the conditions for the conditional release, or that substantial deterioration in the minor's functioning has occurred, the \*county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The \*county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The \*county-designated mental health professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the \*county-designated mental health professional or the secretary with the court in the county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.760 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11. Formerly RCW 71.34.110.]

**\*Reviser's note:** The term "county-designated mental health professional" as defined in RCW 71.34.020 was changed to "designated mental health professional" by 2006 c 93 § 2.

**71.34.790 Transportation for minors committed to state facility for one hundred eighty-day treatment.** Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and

cost-effective means. [1985 c 354 § 15. Formerly RCW 71.34.150.]

**71.34.795 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.** When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19. Formerly RCW 71.34.180.]

**71.34.900 Severability—1985 c 354.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 354 § 37.]

**71.34.901 Effective date—1985 c 354.** This act shall take effect January 1, 1986. [1985 c 354 § 38.]

**Chapter 71.36 RCW**

**COORDINATION OF CHILDREN'S MENTAL HEALTH SERVICES**

Sections

71.36.005	Intent.
71.36.010	Definitions.
71.36.025	Elements of a children's mental health system.
71.36.040	Issue identification, data collection, plan revision—Coordination with other state agencies.
71.36.060	Medicaid eligible children in temporary juvenile detention.
71.36.900	Part headings not law—1991 c 326.
71.36.901	Severability—1991 c 326.

**71.36.005 Intent.** The legislature intends to substantially improve the delivery of children's mental health services in Washington state through the development and implementation of a children's mental health system that:

(1) Values early identification, intervention, and prevention;

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(2) Coordinates existing categorical children's mental health programs and funding, through efforts that include elimination of duplicative care plans and case management;

(3) Treats each child in the context of his or her family, and provides services and supports needed to maintain a child with his or her family and community;

(4) Integrates families into treatment through choice of treatment, participation in treatment, and provision of peer support;

(5) Focuses on resiliency and recovery;

(6) Relies to a greater extent on evidence-based practices;

(7) Is sensitive to the unique cultural circumstances of children of color and children in families whose primary language is not English;

(8) Integrates educational support services that address students' diverse learning styles; and

(9) To the greatest extent possible, blends categorical funding to offer more service and support options to each child. [2007 c 359 § 1; 1991 c 326 § 11.]

**Captions not law—2007 c 359:** "Captions used in this act are not part of the law." [2007 c 359 § 14.]

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

(1) "Agency" means a state, tribal, or local governmental entity or a private not-for-profit organization.

(2) "Child" means a person under eighteen years of age, except as expressly provided otherwise in state or federal law.

(3) "Consensus-based" means a program or practice that has general support among treatment providers and experts, based on experience or professional literature, and may have anecdotal or case study support, or that is agreed but not possible to perform studies with random assignment and controlled groups.

(4) "County authority" means the board of county commissioners or county executive.

(5) "Department" means the department of social and health services.

(6) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(7) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population.

(8) "Family" means a child's biological parents, adoptive parents, foster parents, guardian, legal custodian authorized pursuant to Title 26 RCW, a relative with whom a child has been placed by the department of social and health services, or a tribe.

(9) "Promising practice" or "emerging best practice" means a practice that presents, based upon preliminary information, potential for becoming a research-based or consensus-based practice.

(10) "Regional support network" means a county authority or group of county authorities or other nonprofit entity that has entered into contracts with the secretary pursuant to chapter 71.24 RCW.

(11) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(12) "Secretary" means the secretary of social and health services.

(13) "Wraparound process" means a family driven planning process designed to address the needs of children and youth by the formation of a team that empowers families to make key decisions regarding the care of the child or youth in partnership with professionals and the family's natural community supports. The team produces a community-based and culturally competent intervention plan which identifies the strengths and needs of the child or youth and family and defines goals that the team collaborates on achieving with respect for the unique cultural values of the family. The "wraparound process" shall emphasize principles of persistence and outcome-based measurements of success. [2007 c 359 § 2; 1991 c 326 § 12.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.025 Elements of a children's mental health system.** (1) It is the goal of the legislature that, by 2012, the children's mental health system in Washington state include the following elements:

(a) A continuum of services from early identification, intervention, and prevention through crisis intervention and inpatient treatment, including peer support and parent mentoring services;

(b) Equity in access to services for similarly situated children, including children with co-occurring disorders;

(c) Developmentally appropriate, high quality, and culturally competent services available statewide;

(d) Treatment of each child in the context of his or her family and other persons that are a source of support and stability in his or her life;

(e) A sufficient supply of qualified and culturally competent children's mental health providers;

(f) Use of developmentally appropriate evidence-based and research-based practices;

(g) Integrated and flexible services to meet the needs of children who, due to mental illness or emotional or behavioral disturbance, are at risk of out-of-home placement or involved with multiple child-serving systems.

(2) The effectiveness of the children's mental health system shall be determined through the use of outcome-based performance measures. The department and the evidence-based practice institute established in RCW 71.24.061, in consultation with parents, caregivers, youth, regional support networks, mental health services providers, health plans, primary care providers, tribes, and others, shall develop outcome-based performance measures such as:

(a) Decreased emergency room utilization;

(b) Decreased psychiatric hospitalization;

(c) Lessening of symptoms, as measured by commonly used assessment tools;

(d) Decreased out-of-home placement, including residential, group, and foster care, and increased stability of such placements, when necessary;

(e) Decreased runaways from home or residential placements;

(f) Decreased rates of chemical dependency;

(g) Decreased involvement with the juvenile justice system;

(h) Improved school attendance and performance;

(i) Reductions in school or child care suspensions or expulsions;

(j) Reductions in use of prescribed medication where cognitive behavioral therapies are indicated;

(k) Improved rates of high school graduation and employment; and

(l) Decreased use of mental health services upon reaching adulthood for mental disorders other than those that require ongoing treatment to maintain stability.

Performance measure reporting for children's mental health services should be integrated into existing performance measurement and reporting systems developed and implemented under chapter 71.24 RCW. [2007 c 359 § 3.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.040 Issue identification, data collection, plan revision—Coordination with other state agencies.** (1) The legislature supports recommendations made in the August 2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.

(2) The department shall, within available funds:

(a) Identify internal business operation issues that limit the agency's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early periodic screening diagnosis and treatment plan to reflect the mental health system structure in place on July 27, 2003, and thereafter revise the plan as necessary to conform to subsequent changes in the structure.

(3) The department and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The department and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, regional support networks, and state agencies. [2003 c 281 § 2.]

**Legislative support affirmed—2003 c 281:** "The legislature affirms its support for: Improving field-level cross-program collaboration and efficiency; collecting reliable mental health cost, service, and outcome data specific to children; revising the early periodic screening diagnosis and treatment plan to reflect the current mental health system structure; and identifying and promulgating the approaches used in school districts where mental health and education systems coordinate services and resources to provide public mental health care for children." [2003 c 281 § 1.]

**71.36.060 Medicaid eligible children in temporary juvenile detention.** The department shall explore the feasibility of obtaining a medicaid state plan amendment to allow the state to receive medicaid matching funds for health services provided to medicaid enrolled youth who are temporarily placed in a juvenile detention facility. Temporary

placement shall be defined as until adjudication or up to sixty continuous days, whichever occurs first. [2007 c 359 § 6.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**71.36.900 Part headings not law—1991 c 326.** Part headings used in this act do not constitute any part of the law. [1991 c 326 § 17.]

**71.36.901 Severability—1991 c 326.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 326 § 19.]

## Chapter 71.98 RCW CONSTRUCTION

### Sections

71.98.010	Continuation of existing law.
71.98.020	Title, chapter, section headings not part of law.
71.98.030	Invalidity of part of title not to affect remainder.
71.98.040	Repeals and saving.
71.98.050	Emergency—1959 c 25.

**71.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 25 § 71.98.010.]

**71.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 25 § 71.98.020.]

**71.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 25 § 71.98.030.]

**71.98.040 Repeals and saving.** See 1959 c 25 § 71.98.040.

**71.98.050 Emergency—1959 c 25.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 25 § 71.98.050.]



# Title 71A

## DEVELOPMENTAL DISABILITIES

### Chapters

- 71A.10** General provisions.
- 71A.12** State services.
- 71A.14** Local services.
- 71A.16** Eligibility for services.
- 71A.18** Service delivery.
- 71A.20** Residential habilitation centers.
- 71A.22** Training centers and homes.

### Chapter 71A.10 RCW GENERAL PROVISIONS

#### Sections

- 71A.10.010 Legislative finding—Intent—1988 c 176.
- 71A.10.011 Intent—1995 c 383.
- 71A.10.015 Declaration of policy.
- 71A.10.020 Definitions.
- 71A.10.030 Civil and parental rights not affected.
- 71A.10.040 Protection from discrimination.
- 71A.10.050 Appeal of department actions—Right to.
- 71A.10.060 Notice by secretary.
- 71A.10.070 Secretary's duty to consult.
- 71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.
- 71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.
- 71A.10.805 Headings in Title 71A RCW not part of law.
- 71A.10.900 Severability—1988 c 176.
- 71A.10.901 Saving—1988 c 176.
- 71A.10.902 Continuation of existing law—1988 c 176.

#### **71A.10.010 Legislative finding—Intent—1988 c 176.**

The legislature finds that the statutory authority for the programs, policies, and services of the department of social and health services for persons with developmental disabilities often lack[s] clarity and contain[s] internal inconsistencies. In addition, existing authority is in several chapters of the code and frequently contains obsolete language not reflecting current use. The legislature declares that it is in the public interest to unify and update statutes for programs, policies, and services provided to persons with developmental disabilities.

The legislature intends to recodify the authority for the programs, policies, and services for persons with developmental disabilities. This recodification is not intended to affect existing programs, policies, and services, nor to establish any new program, policies, or services not otherwise authorized before June 9, 1988. The legislature intends to provide only those services authorized under state law before June 9, 1988, and only to the extent funds are provided by the legislature. [1988 c 176 § 1.]

**71A.10.011 Intent—1995 c 383.** The legislature recognizes that the emphasis of state developmental disability services is shifting from institutional-based care to community services in an effort to increase the personal and social inde-

pendence and fulfillment of persons with developmental disabilities, consistent with state policy as expressed in RCW 71A.10.015. It is the intent of the legislature that financial savings achieved from program reductions and efficiencies within the developmental disabilities program shall be redirected within the program to provide public or private community-based services for eligible persons who would otherwise be unidentified or unserved. [1995 c 383 § 1.]

**71A.10.015 Declaration of policy.** The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington. [1988 c 176 § 101.]

**71A.10.020 Definitions.** As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

(2) "Department" means the department of social and health services.

(3) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(4) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(5) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(6) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within

the scope of the limited guardianship, a person's attorney-at-law, a person's attorney-in-fact, or any other person who is authorized by law to act for another person.

(7) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(8) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(9) "Secretary" means the secretary of social and health services or the secretary's designee.

(10) "Service" or "services" means services provided by state or local government to carry out this title.

(11) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biannually [biennially] budgeted capacity. [1998 c 216 § 2; 1988 c 176 § 102.]

**Effective date—1998 c 216:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 216 § 10.]

**71A.10.030 Civil and parental rights not affected.** (1) The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.

(2) The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent.

(3) This title shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a residential habilitation center, except as provided in this title for the orderly operation of such residential habilitation centers. [1988 c 176 § 103.]

**71A.10.040 Protection from discrimination.** Persons are protected from discrimination because of a developmental disability as well as other mental or physical handicaps by the law against discrimination, chapter 49.60 RCW, by other state and federal statutes, rules, and regulations, and by local ordinances, when the persons qualify as handicapped under those statutes, rules, regulations, and ordinances. [1988 c 176 § 104.]

**71A.10.050 Appeal of department actions—Right to.** (1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following department actions:

(a) A denial of an application for eligibility under RCW 71A.16.040;

(b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

(c) A denial, reduction, or termination of a service;

(d) A claim that the person owes a debt to the state for an overpayment;

(e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an [a] habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW. [1989 c 175 § 138; 1988 c 176 § 105.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.10.060 Notice by secretary.** (1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary

within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent. [1989 c 175 § 139; 1988 c 176 § 106.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.10.070 Secretary's duty to consult.** (1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent. [1989 c 175 § 140; 1988 c 176 § 107.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.** (1) The governor shall designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities pursuant to the developmentally disabled assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and to investigate allegations of abuse and neglect. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to persons with developmental disabilities.

(2) The agency designated under subsection (1) of this section shall implement a program for the protection and advocacy of the rights of mentally ill persons pursuant to the protection and advocacy for mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801-10851 (1986), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of mentally ill persons and to investigate allegations of abuse or neglect of mentally ill persons. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to mentally ill persons.

(3) The governor shall designate an appropriate state official to serve as liaison between the agency designated to implement the protection and advocacy programs and the state departments and agencies that provide services to persons with developmental disabilities and mentally ill persons. [1991 c 333 § 1.]

**71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.** Except as provided in RCW 71A.10.901, this title shall govern:

(1) The continued provision of services to persons with developmental disabilities who are receiving services on June 9, 1988.

(2) The disposition of hearings, lawsuits, or appeals that are pending on June 9, 1988.

(3) All other questions or matters covered by this title, from June 9, 1988. [1988 c 176 § 1008.]

**71A.10.805 Headings in Title 71A RCW not part of law.** Title headings, chapter headings, and section headings used in this title do not constitute any part of the law. [1988 c 176 § 1002.]

**71A.10.900 Severability—1988 c 176.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 176 § 1003.]

**71A.10.901 Saving—1988 c 176.** The repeals made by sections 1005 through 1007, chapter 176, Laws of 1988, shall not be construed as affecting any existing right, status, or eligibility for services acquired under the provisions of the statutes repealed, nor as affecting the validity of any rule or order promulgated under the prior statutes, nor as affecting the status of any person appointed or employed under the prior statutes. [1988 c 176 § 1004.]

**71A.10.902 Continuation of existing law—1988 c 176.** Insofar as provisions of this title are substantially the same as provisions of the statutes repealed by sections 1005, 1006, and 1007, chapter 176, Laws of 1988, the provisions of this title shall be construed as restatements and continuations of the prior law, and not as new enactments. [1988 c 176 § 1001.]

**Chapter 71A.12 RCW**  
**STATE SERVICES**

## Sections

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**71A.12.010 State and local program—Coordination—Continuum.** It is declared to be the policy of the state to authorize the secretary to develop and coordinate state services for persons with developmental disabilities; to encourage research and staff training for state and local personnel working with persons with developmental disabilities; and to cooperate with communities to encourage the establishment and development of services to persons with developmental disabilities through locally administered and locally controlled programs.

The complexities of developmental disabilities require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities and services should be established, within appropriations designated for this purpose, which is sufficiently complete to meet the needs of each person with a developmental disability regardless of age or degree of handicap, and at each stage of the person's development. [1988 c 176 § 201.]

**71A.12.020 Objectives of program.** (1) To the extent that state, federal, or other funds designated for services to persons with developmental disabilities are available, the secretary shall provide every eligible person with habilitative services suited to the person's needs, regardless of age or degree of developmental disability.

(2) The secretary shall provide persons who receive services with the opportunity for integration with nonhandicapped and less handicapped persons to the greatest extent possible.

(3) The secretary shall establish minimum standards for habilitative services. Consumers, advocates, service providers, appropriate professionals, and local government agencies shall be involved in the development of the standards. [1988 c 176 § 202.]

**71A.12.025 Persons with developmental disabilities who commit crimes—Findings.** The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 5; 1989 c 420 § 2. Formerly RCW 71.05.035.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

**71A.12.030 General authority of secretary—Rule adoption.** The secretary is authorized to provide, or arrange with others to provide, all services and facilities that are necessary or appropriate to accomplish the purposes of this title, and to take all actions that are necessary or appropriate to accomplish the purposes of this title. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, as are appropriate to carry out this title. [1988 c 176 § 203.]

**71A.12.040 Authorized services.** Services that the secretary may provide or arrange with others to provide under this title include, but are not limited to:

- (1) Architectural services;
- (2) Case management services;
- (3) Early childhood intervention;
- (4) Employment services;

- (5) Family counseling;
- (6) Family support;
- (7) Information and referral;
- (8) Health services and equipment;
- (9) Legal services;
- (10) Residential services and support;
- (11) Respite care;
- (12) Therapy services and equipment;
- (13) Transportation services; and
- (14) Vocational services. [1988 c 176 § 204.]

**71A.12.050 Payments for nonresidential services.**

The secretary may make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of persons with developmental disabilities, upon application pursuant to RCW 71A.18.050. The secretary shall adopt rules determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1988 c 176 § 205.]

**71A.12.060 Payment authorized for residents in community residential programs.** The secretary is authorized to pay for all or a portion of the costs of care, support, and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080. [1988 c 176 § 206.]

**71A.12.070 Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments.** All payments made by the secretary under RCW 71A.12.060 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support, and training in a community residential program by the estate of such resident of the residential habilitation center, or from any resource which such resident may have, or become entitled to, from any public, federal, or state agency. Payments by the secretary under this title may, in the secretary's discretion, be paid directly to community residential programs, or to counties having created developmental disability boards under chapter 71A.14 RCW. [1988 c 176 § 207.]

**71A.12.080 Rules.** (1) The secretary shall adopt rules concerning the eligibility of residents of residential habilitation centers for placement in community residential programs under this title; determination of ability of such persons or their estates to pay all or a portion of the cost of care, support, and training; the manner and method of licensing or certification and inspection and approval of such community residential programs for placement under this title; and procedures for the payment of costs of care, maintenance, and training in community residential programs. The rules shall include standards for care, maintenance, and training to be met by such community residential programs.

(2) The secretary shall coordinate state activities and resources relating to placement in community residential programs to help efficiently expend state and local resources and, to the extent designated funds are available, create an

effective community residential program. [1988 c 176 § 208.]

**71A.12.090 Eligibility of parent for services.** If a person with developmental disabilities is the parent of a child who is about to be placed for adoption or foster care by the secretary, the parent shall be eligible to receive services in order to promote the integrity of the family unit. [1988 c 176 § 209.]

**71A.12.100 Other services.** Consistent with the general powers of the secretary and whether or not a particular person with a developmental disability is involved, the secretary may:

- (1) Provide information to the public on developmental disabilities and available services;
- (2) Engage in research concerning developmental disabilities and the habilitation of persons with developmental disabilities, and cooperate with others who do such research;
- (3) Provide consultant services to public and private agencies to promote and coordinate services to persons with developmental disabilities;
- (4) Provide training for persons in state or local governmental agencies or with private entities who come in contact with persons with developmental disabilities or who have a role in the care or habilitation of persons with developmental disabilities. [1988 c 176 § 210.]

**71A.12.110 Authority to contract for services.** (1) The secretary may enter into agreements with any person, corporation, or governmental entity to pay the contracting party to perform services that the secretary is authorized to provide under this title, except for operation of residential habilitation centers under chapter 71A.20 RCW.

(2) The secretary by contract or by rule may impose standards for services contracted for by the secretary. [1988 c 176 § 211.]

**71A.12.120 Authority to participate in federal programs.** (1) The governor may take whatever action is necessary to enable the state to participate in the manner set forth in this title in any programs provided by any federal law and to designate state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training at the state or local level for persons with developmental disabilities and for persons who work with persons with developmental disabilities.

(2) Designated state agencies may apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the state or by local government to provide more adequate services for and habilitation of persons with developmental disabilities. [1988 c 176 § 212.]

**71A.12.130 Gifts—Acceptance, use, record.** The secretary may receive and accept from any person, organization, or estate gifts of money or personal property on behalf of a residential habilitation center, or the residents therein, or on behalf of the entire program for persons with developmental disabilities, or any part of the program, and to use the gifts for

the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose, the secretary shall use such money or personal property for the general benefit of persons with developmental disabilities. The secretary shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1988 c 176 § 213.]

**71A.12.140 Duties of state agencies generally.** Each state agency that administers federal or state funds for services to persons with developmental disabilities, or for research or staff training in the field of developmental disabilities, shall:

- (1) Investigate and determine the nature and extent of services within its legal authority that are presently available to persons with developmental disabilities in this state;
- (2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to persons with developmental disabilities;
- (3) Cooperate with other state agencies providing services to persons with developmental disabilities to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to persons with developmental disabilities and their families;
- (4) Review and approve any proposed plans that local governments are required to submit for the expenditure of funds by local governments for services to persons with developmental disabilities; and
- (5) Provide consultant and staff training for state and local personnel working in the field of developmental disability. [1988 c 176 § 214.]

**71A.12.150 Contracts with United States and other states for developmental disability services.** The secretary shall have the authority, in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, or other states for the provision of services under this title at the expense of the United States, its territories, or other states. The contracts may provide for the separate or joint maintenance, care, treatment, training, or education of persons. The contracts shall provide that all payments due to the state of Washington from the United States, its territories, or other states for services rendered under the contracts shall be paid to the department and transmitted to the state treasurer for deposit in the general fund. [1988 c 176 § 215.]

**71A.12.161 Individual and family services program—Rules.** (1) The individual and family services program for individuals eligible to receive services under this title is established. This program replaces family support opportunities, traditional family support, and the flexible family support pilot program. The department shall transfer funding associated with these existing family support programs to the individual and family services program and shall

operate the program within available funding. The services provided under the individual and family services program shall be funded by state funding without benefit of federal match.

(2) The department shall adopt rules to implement this section. The rules shall provide:

(a) That eligibility to receive services in the individual and family services program be determined solely by an assessment of individual need;

(b) For service priority levels to be developed that specify a maximum amount of dollars for each person per level per year;

(c) That the dollar caps for each service priority level be adjusted by the vendor rate increases authorized by the legislature; and

(d) That the following services be available under the program:

- (i) Respite care;
- (ii) Therapies;
- (iii) Architectural and vehicular modifications;
- (iv) Equipment and supplies;
- (v) Specialized nutrition and clothing;
- (vi) Excess medical costs not covered by another source;
- (vii) Copays for medical and therapeutic services;
- (viii) Transportation;
- (ix) Training;
- (x) Counseling;
- (xi) Behavior management;
- (xii) Parent/sibling education;
- (xiii) Recreational opportunities; and
- (xiv) Community services grants.

(3) In addition to services provided for the service priority levels under subsections (1) and (2) of this section, the department shall provide for:

(a) One-time exceptional needs and emergency needs for individuals and families not receiving individual and family services annual grants to assist individuals and families who experience a short-term crisis; and

(b) Respite services based on the department's assessment for a parent who provides personal care in the home to his or her adult son or daughter with developmental disabilities.

(4) If a person has more complex needs, a family is experiencing a more prolonged crisis, or it is determined a person needs additional services, the department shall assess the individual to determine if placement in a waiver program would be appropriate. [2007 c 283 § 2.]

**Findings—Intent—2007 c 283:** "(1) The legislature finds that:

(a) A developmental disability is a natural part of human life, and the presence of a developmental disability in the life of a person does not diminish the person's rights or opportunity to participate fully in the life of the local community;

(b) Investing in family members who have children and adults living in the family home preserves a valuable natural support system for the individual with a developmental disability and is also cost-effective for the state of Washington;

(c) Providing support services to families can help maintain the well-being of the family and stabilize the family unit.

(2) It is the intent of the legislature:

(a) To partner with families as care providers for children with developmental disabilities and adults who choose to live in the family home;

(b) That individual and family services be centered on the needs of the person with a developmental disability and the family;

(c) That, to the maximum extent possible, individuals and families

must be given choice of services and exercise control over the resources available to them." [2007 c 283 § 1.]

**Short title—2007 c 283:** "This act may be known and cited as the Lance Morehouse, Jr. memorial individual and family services act." [2007 c 283 § 3.]

**Construction—2007 c 283:** "Nothing in this act shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable, the child or family is not eligible for such services, or sufficient funding has not been appropriated for this program." [2007 c 283 § 4.]

**71A.12.200 Community protection program—Legislative approval.** The department of social and health services is providing a structured, therapeutic environment for persons who are eligible for placement in the community protection program in order for them to live safely and successfully in the community while minimizing the risk to public safety.

The legislature approves of steps already taken by the department to create a community protection program within the division of developmental disabilities. [2006 c 303 § 1.]

**71A.12.210 Community protection program—Application.** RCW 71A.12.220 through 71A.12.280 apply to a person:

(1)(a) Who has been charged with or convicted of a crime and meets the following criteria:

(i) Has been convicted of one of the following:

(A) A crime of sexual violence as defined in chapter 9A.44 or 71.09 RCW including, but not limited to, rape, rape of a child, and child molestation;

(B) Sexual acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists; or

(C) One or more violent offenses, as defined by RCW 9.94A.030; and

(ii) Constitutes a current risk to others as determined by a qualified professional. Charges or crimes that resulted in acquittal must be excluded; or

(b) Who has not been charged with and/or convicted of a crime, but meets the following criteria:

(i) Has a history of stalking, violent, sexually violent, predatory, and/or opportunistic behavior which demonstrates a likelihood to commit a violent, sexually violent, and/or predatory act; and

(ii) Constitutes a current risk to others as determined by a qualified professional; and

(2) Who has been determined to have a developmental disability as defined by RCW 71A.10.020(3). [2006 c 303 § 2.]

**71A.12.220 Community protection program—Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Assessment" means the written opinion of a qualified professional stating, at a minimum:

(a) Whether a person meets the criteria established in RCW 71A.12.210;

(b) What restrictions are necessary.

(2) "Certified community protection program intensive supported living services" means access to twenty-four-hour supervision, instruction, and support services as identified in the person's plan of care.

(3) "Community protection program" means services specifically designed to support persons who meet the criteria of RCW 71A.12.210.

(4) "Constitutes a risk to others" means a determination of a person's risk and/or dangerousness based upon a thorough assessment by a qualified professional.

(5) "Department" means the department of social and health services.

(6) "Developmental disability" means that condition defined in RCW 71A.10.020(3).

(7) "Disclosure" means providing copies of professional assessments, incident reports, legal documents, and other information pertaining to community protection issues to ensure the provider has all relevant information. Polygraph and plethysmograph reports are excluded from disclosure.

(8) "Division" means the division of developmental disabilities.

(9) "Managed successfully" means that a person supported by a community protection program does not engage in the behavior identified in RCW 71A.12.210.

(10) "Opportunistic behavior" means an act committed on impulse, which is not premeditated.

(11) "Predatory" means acts directed toward strangers, individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or casual acquaintances with whom no substantial personal relationship exists. Predatory behavior may be characterized by planning and/or rehearsing the act, stalking, and/or grooming the victim.

(12) "Qualified professional" means a person with at least three years' prior experience working with individuals with developmental disabilities, and: (a) If the person being assessed has demonstrated sexually aggressive or sexually violent behavior, that person must be assessed by a qualified professional who is a certified sex offender treatment provider, or affiliate sex offender treatment provider working under the supervision of a certified sex offender treatment provider; or (b) if the person being assessed has demonstrated violent, dangerous, or aggressive behavior, that person must be assessed by a licensed psychologist or psychiatrist who has received specialized training in the treatment of or has at least three years' prior experience treating violent or aggressive behavior.

(13) "Treatment team" means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case resource manager, therapist, residential provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

(14) "Violent offense" means any felony defined as a violent offense in RCW 9.94A.030.

(15) "Waiver" means the community-based funding under section 1915 of Title XIX of the federal social security act. [2006 c 303 § 3.]

**71A.12.230 Community protection program—Risk assessment—Written notification—Written determination.** (1) Prior to receiving services through the community protection program, a person must first receive an assessment of risk and/or dangerousness by a qualified professional. The assessment must be consistent with the guidelines for risk assessments and psychosexual evaluations developed by the department. The person requesting services and the person's legal representative have the right to choose the qualified professional who will perform the assessment from a list of state contracted qualified professionals. The assessment must contain, at a minimum, a determination by the qualified professional whether the person can be managed successfully in the community with reasonably available safeguards and that lesser restrictive residential placement alternatives have been considered and would not be reasonable for the person seeking services. The department may request an additional evaluation by a qualified professional evaluator who is contracted with the state.

(2) Any person being considered for placement in the community protection program and his or her legal representative must be informed in writing of the following: (a) Limitations regarding the services that will be available due to the person's community protection issues; (b) disclosure requirements as a condition of receiving services other than case management; (c) the requirement to engage in therapeutic treatment may be a condition of receiving certain services; (d) anticipated restrictions that may be provided including, but not limited to intensive supervision, limited access to television viewing, reading material, videos; (e) the right to accept or decline services; (f) the anticipated consequences of declining services such as the loss of existing services and removal from waiver services; (g) the right to an administrative fair hearing in accordance with department and division policy; (h) the requirement to sign a preplacement agreement as a condition of receiving community protection intensive supported living services; (i) the right to retain current services during the pendency of any challenge to the department's decision; (j) the right to refuse to participate in the program.

(3)(a) If the department determines that a person is appropriate for placement in the community protection program, the individual and his or her legal representative shall receive in writing a determination by the department that the person meets the criteria for placement within the community protection program.

(b) If the department determines that a person cannot be managed successfully in the community protection program with reasonably available safeguards, the department must notify the person and his or her legal representative in writing. [2006 c 303 § 4.]

**71A.12.240 Community protection program—Appeals—Rules—Notice.** (1) Individuals receiving services through the department's community protection waiver retain all appeal rights provided for in RCW 71A.10.050. In addition, such individuals have a right to an administrative hearing pursuant to chapter 34.05 RCW to appeal the following decisions by the department:

(a) Termination of community protection waiver eligibility;

(b) Assignment of the applicant to the community protection waiver;

(c) Denial of a request for less restrictive community residential placement.

(2) Final administrative decisions may be appealed pursuant to the provisions of RCW 34.05.510.

(3) The secretary shall adopt rules concerning the procedure applicable to requests for hearings under this section and governing the conduct thereof.

(4) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the person enrolled on the community protection waiver of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice must also include a statement advising the recipient of the right to file a petition for judicial review of a final administrative decision as provided in chapter 34.05 RCW.

(5) Nothing in this section creates an entitlement to placement on the community protection waiver nor does it create a right to an administrative hearing on department decisions denying placement on the community protection waiver. [2006 c 303 § 5.]

**71A.12.250 Community protection program—Services—Reviews—Rules.** (1) Community protection program participants shall have appropriate opportunities to receive services in the least restrictive manner and in the least restrictive environments possible.

(2) There must be a review by the treatment team every ninety days to assess each participant's progress, evaluate use of less restrictive measures, and make changes in the participant's program as necessary. The team must review all restrictions and recommend reductions if appropriate. The therapist must write a report annually evaluating the participant's risk of offense and/or risk of behaviors that are dangerous to self or others. The department shall have rules in place describing this process. If a treatment team member has reason to be concerned that circumstances have changed significantly, the team member may request that a complete reassessment be conducted at any time. [2006 c 303 § 6.]

**71A.12.260 Community protection program—Less restrictive residential placement.** A participant who demonstrates success in complying with reduced restrictions and remains free of offenses that may indicate a relapse for at least twelve months, may be considered for placement in a less restrictive community residential setting.

The process to move a participant to a less restrictive residential placement shall include, at a minimum:

(1) Written verification of the person's treatment progress, compliance with reduced restrictions, an assessment of low risk of reoffense, and a recommendation as to suitable placement by the treatment team;

(2) Development of a gradual phase out plan by the treatment team, projected over a reasonable period of time and includes specific criteria for evaluating reductions in restrictions, especially supervision;

(3) The absence of any incidents that may indicate relapse for a minimum of twelve months;

(4) A written plan that details what supports and services, including the level of supervision the person will receive from the division upon exiting the community protection program;

(5) An assessment consistent with the guidelines for risk assessments and psychosexual evaluations developed by the division, conducted by a qualified professional. At a minimum, the assessment shall include:

(a) An evaluation of the participant's risk of reoffense and/or dangerousness; and

(b) An opinion as to whether or not the person can be managed successfully in a less restrictive community residential setting;

(6) Recommendation by the treatment team that the participant is ready to move to a less restrictive community residential placement. [2006 c 303 § 7.]

**71A.12.270 Community protection program—Enforcement actions.** (1) The department is authorized to take one or more of the enforcement actions listed in subsection (2) of this section when the department finds that a provider of residential services and support with whom the department entered into an agreement under this chapter has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under it;

(b) Failed or refused to cooperate with the certification process;

(c) Prevented or interfered with a certification, inspection, or investigation by the department;

(d) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW; or

(e) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department.

(2) The department may:

(a) Decertify or refuse to renew the certification of a provider;

(b) Impose conditions on a provider's certification status;

(c) Suspend department referrals to the provider; or

(d) Require a provider to implement a plan of correction developed by the department and to cooperate with subsequent monitoring of the provider's progress. In the event a provider fails to implement the plan of correction or fails to cooperate with subsequent monitoring, the department may impose civil penalties of not more than one hundred fifty dollars per day per violation. Each day during which the same or similar action or inaction occurs constitutes a separate violation.

(3) When determining the appropriate enforcement action or actions under subsection (2) of this section, the department must select actions commensurate with the seriousness of the harm or threat of harm to the persons being served by the provider. Further, the department may take enforcement actions that are more severe for violations that are uncorrected, repeated, pervasive, or which present a serious threat of harm to the health, safety, or welfare of persons served by the provider. The department shall by rule develop criteria for the selection and implementation of enforcement actions authorized in subsection (2) of this section. Rules

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adopted under this section shall include a process for an informal review upon request by a provider.

(4) The provisions of chapter 34.05 RCW apply to enforcement actions under this section. Except for the imposition of civil penalties, the effective date of enforcement actions shall not be delayed or suspended pending any hearing or informal review.

(5) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any other action authorized in statute or rule or under the terms of a contract with the provider. [2006 c 303 § 8.]

**71A.12.280 Community protection program—Rules, guidelines, and policy manuals.** The department shall develop and maintain rules, guidelines, or policy manuals, as appropriate, for implementing and maintaining the community protection program under this chapter. [2006 c 303 § 9.]

## Chapter 71A.14 RCW LOCAL SERVICES

### Sections

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**71A.14.010 Coordinated and comprehensive state and local program.** The legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disability is expressed in RCW 71A.12.010. [1988 c 176 § 301.]

**71A.14.020 County developmental disability boards—Composition—Expenses.** (1) The county governing authority of any county may appoint a developmental disability board to plan services for persons with developmental disabilities, to provide directly or indirectly a continuum of care and services to persons with developmental disabilities within the county or counties served by the community board. The governing authorities of more than one county by joint action may appoint a single developmental disability board. Nothing in this section shall prohibit a county or counties from combining the developmental disability board with another county board, such as a mental health board.

(2) Members appointed to the board shall include but not be limited to representatives of public, private, or voluntary agencies, representatives of local governmental units, and citizens knowledgeable about developmental disabilities or interested in services to persons with developmental disabilities in the community.

(3) The board shall consist of not less than nine nor more than fifteen members.

(4) Members shall be appointed for terms of three years and until their successors are appointed and qualified.

(5) The members of the developmental disability board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 42.24.090. [1988 c 176 § 302.]

**71A.14.030 County authorities—State fund eligibility—Rules—Application.** Pursuant to RCW 71A.14.040 the secretary shall work with the county governing authorities and developmental disability boards who apply for state funds to coordinate and provide local services for persons with developmental disabilities and their families. The secretary is authorized to promulgate rules establishing the eligibility of each county and the developmental disability board for state funds to be used for the work of the board in coordinating and providing services to persons with developmental disabilities and their families. An application for state funds shall be made by the board with the approval of the county governing authority, or by the county governing authority on behalf of the board. [1988 c 176 § 303.]

**71A.14.040 Applications for state funds—Review—Approval—Rules.** The secretary shall review the applications from the county governing authority made under RCW 71A.14.030. The secretary may approve an application if it meets the requirements of this chapter and the rules promulgated by the secretary. The secretary shall promulgate rules to assist in determining the amount of the grant. In promulgating the rules, the secretary shall consider the population of the area served, the needs of the area, and the ability of the community to provide funds for the developmental disability program provided in this title. [1988 c 176 § 304.]

**71A.14.050 Services to community may be required.** The department may require by rule that in order to be eligible for state funds, the county and the developmental disability board shall provide the following indirect services to the community:

(1) Serve as an informational and referral agency within the community for persons with developmental disabilities and their families;

(2) Coordinate all local services for persons with developmental disabilities and their families to insure the maximum utilization of all available services;

(3) Prepare comprehensive plans for present and future development of services and for reasonable progress toward the coordination of all local services to persons with developmental disabilities. [1988 c 176 § 305.]

**71A.14.060 Local authority to provide services.** The secretary by rule may authorize the county and the developmental disability board to provide any service for persons with developmental disabilities that the department is authorized to provide, except for operating residential habilitation centers under chapter 71A.20 RCW. [1988 c 176 § 306.]

**71A.14.070 Confidentiality of information—Oath.** In order for the developmental disability board to plan, coordinate,

and provide required services for persons with developmental disabilities, the county governing authority and the board shall be eligible to obtain such confidential information from public or private schools and the department as is necessary to accomplish the purposes of this chapter. Such information shall be kept in accordance with state law and rules promulgated by the secretary under chapter 34.05 RCW to permit the use of the information to coordinate and plan services. All persons permitted to have access to or to use such information shall sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I, . . . ., agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such information may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under state law."

[1988 c 176 § 307.]

**71A.14.080 Local authority to receive and spend funds.** The county governing authority and the developmental disability board created under RCW 71A.14.020 are authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of persons with developmental disabilities. [1988 c 176 § 308.]

**71A.14.090 Local authority to participate in federal programs.** RCW 71A.12.120 authorizes local governments to participate in federal programs for persons with developmental disabilities. [1988 c 176 § 309.]

**71A.14.100 Funds from tax levy under RCW 71.20.110.** Counties are authorized by RCW 71.20.110 to fund county activities under this chapter. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1988 c 176 § 310.]

**71A.14.110 Contracts by boundary counties or cities in boundary counties.** Any county or city within a county either of which is situated on the state boundaries is authorized to contract for developmental disability services with a county situated in either the states of Oregon or Idaho, which county is located on boundaries with the state of Washington. [1988 c 176 § 311.]

## Chapter 71A.16 RCW ELIGIBILITY FOR SERVICES

### Sections

71A.16.010	Referral for services—Admittance to residential habilitation centers—Expiration of subsections.
71A.16.020	Eligibility for services—Rules.
71A.16.030	Outreach program—Determination of eligibility for services—Application.

- 71A.16.040 Determination of eligibility—Notice—Rules for redetermination.
- 71A.16.050 Determination of eligibility—Effect—Determination of appropriate services.

**71A.16.010 Referral for services—Admittance to residential habilitation centers—Expiration of subsection.** (1) It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized under this title to persons with developmental disabilities. Eligible persons with developmental disabilities, whether they live in the community or residential habilitation centers, should have the opportunity to choose where they live.

(2) Until June 30, 2003, and subject to subsection (3) of this section, if there is a vacancy in a residential habilitation center, the department shall offer admittance to the center to any eligible adult, or eligible adolescent on an exceptional case-by-case basis, with developmental disabilities if his or her assessed needs require the funded level of resources that are provided by the center.

(3) The department shall not offer a person admittance to a residential habilitation center under subsection (2) of this section unless the department also offers the person appropriate community support services listed in RCW 71A.12.040.

(4) Community support services offered under subsection (3) of this section may only be offered using funds specifically designated for this purpose in the state operating budget. When these funds are exhausted, the department may not offer admittance to a residential habilitation center, or community support services under this section.

(5) Nothing in this section shall be construed to create an entitlement to state services for persons with developmental disabilities.

(6) Subsections (2) through (6) of this section expire June 30, 2003. [1998 c 216 § 3; 1988 c 176 § 401.]

**Effective date—1998 c 216:** See note following RCW 71A.10.020.

**71A.16.020 Eligibility for services—Rules.** (1) A person is eligible for services under this title if the secretary finds that the person has a developmental disability as defined in \*RCW 71A.10.020(2).

(2) The secretary may adopt rules further defining and implementing the criteria in the definition of "developmental disability" under \*RCW 71A.10.020(2). [1988 c 176 § 402.]

**\*Reviser's note:** RCW 71A.10.020 was amended by 1998 c 216 § 2, changing subsection (2) to subsection (3).

**71A.16.030 Outreach program—Determination of eligibility for services—Application.** (1) The department will develop an outreach program to ensure that any eligible person with developmental disabilities services in homes, the community, and residential habilitation centers will be made aware of these services. This subsection (1) expires June 30, 2003.

(2) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

(3) Until June 30, 2003, the procedure set out under subsection (1) of this section must require that all applicants and

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all persons with developmental disabilities currently receiving services from the division of developmental disabilities within the department be given notice of the existence and availability of residential habilitation center and community support services. For genuine choice to exist, people must know what the options are. Available options must be clearly explained, with services customized to fit the unique needs and circumstances of developmentally disabled clients and their families. Choice of providers and design of services and supports will be determined by the individual in conjunction with the department. When the person cannot make these choices, the person's legal guardian may make them, consistent with chapter 11.88 or 11.92 RCW. This subsection expires June 30, 2003.

(4) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability, or by any other person who is authorized by rule of the secretary to submit an application. [1998 c 216 § 4; 1988 c 176 § 403.]

**Effective date—1998 c 216:** See note following RCW 71A.10.020.

**71A.16.040 Determination of eligibility—Notice—Rules for redetermination.** (1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title. [1989 c 175 § 141; 1988 c 176 § 404.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.16.050 Determination of eligibility—Effect—Determination of appropriate services.** The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the secretary shall make a determination as to what services are appropriate for the person. [1988 c 176 § 405.]

## Chapter 71A.18 RCW SERVICE DELIVERY

### Sections

- 71A.18.010 Individual service plans.  
71A.18.020 Services provided if funds available.  
71A.18.030 Rejection of service.  
71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.  
71A.18.050 Discontinuance of a service.

**71A.18.010 Individual service plans.** The secretary may produce and maintain an individual service plan for each

eligible person. An individual service plan is a plan that identifies the needs of a person for services and determines what services will be in the best interests of the person and will meet the person's needs. [1988 c 176 § 501.]

**71A.18.020 Services provided if funds available.** The secretary may provide a service to a person eligible under this title if funds are available. If there is an individual service plan, the secretary shall consider the need for services as provided in that plan. [1988 c 176 § 601.]

**71A.18.030 Rejection of service.** An eligible person or the person's legal representative may reject an authorized service. Rejection of an authorized service shall not affect the person's eligibility for services and shall not eliminate the person from consideration for other services or for the same service at a different time or under different circumstances. [1988 c 176 § 602.]

**71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice.** (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section. [1989 c 175 § 142; 1988 c 176 § 603.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.18.050 Discontinuance of a service.** (1) When considering the discontinuance of a service that is being provided to a person, the secretary shall consult as required in RCW 71A.10.070.

(2) The discontinuance of a service under this section does not affect the person's eligibility for services. Other services may be provided or the same service may be restored when it is again available or when it is again needed.

(3) Except when the service is discontinued at the request of the person receiving the service or that person's legal representative, the secretary shall give notice as required in RCW 71A.10.060. [1988 c 176 § 604.]

## Chapter 71A.20 RCW

### RESIDENTIAL HABILITATION CENTERS

#### Sections

71A.20.010	Scope of chapter.
71A.20.020	Residential habilitation centers.
71A.20.030	Facilities for Interlake School.
71A.20.040	Use of Harrison Memorial Hospital property.
71A.20.050	Superintendents—Secretary's custody of residents.
71A.20.060	Work programs for residents.
71A.20.070	Educational programs.
71A.20.080	Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.
71A.20.090	Secretary to determine capacity of residential quarters.
71A.20.100	Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover.
71A.20.110	Clothing for residents—Cost.
71A.20.120	Financial responsibility.
71A.20.130	Death of resident, payment of funeral expenses—Limitation.
71A.20.140	Resident desiring to leave center—Authority to hold resident limited.
71A.20.150	Admission to residential habilitation center for observation.
71A.20.170	Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals.
71A.20.800	Chapter to be liberally construed.

**71A.20.010 Scope of chapter.** This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those children and adults who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers. [1988 c 176 § 701.]

**71A.20.020 Residential habilitation centers.** The following residential habilitation centers are permanently established to provide services to persons with developmental dis-

abilities: Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; Fircrest School, located at Seattle, King county; and Frances Haddon Morgan Children's Center, located at Bremerton, Kitsap county. [1994 c 215 § 1; 1988 c 176 § 702.]

**Effective date—1994 c 215:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 215 § 3.]

**71A.20.030 Facilities for Interlake School.** (1) The secretary may use surplus physical facilities at Eastern State Hospital as a residential habilitation center, which shall be known as the "Interlake School."

(2) The secretary may designate and select such buildings and facilities and tracts of land at Eastern State Hospital that are surplus to the needs of the department for mentally ill persons and that are reasonably necessary and adequate for services for persons with developmental disabilities. The secretary shall also designate those buildings, equipment, and facilities which are to be used jointly and mutually by both Eastern State Hospital and Interlake School. [1988 c 176 § 703.]

**71A.20.040 Use of Harrison Memorial Hospital property.** The secretary may under RCW 72.29.010 use the Harrison Memorial Hospital property at Bremerton, Kitsap county, for services to persons with developmental disabilities. [1988 c 176 § 704.]

**71A.20.050 Superintendents—Secretary's custody of residents.** (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of the resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1990 c 33 § 589; 1988 c 176 § 705.]

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

**71A.20.060 Work programs for residents.** The secretary shall have authority to engage the residents of a residential habilitation center in beneficial work programs, but the

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secretary shall not engage residents in excessive hours of work or work for disciplinary purposes. [1988 c 176 § 706.]

**71A.20.070 Educational programs.** (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.190.030 through 28A.190.050. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residential habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary shall, upon request from a local school district, provide such clinical, counseling, and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1990 c 33 § 590; 1988 c 176 § 707.]

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

**71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal.** Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement. [1989 c 175 § 143; 1988 c 176 § 708.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**71A.20.090 Secretary to determine capacity of residential quarters.** The secretary shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of each residential habilitation center. The secretary in authorizing service at a residen-

tial habilitation center shall not exceed the maximum population for the residential habilitation center unless the secretary makes a written finding of reasons for exceeding the rated capacity. [1988 c 176 § 709.]

**71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover.** The secretary shall serve as custodian without compensation of personal property of a resident of a residential habilitation center that is located at the residential habilitation center, including moneys deposited with the secretary for the benefit of the resident. As custodian, the secretary shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the secretary for the benefit of a resident, the secretary may disburse any of the funds belonging to a resident for such personal needs of the resident as the secretary may deem proper and necessary.

(2) The secretary may pay to the department as reimbursement for the costs of care, support, maintenance, treatment, hospitalization, medical care, and habilitation of a resident from the resident's fund when such fund exceeds a sum as established by rule of the department, to the extent of any notice and finding of financial responsibility served upon the secretary after such findings shall have become final. If the resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served, then the secretary shall not make payments to the department as provided in this subsection, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 43.20B.430 shall not commence to run until the appointment of such guardian and the service upon the guardian of notice and findings of financial responsibility.

(3) When services to a person are changed from a residential center to another setting, the secretary shall deliver to the person, or to the parent, guardian, or agency legally responsible for the person, all or such portion of the funds of which the secretary is custodian as defined in this section, or other property belonging to the person, as the secretary may deem necessary to the person's welfare, and the secretary may deliver to the person such additional property or funds belonging to the person as the secretary may from time to time deem proper, so long as the person continues to receive service under this title. When the resident no longer receives any services under this title, the secretary shall deliver to the person, or to the parent, person, or agency legally responsible for the person, all funds or other property belonging to the person remaining in the secretary's possession as custodian.

(4) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures from the fund to be accurately accounted for by the secretary. All interest accruing from, or as a result of the deposit of such moneys in a single fund shall be credited to the personal accounts of the residents. All expenditures under this section shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of a resident shall terminate the secretary's authority as custodian of

any funds of the resident which may be subject to the control of the guardianship, upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to the guardian any funds subject to the control of the guardianship or other property of the resident remaining in the secretary's possession, together with a full and final accounting of all receipts and expenditures made.

(6) Upon receipt of a written request from the secretary stating that a designated individual is a resident of the residential habilitation center and that such resident has no legally appointed guardian of his or her estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the secretary as custodian and mail written notice of the delivery to such resident at the residential habilitation center. The receipt by the secretary shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his or her legal representative. All funds so received by the secretary shall be duly deposited by the secretary as custodian in the resident's fund to the personal account of the resident. If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the lawsuit without cost to the person, bank, corporation, or agency that delivered the property to the secretary, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1988 c 176 § 710.]

**71A.20.110 Clothing for residents—Cost.** When clothing for a resident of a residential habilitation center is not otherwise provided, the secretary shall provide a resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian, or estate of the resident. If such parent or guardian is unable to provide or pay for the clothing, or the estate of the resident is insufficient to provide or pay for the clothing, the clothing shall be provided by the state. [1988 c 176 § 711.]

**71A.20.120 Financial responsibility.** The subject of financial responsibility for the provision of services to persons in residential habilitation centers is covered by RCW 43.20B.410 through 43.20B.455. [1988 c 176 § 712.]

**71A.20.130 Death of resident, payment of funeral expenses—Limitation.** Upon the death of a resident of a residential habilitation center, the secretary may supplement such funds as were in the resident's account at the time of the person's death to provide funeral and burial expense for the deceased resident. These expenses shall not exceed funeral and burial expenses allowed under \*RCW 74.08.120. [1988 c 176 § 713.]

\*Reviser's note: RCW 74.08.120 was repealed by 1997 c 58 § 1002.

**71A.20.140 Resident desiring to leave center—Authority to hold resident limited.** (1) If a resident of a residential habilitation center desires to leave the center and the secretary believes that departures may be harmful to the resi-

dent, the secretary may hold the resident at the residential habilitation center for a period not to exceed forty-eight hours in order to consult with the person's legal representative as provided in RCW 71A.10.070 as to the best interests of the resident.

(2) The secretary shall adopt rules to provide for the application of subsection (1) of this section in a manner that protects the constitutional rights of the resident.

(3) Neither the secretary nor any person taking action under this section shall be civilly or criminally liable for performing duties under this section if such duties were performed in good faith and without gross negligence. [1988 c 176 § 714.]

**71A.20.150 Admission to residential habilitation center for observation.** Without committing the department to continued provision of service, the secretary may admit a person eligible for services under this chapter to a residential habilitation center for a period not to exceed thirty days for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1988 c 176 § 715.]

**71A.20.170 Developmental disabilities community trust account—Creation—Required deposits—Permitted withdrawals.** (1) The developmental disabilities community trust account is created in the state treasury. All net proceeds from the use of excess property identified in the 2002 joint legislative audit and review committee capital study or other studies of the division of developmental disabilities residential habilitation centers at Lakeland Village, Yakima Valley school, Francis Haddon Morgan Center, and Rainier school that would not impact current residential habilitation center operations must be deposited into the account.

(2) Proceeds may come from the lease of the land, conservation easements, sale of timber, or other activities short of sale of the property.

(3) "Excess property" includes that portion of the property at Rainier school previously under the cognizance and control of Washington State University for use as a dairy/forage research facility.

(4) Only investment income from the principal of the proceeds deposited into the trust account may be spent from the account. For purposes of this section, "investment income" includes lease payments, rent payments, or other periodic payments deposited into the trust account. For purposes of this section, "principal" is the actual excess land from which proceeds are assigned to the trust account.

(5) Moneys in the account may be spent only after appropriation. Expenditures from the account shall be used exclusively to provide family support and/or employment/day services to eligible persons with developmental disabilities who can be served by community-based developmental disability services. It is the intent of the legislature that the account should not be used to replace, supplant, or reduce existing appropriations.

(6) The account shall be known as the Dan Thompson memorial developmental disabilities community trust account. [2008 c 265 § 1; 2005 c 353 § 1.]

**Effective dates—2005 c 353:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov- (2008 Ed.)

ernment and its existing public institutions, and takes effect immediately [May 10, 2005], except for section 3 of this act which takes effect July 1, 2005, and section 4 of this act which takes effect July 1, 2006." [2005 c 353 § 7.]

**71A.20.800 Chapter to be liberally construed.** The provisions of this chapter shall be liberally construed to accomplish its purposes. [1988 c 176 § 716.]

**Chapter 71A.22 RCW**

**TRAINING CENTERS AND HOMES**

Sections

- 71A.22.010 Contracts for services authorized.
- 71A.22.020 Definitions.
- 71A.22.030 Payments by secretary under this chapter supplemental—Limitation.
- 71A.22.040 Certification of facility as day training center or group training home.
- 71A.22.050 Services in day training center or group training home—Application for payment.
- 71A.22.060 Facilities to be nonsectarian.

**71A.22.010 Contracts for services authorized.** The secretary may enter into agreements with any person or with any person, corporation, or association operating a day training center or group training home or a combination day training center and group training home approved by the department, for the payment of all, or a portion, of the cost of the care, treatment, maintenance, support, and training of persons with developmental disabilities. [1988 c 176 § 801.]

**71A.22.020 Definitions.** As used in this chapter:

(1) "Day training center" means a facility equipped, supervised, managed, and operated at least three days per week by any person, association, or corporation on a non-profit basis for the day-care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under rules adopted by the secretary.

(2) "Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis by any person, association, or corporation on a nonprofit basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under the rules adopted by the secretary. [1988 c 176 § 802.]

**71A.22.030 Payments by secretary under this chapter supplemental—Limitation.** All payments made by the secretary under this chapter, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home, or a combination of both, by the persons with developmental disabilities resident in the home or center. Payments made by the secretary under this chapter shall not exceed actual costs for the care, treatment, support, maintenance, and training of any person with a developmental disability whether at a day training center or group training home or combination of both. [1988 c 176 § 803.]

**71A.22.040 Certification of facility as day training center or group training home.** Any person, corporation, or association may apply to the secretary for approval and certi-

fication of the applicant's facility as a day training center or a group training home for persons with developmental disabilities, or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the care, treatment, maintenance, training, and support of persons with developmental disabilities, under standards in rules adopted by the secretary. Day training centers and group training homes must meet local health and safety standards as may be required by local health and fire-safety authorities. [1989 c 329 § 2; 1988 c 176 § 804.]

**71A.22.050 Services in day training center or group training home—Application for payment.** (1) Except as otherwise provided in this section, the provisions of this title govern applications for payment by the state for services in a day training center or group training home approved by the secretary under this chapter.

(2) In determining eligibility and the amount of payment, the secretary shall make special provision for group training homes where parents are actively involved as a member of the administrative board of the group training home and who may provide for some of the services required by a resident therein. The special provisions shall include establishing eligibility requirements for a person placed in such a group training home to have a parent able and willing to attend administrative board meetings and participate insofar as possible in carrying out special activities deemed by the board to contribute to the well being of the residents.

(3) If the secretary determines that a person is eligible for services in a day training center or group training home, the secretary shall determine the extent and type of services to be provided and the amount that the department will pay, based upon the needs of the person and the ability of the parent or the guardian to pay or contribute to the payment of the monthly cost of the services.

(4) The secretary may, upon application of the person who is receiving services or the person's legal representative, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the secretary for services at a day training center or group training home or combination of both. [1988 c 176 § 805.]

**71A.22.060 Facilities to be nonsectarian.** A day training center and a group training home under this chapter shall be a nonsectarian training center and a nonsectarian group training home. [1988 c 176 § 806.]

# Title 72

## STATE INSTITUTIONS

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### Chapter 72.01 RCW ADMINISTRATION

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**72.01.010 Powers and duties apply to department of social and health services and department of corrections—Joint exercise authorized.** As used in this chapter:

"Department" means the departments of social and health services and corrections; and

"Secretary" means the secretaries of social and health services and corrections.

The powers and duties granted and imposed in this chapter, when applicable, apply to both the departments of social and health services and corrections and the secretaries of social and health services and corrections for institutions under their control. A power or duty may be exercised or fulfilled jointly if joint action is more efficient, as determined by the secretaries. [1981 c 136 § 66; 1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.** The hours of labor for each full time employee shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-one hundred and seventy-sixth of the employee's gross monthly salary: PROVIDED, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: PROVIDED FURTHER, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by the secretary. [1981 c 136 § 67; 1979 c 141 § 143; 1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.01.043 Hours of labor for full time employees—Certain personnel excepted.** RCW 72.01.042 shall not be

applicable to the following designated personnel: Administrative officers of the department; institutional superintendents, medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of social and health services with the concurrence of the merit system board having jurisdiction. [1979 c 141 § 144; 1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256.]

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.01.045 Assaults to employees—Reimbursement for costs.** (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services, the department of natural resources, and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, the commissioner of public lands, or the director of the department of veterans affairs, or the secretary's, commissioner's, or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, commissioner, director, or applicable designee, finds that the employee has not diligently

pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, commissioner, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2002 c 77 § 1; 1990 c 153 § 1; 1987 c 102 § 1; 1986 c 269 § 4.]

**72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities.** (1) The secretary of social and health services shall have full power to manage and govern the following public institutions: The western state hospital, the eastern state hospital, the northern state hospital, the state training school, the state school for girls, Lakeland Village, the Rainier school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions.

(2) The secretary of corrections shall have full power to manage, govern, and name all state correctional facilities, subject only to the limitations contained in laws relating to the management of such institutions.

(3) If any state correctional facility is fully or partially destroyed by natural causes or otherwise, the secretary of corrections may, with the approval of the governor, provide for the establishment and operation of additional residential correctional facilities to place those inmates displaced by such destruction. However, such additional facilities may not be established if there are existing residential correctional facilities to which all of the displaced inmates can be appropriately placed. The establishment and operation of any additional facility shall be on a temporary basis, and the facility may not be operated beyond July 1 of the year following the year in which it was partially or fully destroyed. [1992 c 7 § 51; 1988 c 143 § 1. Prior: 1985 c 378 § 8; 1985 c 350 § 1; 1981 c 136 § 68; 1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050; prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

**Severability—1985 c 378:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 378 § 36.]

**Effective date—1985 c 378:** "This act shall take effect July 1, 1986. The secretary of social and health services and the governor may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1985 c 378 § 37.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.060 Chief executive officers—Appointment—Salaries—Assistants.** The secretary shall appoint the chief executive officers necessary to manage one or more of the public facilities operated by the department. This section, however, shall not apply to RCW 72.40.020.

Except as otherwise provided in this title, the chief executive officer of each institution may appoint all assistants and employees required for the management of the institution placed in his charge, the number of such assistants and employees to be determined and fixed by the secretary. The chief executive officer of any institution may, at his pleasure, discharge any person therein employed. The secretary shall investigate all complaints made against the chief executive officer of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the chief executive officer.

The secretary may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each chief executive officer shall receive such salary as is fixed by the secretary, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve month period commencing April 1st. [1983 1st ex.s. c 41 § 26; 1979 c 141 § 146; 1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

*Authority to appoint a single executive officer for multiple institutions—Exception:* RCW 43.20A.607.

*Juvenile correctional institution in King county, appointment of superintendent:* RCW 72.19.030.

*Maple Lane School, appointment of superintendent and subordinate officers and employees:* RCW 72.20.020.

*State hospitals for individuals with mental illness—Superintendents:* RCW 72.23.030.

**72.01.090 Rules and regulations.** The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

**72.01.110 Construction or repair of buildings—Contracts or inmate labor.** The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: PROVIDED, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the

institution, when in its judgment the improvements can be made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

*Public works: Chapter 39.04 RCW.*

**72.01.120 Construction or repair of buildings—Award of contracts.** When improvements are to be made under contract, notice of the call for the same shall be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The secretary is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The secretary shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The secretary shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the secretary, faithfully comply with the same. [1979 c 141 § 148; 1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

**72.01.130 Destruction of buildings—Reconstruction.** If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose, not to exceed one hundred thousand dollars: PROVIDED, That if a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

**72.01.140 Agricultural and farm activities.** The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced. [2005 c 353 § 5; 1981 c 238 § 1; 1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10), and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

**Effective date—1981 c 238:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981." [1981 c 238 § 7.]

**Savings—Liabilities—1981 c 238:** "The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on the effective date of this act." [1981 c 238 § 5.]

**Savings—Rights, actions, contracts—1981 c 238:** "Nothing in this act shall be construed as affecting any existing rights except as to the agencies referred to, nor as affecting any pending actions, activities, proceedings, or contracts, nor affect the validity of any act performed by such agency or any employee thereof prior to the effective date of this act." [1981 c 238 § 6.]

**72.01.150 Industrial activities.** The secretary shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1979 c 141 § 150; 1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15), and (16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

*Correctional industries: Chapter 72.60 RCW.*

**72.01.180 Dietitian—Duties—Travel expenses.** The secretary shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 c 141 § 152;

1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

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

**72.01.190 Fire protection.** The secretary may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1979 c 141 § 153; 1959 c 28 § 72.01.190. Prior: 1947 c 188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

**72.01.200 Employment of teachers—Exceptions.** State correctional facilities may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.190.030 through 28A.190.050 and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1992 c 7 § 52; 1990 c 33 § 591; 1979 ex.s. c 217 § 6; 1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

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

**Effective date—Severability—1979 ex.s. c 217:** See notes following RCW 28A.190.020.

*Teachers' qualifications at state schools for the deaf and blind:* RCW 72.40.028.

*Teachers' retirement:* Chapter 41.32 RCW.

**72.01.210 Institutional chaplains—Appointment—Qualifications.** (1) The secretary of corrections shall appoint institutional chaplains for the state correctional institutions for convicted felons. Institutional chaplains shall be appointed as employees of the department of corrections. The secretary of corrections may further contract with chaplains to be employed as is necessary to meet the religious needs of those inmates whose religious denominations are not represented by institutional chaplains and where volunteer chaplains are not available.

(2) Institutional chaplains appointed by the department of corrections under this section shall have qualifications necessary to function as religious program coordinators for all faith groups represented within the department. Every chaplain so appointed or contracted with shall have qualifications consistent with community standards of the given faith group to which the chaplain belongs and shall not be required to violate the tenets of his or her faith when acting in an ecclesiastical role.

(3) The secretary of social and health services shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional, and mental institutions under their control.

(4) Except as provided in this section, the chaplains so appointed under this section shall have the qualifications and shall be compensated in an amount as recommended by the appointing department and approved by the Washington personnel resources board. [2008 c 104 § 3; 1993 c 281 § 62; 1981 c 136 § 69; 1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

(2008 Ed.)

**Finding—2008 c 104:** See note following RCW 72.09.800.

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

*Housing allowance for state-employed chaplains:* RCW 41.04.360.

*Washington personnel resources board:* RCW 41.06.110.

**72.01.212 Institutional chaplains—Liability insurance—Representation by attorney general in civil lawsuits.** Regardless of whether the services are voluntary or provided by employment or contract with the department of corrections, a chaplain who provides the services authorized by RCW 72.01.220:

(1) May not be compelled to carry personal liability insurance as a condition of providing those services; and

(2) May request that the attorney general authorize the defense of an action or proceeding for damages instituted against the chaplain arising out of the course of his or her duties in accordance with RCW 4.92.060, 4.92.070, and 4.92.075. [2008 c 104 § 4.]

**Finding—2008 c 104:** See note following RCW 72.09.800.

**72.01.220 Institutional chaplains—Duties.** It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

**72.01.230 Institutional chaplains—Offices, chapels, supplies.** The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

**72.01.240 Supervisor of chaplains.** Each secretary is hereby empowered to appoint one of the chaplains, authorized by RCW 72.01.210, to act as supervisor of chaplains for his department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1981 c 136 § 70; 1979 c 141 § 155; 1959 c 28 § 72.01.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.260 Outside ministers not excluded.** Nothing contained in RCW 72.01.210 through 72.01.240 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the secretary may prescribe. [1983 c 3 § 184; 1979 c 141 § 156; 1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code 1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

**72.01.270 Gifts, acceptance of.** The secretary shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used

for the benefit of the institution for which it is received. [1979 c 141 § 157; 1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

**72.01.280 Quarters for personnel—Charges.** The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the secretary may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The secretary shall charge and collect from such officers and employees the full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1979 c 141 § 158; 1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

**72.01.282 Quarters for personnel—Deposit of receipts.** All moneys received by the secretary from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1981 c 136 § 71; 1979 c 141 § 159; 1959 c 210 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.290 Record of patients and inmates.** The department shall keep at its office, accessible only to the secretary and to proper officers and employees, and to other persons authorized by the secretary, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date of discharge of every person from the institution, and whether such discharge is final: PROVIDED, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1979 c 141 § 160; 1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**72.01.300 Accounting systems.** The secretary shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the

department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1979 c 141 § 161; 1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

**72.01.310 Political influence forbidden.** Any officer, including the secretary, or employee of the department or of the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1979 c 141 § 162; 1959 c 28 § 72.01.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

**72.01.320 Examination of conditions and needs—Report.** The secretary shall examine into the conditions and needs of the several state institutions under the secretary's control and report in writing to the governor the condition of each institution. [1987 c 505 § 66; 1979 c 141 § 163; 1977 c 75 § 84; 1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.]

**72.01.365 Escorted leaves of absence for inmates—Definitions.** As used in RCW 72.01.370 and 72.01.375:

"Escorted leave" means a leave of absence from a correctional facility under the continuous supervision of an escort.

"Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany an inmate on a leave of absence and be in visual or auditory contact with the inmate at all times.

"Nonviolent offender" means an inmate under confinement for an offense other than a violent offense defined by RCW 9.94A.030. [1983 c 255 § 2.]

**Severability—1983 c 255:** See RCW 72.74.900.

*Prisoner furloughs: Chapter 72.66 RCW.*

**72.01.370 Escorted leaves of absence for inmates—Grounds.** The superintendent of any state correctional facility may, subject to the approval of the secretary and under RCW 72.01.375, grant escorted leaves of absence to inmates confined in such institutions to:

- (1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;
- (2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;
- (3) Participate in athletic contests;
- (4) Perform work in connection with the industrial, educational, or agricultural programs of the department;
- (5) Receive necessary medical or dental care which is not available in the institution; and
- (6) Participate as a volunteer in community service work projects which are approved by the superintendent, but only inmates who are nonviolent offenders may participate in these projects. Such community service work projects shall

only be instigated at the request of a local community. [1992 c 7 § 53; 1983 c 255 § 3; 1981 c 136 § 72; 1979 c 141 § 164; 1959 c 40 § 1.]

**Severability—1983 c 255:** See RCW 72.74.900.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies.** An inmate shall not be allowed to start a leave of absence under RCW 72.01.370 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the inmate's destination. [1983 c 255 § 4.]

**Severability—1983 c 255:** See RCW 72.74.900.

**72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs.** The secretary is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: PROVIDED, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The secretary shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): PROVIDED FURTHER, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1) and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1981 c 136 § 73; 1979 c 141 § 165; 1959 c 40 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.** (1) Whenever any child under the age of eighteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best pre-

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pare the individual for a successful return to the community. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known.

(2)(a) Except as provided in (b) and (c) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender who reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the correctional goals for the offender could continue to be better met by the programs and housing environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and correctional goals are no longer better met in that environment but in no case past the offender's twenty-first birthday.

(c) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender shall be kept physically separate from other offenders at all times. [2002 c 171 § 1; 1997 c 338 § 41; 1994 c 220 § 1; 1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

**Effective date—2002 c 171:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 171 § 3.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective date—1981 c 136:** See RCW 72.09.900.

*Juvenile not to be confined with adult inmates: RCW 13.04.116.*

**72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.** An offender under the age of eighteen who is convicted in adult criminal court of a crime and who is committed for a term of confinement in a jail as defined in RCW 70.48.020, must be housed in a jail cell that does not contain adult offenders, until the offender reaches the age of eighteen. [1997 c 338 § 42.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions.** The secretary, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and sup-

plies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1981 c 136 § 75; 1979 c 141 § 167; 1967 c 23 § 1; 1961 c 193 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized.** The secretary is authorized to enter into agreements with any school district or any institution of higher learning for the use of the facilities, equipment and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1981 c 136 § 76; 1979 c 141 § 168; 1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.** The secretary is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1979 c 141 § 169; 1970 ex.s. c 50 § 3.]

**72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc.** (1) The secretary may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the secretary to be beneficial to such residents or a portion thereof.

(2) The secretary may permit the nonresidential use of the facilities of any state institution by any county, community service organization, nonprofit corporation, group or association for the purpose of conducting programs under RCW 72.06.070. [1982 c 204 § 15; 1979 c 141 § 170; 1970 ex.s. c 50 § 5.]

**72.01.458 Use of files and records for courses of education, instruction and training at institutions.** In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

**72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.**

(1) Any lease of public lands with outdoor recreation potential authorized by the department shall be open and available to the public for compatible recreational use unless the department determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department to close the leased land to any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1981 c 136 § 77; 1979 c 141 § 171; 1969 ex.s. c 46 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.** The secretary is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department. [1981 c 136 § 78; 1979 c 141 § 172; 1970 ex.s. c 50 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**Severability—1970 ex.s. c 50:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 50 § 8.]

**72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.** See RCW 64.08.090.

**Chapter 72.02 RCW  
ADULT CORRECTIONS**

Sections

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**72.02.015 Powers of court or judge not impaired.**

Nothing in this chapter shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this chapter applies, to fix the term of imprisonment and to order commitment, according to law, nor to deny the right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law. [1988 c 143 § 9; 1959 c 214 § 13. Formerly RCW 72.13.130.]

**72.02.040 Secretary acting for department exercises powers and duties.** The secretary of corrections acting for the department of corrections shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department of corrections. [1981 c 136 § 79; 1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.02.045 Superintendent’s authority.** The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the Washington personnel resources board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent, subject to approval by the secretary, has the authority to determine the types and amounts of property that convicted persons may possess in department facilities. This authority includes the authority to determine the types and amounts that the department will transport at the department’s expense whenever a convicted person is transferred between department institutions or to other jurisdictions. Convicted persons are responsible for the costs of transporting their excess property. If a convicted person fails to pay the costs of transporting any excess property within ninety days from the date of transfer, such property shall be presumed abandoned and may be disposed of in the manner

allowed by RCW 63.42.040 (1) through (3). The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person’s personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the custody of the department either on parole, community placement, community custody, community supervision, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent’s opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed. [2005 c 382 § 1; 1993 c 281 § 63; 1988 c 143 § 2.]

**Effective date—2005 c 382:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 2005]." [2005 c 382 § 2.]

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

*Health care:* RCW 41.05.280.

**72.02.055 Appointment of associate superintendents.**

The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the secretary. In the event the superintendent is absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his or her duties, one of the associate superintendents of such institution as may be designated by the director of the division of prisons and the secretary shall act as superintendent. [1988 c 143 § 3.]

**72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.**

Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the \*indeterminate sentencing review board, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: PROVIDED, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's community corrections officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or 72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1988 c 143 § 5; 1971 ex.s. c 171 § 1.]

**\*Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

**72.02.110 Weekly payments to certain released prisoners.** As state, federal or other funds are available, the secretary of corrections or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the \*indeterminate sentencing review board, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the community corrections officer at the office of such officer. In addition to the initial six weekly payments provided for in this section, a community corrections officer and his supervisor may, at their discretion, con-

tinue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: PROVIDED, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: PROVIDED, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of corrections may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1988 c 143 § 6; 1981 c 136 § 80; 1971 ex.s. c 171 § 2.]

**\*Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.02.150 Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation.** The secretary or the secretary's designee shall be responsible for the preparation of contingency plans for dealing with disturbances at state penal facilities. The plans shall be developed or revised in cooperation with representatives of state and local agencies at least annually. Contingency plans developed shall encompass contingencies of varying levels of severity, specific contributions of personnel and material from participating agencies, and a unified chain of command. Agencies providing personnel under the plan shall provide commanders for the personnel who will be included in the unified chain of command. [1982 c 49 § 1.]

**72.02.160 Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope.** Whenever the secretary or the secretary's designee determines that due to a disturbance at a state penal facility within the jurisdiction of the department that the assistance of law enforcement officers in addition to department of corrections' personnel is required, the secretary may notify the Washington state patrol, the chief law enforcement officer of any nearby county and the county in which the facility is located, and the chief law enforcement officer of any municipality near the facility or in which the facility is located. These law enforcement agencies may provide such assistance as expressed in the contingency plan or plans, or as is deemed necessary by the secretary, or the secretary's designee, to restore order at the facility, consistent with the resources available to the law enforcement agencies and the law enforcement agencies' other statutory obligations. While on the grounds of a penal facility and acting under this section, all law enforcement officials shall be under the immediate control of their respective supervisors who shall be respon-

sive to the secretary, or the secretary's designee, which designee need not be an employee of the department of corrections. [1982 c 49 § 2.]

*Reimbursement for local support at prison disturbances:* RCW 72.72.050, 72.72.060.

**72.02.200 Reception and classification units.** There shall be units known as reception and classification centers which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of offenders convicted of offenses punishable by imprisonment, except offenders convicted of crime and sentenced to death. [1988 c 143 § 7; 1959 c 214 § 11. Formerly RCW 72.13.110.]

**72.02.210 Sentence—Commitment to reception units.** Any offender convicted of an offense punishable by imprisonment, except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department without designating the name of such institution, and be committed to the reception units for classification, confinement and placement in such correctional facility under the supervision of the department as the secretary shall deem appropriate. [1988 c 143 § 8; 1981 c 136 § 95; 1979 c 141 § 206; 1959 c 214 § 12. Formerly RCW 72.13.120.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.02.220 Cooperation with reception units by state agencies.** The indeterminate sentence review board and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception unit and supply the reception unit with necessary information regarding social histories and community background. [1988 c 143 § 10; 1979 c 141 § 207; 1959 c 214 § 14. Formerly RCW 72.13.140.]

*Indeterminate sentences:* Chapter 9.95 RCW.

**72.02.230 Persons to be received for classification and placement.** The division of prisons shall receive all persons convicted of a felony by the superior court and committed by the superior court to the reception units for classification and placement in such facility as the secretary shall designate. The superintendent of these institutions shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence, and order of commitment of the superior court and the statement of the prosecuting attorney, along with other reports as may have been made in reference to each individual prisoner. [1988 c 143 § 11; 1984 c 114 § 4; 1979 c 141 § 208; 1959 c 214 § 15. Formerly RCW 72.13.150.]

**72.02.240 Secretary to determine placement—What laws govern confinement, parole and discharge.** The sec-

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retary shall determine the state correctional institution in which the offender shall be confined during the term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which the offender is certified for confinement, but parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1988 c 143 § 12; 1979 c 141 § 209; 1959 c 214 § 16. Formerly RCW 72.13.160.]

**72.02.250 Commitment of convicted female persons—Procedure as to death sentences.** All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.95.170, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.95.160, and the secretary of corrections shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of corrections certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons committed to the Washington correctional institution for women under the provisions of this section. [1983 c 3 § 185; 1981 c 136 § 97; 1971 c 81 § 134; 1967 ex.s. c 122 § 8. Formerly RCW 72.15.060.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.02.260 Letters of inmates may be withheld.** Whenever the superintendent of an institution withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of corrections or the secretary's designee for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1988 c 143 § 13; 1981 c 136 § 87; 1979 c 141 § 192; 1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1. Formerly RCW 72.08.380.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.02.270 Abused victims—Murder of abuser—Notice of provisions for reduction in sentence.** The department shall advise all inmates in the department's custody who were convicted of a murder that the inmate committed prior to July 23, 1989, about the provisions in RCW 9.95.045, 9.95.047, and 9.94A.890. The department shall advise the inmates of the method and deadline for submitting petitions to the indeterminate sentence review board for review of the inmate's sentence. The department shall issue the notice to the inmates no later than July 1, 1993. [1993 c 144 § 6.]

**Effective date—1993 c 144:** See note following RCW 9.95.045.

**72.02.280 Motion pictures.** Motion pictures unrated after November 1968 or rated X or NC-17 by the motion picture association of America shall not be shown in adult correctional facilities. [1994 sp.s. c 7 § 808.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

## Chapter 72.04A RCW PROBATION AND PAROLE

### Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of department—Progress reports.
- 72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.
- 72.04A.120 Parolee assessments.
- 72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.

*Counties may provide probation and parole services:* RCW 36.01.070.

*Indeterminate sentence review board:* Chapter 9.95 RCW.

*Siting of community-based facilities:* RCW 72.65.220.

*Victims of crimes, reimbursement by convicted person as condition of work release or parole:* RCW 7.68.120.

**72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.** The powers and duties of the state \*board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the secretary of corrections.

This section shall not be construed as affecting any of the remaining powers and duties of the \*board of prison terms and paroles including, but not limited to, the following:

(1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;

(2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1981 c 136 § 81; 1979 c 141 § 173; 1967 c 134 § 7.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.04A.070 Plans and recommendations for conditions of supervision of parolees.** The secretary of corrections shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the \*board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of

supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1981 c 136 § 82; 1979 c 141 § 174; 1967 c 134 § 9.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.04A.080 Parolees subject to supervision of department—Progress reports.** Each inmate hereafter released on parole shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the \*board of prison terms and paroles for their files and records. [1981 c 136 § 83; 1979 c 141 § 175; 1967 c 134 § 10.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.** Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the \*board of prison terms and paroles, any probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the \*board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95.120. The \*board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the \*board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and

parole officer, and such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the \*board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1981 c 136 § 84; 1979 c 141 § 176; 1969 c 98 § 1; 1967 c 134 § 11.]

\*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Severability—Effective date—1969 c 98:** See notes following RCW 9.95.120.

*Suspension, revision of parole, retaking violators, community corrections officers, etc.:* RCW 9.95.120.

**72.04A.120 Parolee assessments.** (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1991 c 104 § 2; 1989 c 252 § 20; 1982 c 207 § 1.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

(2008 Ed.)

**72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.** The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 72.04A.050, 72.04A.070, 72.04A.080, and 72.04A.090. [1981 c 137 § 34.]

**Severability—1981 c 137:** See RCW 9.94A.910.

## Chapter 72.05 RCW

### CHILDREN AND YOUTH SERVICES

#### Sections

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*Children with disabilities, parental responsibility, order of commitment:* Chapter 26.40 RCW.

*Council for children and families:* Chapter 43.121 RCW.

*Educational programs for residential school residents:* RCW 28A.190.020 through 28A.190.060.

*Employment of dental hygienist without supervision of dentist authorized:* RCW 18.29.056.

*Financial responsibility for cost of detention of minor:* RCW 13.16.085.

*Minors—Mental health services, commitment:* Chapter 71.34 RCW.

*Uniform interstate compact on juveniles:* Chapter 13.24 RCW.

**72.05.010 Declaration of purpose.** The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and hearing and visually impaired children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of

the Green Hill school, the Maple Lane school, the Naselle Youth Camp, the Mission Creek Youth Camp, Echo Glen, the Cascadia Diagnostic Center, Lakeland Village, Rainier school, the Yakima Valley school, Interlake school, Fircrest school, the Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, and like residential state schools, camps and centers hereafter established, and to place them under the department of social and health services except where specified otherwise; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1985 c 378 § 9; 1980 c 167 § 7; 1979 ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—Severability—1979 ex.s. c 217:** See notes following RCW 28A.190.020.

**72.05.020 Definitions.** As used in this chapter, unless the context requires otherwise:

(1) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.

(2) "Department" means the department of social and health services.

(3) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(4) "Service provider" means the entity that operates a community facility. [1998 c 269 § 2; 1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

**Intent—Finding—1998 c 269:** "It is the intent of the legislature to:

(1) Enhance public safety and maximize the rehabilitative potential of juvenile offenders through modifications to licensed community residential placements for juveniles;

(2) Ensure community support for community facilities by enabling community participation in decisions involving these facilities and assuring the safety of communities in which community facilities for juvenile offenders are located; and

(3) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the juvenile offenders placed in the community, and by establishing minimum standards for operation of licensed residential community facilities. The legislature finds that community support and participation is vital to the success of community programming." [1998 c 269 § 1.]

**Effective date—1998 c 269:** "This act takes effect September 1, 1998." [1998 c 269 § 19.]

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.05.130 Powers and duties of department—"Close security" institutions designated.** The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to

RCW 28A.190.030 through 28A.190.050 which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1990 c 33 § 592; 1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

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

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—Severability—1979 ex.s. c 217:** See notes following RCW 28A.190.020.

**72.05.150 "Minimum security" institutions.** The department shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, cus-

today, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the secretary may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the department of natural resources, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp. [1979 ex.s. c 67 § 6; 1979 c 141 § 181; 1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

**Severability—1979 ex.s. c 67:** See note following RCW 19.28.351.

**72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.** No inmate of a juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154 shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1987 c 185 § 37; 1973 c 68 § 1.]

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

**Effective date—1973 c 68:** "This 1973 act shall take effect on July 1, 1973." [1973 c 68 § 3.]

**72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.** From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: PROVIDED, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which

occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

**Effective date—1973 c 68:** See note following RCW 72.05.152.

**72.05.160 Contracts with other divisions, agencies authorized.** In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department shall have power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1979 c 141 § 182; 1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

**72.05.170 Counseling and consultative services.** The department may provide professional counseling services to delinquent children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work. [1977 ex.s. c 80 § 45; 1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.05.200 Parental right to provide treatment preserved.** Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

**72.05.210 Juvenile court law—Applicability—Synonymous terms.** RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

**72.05.300 Parental schools—Leases, purchases—Powers of school district.** The department may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the secretary of social and health services deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district,

execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease, with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1979 c 141 § 183; 1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

**72.05.310 Parental schools—Personnel.** The department may employ personnel, including but not limited to, superintendents and all other officers, agents, and teachers necessary to the operation of parental schools. [1979 c 141 § 184; 1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

**72.05.400 Operation of community facility—Establishing or relocating—Public participation required—Secretary's duties.** (1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the community facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating community facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a community facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a community facility may be sited.

(b) When the secretary or service provider has determined the community facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the community facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the community facility would be sited or whose boundary is

within two miles of a proposed community facility, any library district in which the community facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed community facility. Before initiating this process, the department shall contact local government planning agencies in the communities containing the proposed community facility. The department shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) The secretary shall not issue a license to any service provider until the service provider submits proof that the requirements of this section have been met.

(4) This section shall apply only to community facilities sited after September 1, 1998. [1998 c 269 § 5.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.405 Juveniles in community facility—Infraction policy—Return to institution upon serious violation—Definitions by rule.** The department shall adopt an infraction policy for juveniles placed in community facilities. The policy shall require written documentation by the department and service providers of all infractions and violations by juveniles of conditions set by the department. Any juvenile who commits a serious infraction or a serious violation of conditions set by the department shall be returned to an institution. The secretary shall not return a juvenile to a community facility until a new risk assessment has been completed and the secretary reasonably believes that the juvenile can adhere to the conditions set by the department. The department shall define the terms "serious infraction" and "serious violation" in rule and shall include but not necessarily [be] limited to the commission of any criminal offense, any unlawful use or possession of a controlled substance, and any use or possession of an alcoholic beverage. [1998 c 269 § 6.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.410 Violations by juveniles in community facility—Toll-free hotline for reporting.** (1) The department shall publish and operate a staffed, toll-free twenty-four-hour hotline for the purpose of receiving reports of violation of conditions set for juveniles who are placed in community facilities.

(2) The department shall include the phone number on all documents distributed to the juvenile and the juvenile's employer, school, parents, and treatment providers.

(3) The department shall include the phone number in every contract it executes with any service provider after September 1, 1998. [1998 c 269 § 8.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions.** (1) Promptly following the report due under section 17, chapter 269, Laws of 1998, the secretary

shall develop a process with local governments that allows each community to establish a community placement oversight committee. The department may conduct community awareness activities. The community placement oversight committees developed pursuant to this section shall be implemented no later than September 1, 1999.

(2) The community placement oversight committees may review and make recommendations regarding the placement of any juvenile who the secretary proposes to place in the community facility.

(3) The community placement oversight committees, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its decision in regard to a proposed placement of a juvenile unless the committee acts with gross negligence or bad faith in making a placement decision.

(4) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) Except as provided in RCW 13.40.215, at least seventy-two hours prior to placing a juvenile in a community facility the secretary shall provide to the chief law enforcement officer of the jurisdiction in which the community facility is sited: (a) The name of the juvenile; (b) the juvenile's criminal history; and (c) such other relevant and disclosable information as the law enforcement officer may require. [1998 c 269 § 9.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.420 Placement in community facility—Necessary conditions and actions—Department's duties.** (1) The department shall not initially place an offender in a community facility unless:

(a) The department has conducted a risk assessment, including a determination of drug and alcohol abuse, and the results indicate the juvenile will pose not more than a minimum risk to public safety; and

(b) The offender has spent at least ten percent of his or her sentence, but in no event less than thirty days, in a secure institution operated by, or under contract with, the department.

The risk assessment must include consideration of all prior convictions and all available nonconviction data released upon request under RCW 10.97.050, and any serious infractions or serious violations while under the jurisdiction of the secretary or the courts.

(2) No juvenile offender may be placed in a community facility until the juvenile's student records and information have been received and the department has reviewed them in conjunction with all other information used for risk assessment, security classification, and placement of the juvenile.

(3) A juvenile offender shall not be placed in a community facility until the department's risk assessment and security classification is complete and local law enforcement has been properly notified. [1998 c 269 § 10.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

(2008 Ed.)

**72.05.425 Student records and information—Necessary for risk assessment, security classification, and proper placement—Rules.** (1) The department shall establish by rule, in consultation with the office of the superintendent of public instruction, those student records and information necessary to conduct a risk assessment, make a security classification, and ensure proper placement. Those records shall include at least:

(a) Any history of placement in special education programs;

(b) Any past, current, or pending disciplinary action;

(c) Any history of violent, aggressive, or disruptive behavior, or gang membership, or behavior listed in RCW 13.04.155;

(d) Any use of weapons that is illegal or in violation of school policy;

(e) Any history of truancy;

(f) Any drug or alcohol abuse;

(g) Any health conditions affecting the juvenile's placement needs; and

(h) Any other relevant information.

(2) For purposes of this section "gang" has the meaning defined in RCW 28A.225.225. [1998 c 269 § 13.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.430 Placement and supervision of juveniles in community facility—Monitoring requirements—Copies of agreements.** (1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the placement and supervision of juveniles must be accomplished in accordance with this section.

(2) The secretary shall require that any juvenile placed in a community facility and who is employed or assigned as a volunteer be subject to monitoring for compliance with requirements for attendance at his or her job or assignment. The monitoring requirements shall be included in a written agreement between the employer or supervisor, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

(a) Acknowledgment of the juvenile's offender status;

(b) The name, address, and telephone number of the community facility at which the juvenile resides;

(c) The twenty-four-hour telephone number required under RCW 72.05.410;

(d) The name and work telephone number of all persons responsible for the supervision of the juvenile;

(e) A prohibition on the juvenile's departure from the work or volunteer site without prior approval of the person in charge of the community facility;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A prohibition on receiving compensation in any form other than a negotiable instrument;

(h) A requirement that rest breaks during work hours be taken only in those areas at the location which are designated for such breaks;

(i) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

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(j) A requirement that any unexcused absence, tardiness, or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(k) A requirement that any notice from the juvenile that he or she will not report to the work or volunteer site be verified as legitimate by contacting the person in charge of the community facility; and

(l) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(3) The secretary shall require that any juvenile placed in a community facility and who is enrolled in a public or private school be subject to monitoring for compliance with requirements for attendance at his or her school. The monitoring requirements shall be included in a written agreement between the school district or appropriate administrative officer, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

(a) Acknowledgment of the juvenile's offender status;

(b) The name, address, and telephone number of the community facility at which the juvenile resides;

(c) The twenty-four-hour telephone number required under RCW 72.05.410;

(d) The name and work telephone number of at least two persons at the school to contact if issues arise concerning the juvenile's compliance with the terms of his or her attendance at school;

(e) A prohibition on the juvenile's departure from the school without prior approval of the appropriate person at the school;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A requirement that the juvenile remain on school grounds except for authorized and supervised school activities;

(h) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

(i) A requirement that any unexcused absence or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(j) A requirement that any notice from the juvenile that he or she will not attend school be verified as legitimate by contacting the person in charge of the community facility; and

(k) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(4) The secretary shall require that when any juvenile placed in a community facility is employed, assigned as a volunteer, or enrolled in a public or private school:

(a) Program staff members shall make and document periodic and random accountability checks while the juvenile is at the school or work facility;

(b) A program counselor assigned to the juvenile shall contact the juvenile's employer, teacher, or school counselor regularly to discuss school or job performance-related issues.

(5) The department shall maintain a copy of all agreements executed under this section. The department shall also provide each affected juvenile with a copy of every agreement to which he or she is a party. The service provider shall

maintain a copy of every agreement it executes under this section. [1998 c 269 § 14.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony.** (1) The department shall establish by rule a policy for the common use of residential group homes for juvenile offenders under the jurisdiction of the juvenile rehabilitation administration and the children's administration.

(2) A juvenile confined under the jurisdiction of the juvenile rehabilitation administration who is convicted of a class A felony is not eligible for placement in a community facility operated by children's administration that houses juveniles who are not under the jurisdiction of juvenile rehabilitation administration unless:

(a) The juvenile is housed in a separate living unit solely for juvenile offenders;

(b) The community facility is a specialized treatment program and the youth is not assessed as sexually aggressive under RCW 13.40.470; or

(c) The community facility is a specialized treatment program that houses one or more sexually aggressive youth and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470. [1998 c 269 § 15.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules.**

(1) A person shall not be eligible for an employed or volunteer position within the juvenile rehabilitation administration or any agency with which it contracts in which the person may have regular access to juveniles under the jurisdiction of the department of social and health services or the department of corrections if the person has been convicted of one or more of the following:

(a) Any felony sex offense;

(b) Any violent offense, as defined in RCW 9.94A.030.

(2) Subsection (1) of this section applies only to persons hired by the department or any of its contracting agencies after September 1, 1998.

(3) Any person employed by the juvenile rehabilitation administration, or by any contracting agency, who may have regular access to juveniles under the jurisdiction of the department or the department of corrections and who is convicted of an offense set forth in this section after September 1, 1998, shall report the conviction to his or her supervisor. The report must be made within seven days of conviction. Failure to report within seven days of conviction constitutes misconduct under Title 50 RCW.

(4) For purposes of this section "may have regular access to juveniles" means access for more than a nominal amount of time.

(5) The department shall adopt rules to implement this section. [1998 c 269 § 16.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**Chapter 72.06 RCW**  
**MENTAL HEALTH**

## Sections

- 72.06.010 "Department" defined.  
72.06.050 Mental health—Dissemination of information and advice by department.  
72.06.060 Mental health—Psychiatric outpatient clinics.  
72.06.070 Mental health—Cooperation of department and state hospitals with local programs.

**Reviser's note:** 1979 ex.s. c 108, which was to be added to this chapter, has been codified as chapter 72.72 RCW.

*Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

*State hospitals for individuals with mental illness: Chapter 72.23 RCW.*

**72.06.010 "Department" defined.** "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**72.06.050 Mental health—Dissemination of information and advice by department.** The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness.

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1977 ex.s. c 80 § 46; 1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.06.060 Mental health—Psychiatric outpatient clinics.** The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the secretary shall designate for the prevention, diagnosis and treatment of mental illnesses, and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1979 c 141 § 185; 1977 ex.s. c 80 § 47; 1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.06.070 Mental health—Cooperation of department and state hospitals with local programs.** The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and shall also supply the services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

(2008 Ed.)

**Chapter 72.09 RCW**  
**DEPARTMENT OF CORRECTIONS**

## Sections

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- 72.09.590 Community safety.
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- 72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses.
- 72.09.716 Prisoner escape, release, or furlough—Requests for notification.
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- 72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify.
- 72.09.800 Comprehensive plan for character-building residential services in prisons—Establishment of oversight committee.
- 72.09.900 Effective date—1981 c 136.
- 72.09.901 Short title.
- 72.09.902 Construction—1981 c 136.
- 72.09.903 Savings—1981 c 136.
- 72.09.904 Construction—1999 c 196.
- 72.09.905 Short title—1999 c 196.

*Data provided for statewide automated victim information and notification system, when required: RCW 36.28A.0402.*

*Disturbances at state penal facilities development of contingency plans—Scope—Local participation: RCW 72.02.150.*  
*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*  
*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Interagency agreement on fetal alcohol exposure programs: RCW 70.96A.510.*

*Rule-making authority: RCW 70.24.107.*

**72.09.010 Legislative intent.** It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.

(4) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(5) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all individuals should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(6) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of offenders and the department is essential. Offenders must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(8) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(9) The system should meet those national standards which the state determines to be appropriate. [1995 1st sp.s. c 19 § 2; 1981 c 136 § 2.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.015 Definitions.** (*Effective until August 1, 2009.*) The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a

second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(4) "County" means a county or combination of counties.

(5) "Department" means the department of corrections.

(6) "Earned early release" means earned release as authorized by RCW 9.94A.728.

(7) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(8) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(9) "Good conduct" means compliance with department rules and policies.

(10) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(11) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(12) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(13) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offenders' [offender's] risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(14) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(15) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of

which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(16) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(17) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(18) "Secretary" means the secretary of corrections or his or her designee.

(19) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(20) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(21) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(22) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(23) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(24) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

**Intent—2007 c 483:** See note following RCW 72.09.270.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

### **72.09.015 Definitions. (Effective August 1, 2009.)**

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a general equivalency diploma.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(4) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(5) "County" means a county or combination of counties.

(6) "Department" means the department of corrections.

(7) "Earned early release" means earned release as authorized by RCW 9.94A.728.

(8) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(9) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(10) "Good conduct" means compliance with department rules and policies.

(11) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(12) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(13) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(14) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(15) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(16) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(17) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(18) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(19) "Secretary" means the secretary of corrections or his or her designee.

(20) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(21) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(22) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(23) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(24) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(25) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2008 c 231 § 47; 2007 c 483 § 202; 2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—2007 c 483:** See note following RCW 72.09.270.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.030 Department created—Secretary.** There is created a department of state government to be known as the department of corrections. The executive head of the department shall be the secretary of corrections who shall be appointed by the governor with the consent of the senate. The secretary shall serve at the pleasure of the governor and shall receive a salary to be fixed under RCW 43.03.040. [1981 c 136 § 3.]

**72.09.040 Transfer of functions from department of social and health services.** All powers, duties, and functions assigned to the secretary of social and health services and to the department of social and health services relating to adult correctional programs and institutions are hereby transferred to the secretary of corrections and to the department of corrections. Except as may be specifically provided, all functions of the department of social and health services relating to juvenile rehabilitation and the juvenile justice system shall remain in the department of social and health services. Where functions of the department of social and health services and the department of corrections overlap in the juvenile rehabil-

itation and/or juvenile justice area, the governor may allocate such functions between these departments. [1998 c 245 § 139; 1981 c 136 § 4.]

**72.09.050 Powers and duties of secretary.** The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the other governmental entities, alone. Beginning February 1, 1999, the secretary may expend funds appropriated for the 1997-1999 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary may expend funds appropriated for the 1999-01 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1999 c 309 § 902; 1999 c 309 § 924; 1995 c 189 § 1; 1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

**Reviser's note:** This section was amended by 1999 c 309 § 924 and by 1999 c 309 § 902, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** See note following RCW 43.79.480.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**72.09.055 Affordable housing—Inventory of suitable property.** (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall

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include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 202; 1993 c 461 § 12.]

**Finding—1993 c 461:** See note following RCW 43.63A.510.

**72.09.057 Fees for reproduction, shipment, and certification of documents and records.** The department may charge reasonable fees for the reproduction, shipment, and certification of documents, records, and other materials in the files of the department. [1995 c 189 § 2.]

**72.09.060 Organization of department—Program for public involvement and volunteers.** The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community restitution, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his or her staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies. [2002 c 175 § 48; 1989 c 185 § 3; 1981 c 136 § 6.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**72.09.070 Correctional industries board of directors—Duties.** (1) There is created a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates meaningful employment, work experience, and training in vocations that are specifically designed to reduce recidivism and thereby enhance public safety by providing opportunities for legitimate means of livelihood upon their release from custody;

(b) Provide industries which will reduce the tax burden of corrections and save taxpayers money through production of goods and services for sale and use;

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Encourage the development of and provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and select correctional industries work programs that do not unfairly compete with Washington businesses;

(f) Invest available funds in correctional industries enterprises and meaningful work programs that minimize the impact on in-state jobs and businesses.

(3) The board of directors shall at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors.

(6) The board shall develop a strategic yearly marketing plan that shall be consistent with and work towards achieving the goals established in the six-year phased expansion of class I and class II correctional industries established in RCW 72.09.111. This marketing plan shall be presented to the appropriate committees of the legislature by January 17 of each calendar year until the goals set forth in RCW 72.09.111 are achieved. [2004 c 167 § 1; 1994 sp.s. c 7 § 535; 1993 sp.s. c 20 § 3; 1989 c 185 § 4; 1981 c 136 § 8.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Severability—1993 sp.s. c 20:** See note following RCW 43.19.534.

**72.09.080 Correctional industries board of directors—Appointment of members, chair—Compensation—Support.** (1) The correctional industries board of directors shall consist of nine voting members, appointed by the governor. Each member shall serve a three-year staggered term. Initially, the governor shall appoint three members to one-year terms, three members to two-year terms, and three members to three-year terms. The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The nine members appointed by the governor shall include three representatives from labor, three representatives from business representing cross-sections of industries and all sizes of employers, and three members from the general public.

(2) The board of directors shall elect a chair and such other officers as it deems appropriate from among the voting members.

(3) The voting members of the board of directors shall serve with compensation pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now

or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties. [1993 sp.s. c 20 § 4; 1989 c 185 § 5; 1981 c 136 § 9.]

**Severability—1993 sp.s. c 20:** See note following RCW 43.19.534.

**72.09.090 Correctional industries account—Expenditure—Profits—Appropriations.** The correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the correctional industries operations.

The division's net profits from correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of correctional industries. However, the board of directors shall annually recommend that some portion of the profits from correctional industries be returned to the state general fund.

The board and secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive correctional industries program. [1989 c 185 § 6; 1987 c 7 § 203; 1981 c 136 § 10.]

**Severability—1987 c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 7 § 901.]

**72.09.095 Transfer of funds to department of labor and industries for crime victims' compensation.** Each year the department shall transfer twenty-five percent of the total annual revenues and receipts received in each institutional betterment fund subaccount to the department of labor and industries for the purpose of providing direct benefits to crime victims through the crime victims' compensation program as outlined in chapter 7.68 RCW. This transfer takes priority over any expenditure of betterment funds and shall be reflected on the monthly financial statements of each institution's betterment fund subaccount.

Any funds so transferred to the department of labor and industries shall be in addition to the crime victims' compensation amount provided in an omnibus appropriation bill. It is the intent of the legislature that the funds forecasted or transferred pursuant to this section shall not reduce the funding levels provided by appropriation. [1995 c 234 § 2.]

**Finding—1995 c 234:** "The legislature finds that the responsibility for criminal activity should fall squarely on the criminal. To the greatest extent possible society should not be expected to have to pay the price for crimes twice, once for the criminal activity and again by feeding, clothing, and housing the criminal. The corrections system should be the first place criminals are given the opportunity to be responsible for paying for their criminal act, not just through the loss of their personal freedom, but by making financial contributions to alleviate the pain and suffering of victims of crime." [1995 c 234 § 1.]

**72.09.100 Inmate work program—Classes of work programs—Participation—Benefits.** It is the intent of the legislature to vest in the department the power to provide for

a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or non-profit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed primarily to reduce the costs for goods and services for tax-supported agencies and for non-profit organizations.

(b)(i) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

(ii) The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to the following:

(A) Public agencies;

(B) Nonprofit organizations;

(C) Private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization;

(D) An employee and immediate family members of an employee of the department of corrections; and

(E) A person under the supervision of the department of corrections and his or her immediate family members.

(ii) The correctional industries board of directors shall authorize the type and quantity of items that may be purchased and sold under (b)(ii)(D) and (E) of this subsection.

(iv) It is prohibited to purchase any item purchased under (b)(ii)(D) and (E) of this subsection for the purpose of resale.

(v) Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly marketing review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2005 c 346 § 1; 2004 c 167 § 3; (2004 c 167 § 2 expired July 1, 2005). Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

**Effective date—2004 c 167 § 3:** "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

**Expiration date—2004 c 167 § 2:** "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

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

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**Severability—1983 c 255:** See RCW 72.74.900.

*Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.*

**72.09.101 Inmate work program—Administrators' duty.** Administrators of work programs described in RCW 72.09.100 shall ensure that no inmate convicted of a sex offense as defined in chapter 9A.44 RCW obtains access to names, addresses, or telephone numbers of private individuals while performing his or her duties in an inmate work program. [1998 c 83 § 1.]

**Effective date—1998 c 83:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1998]." [1998 c 83 § 2.]

**72.09.104 Prison work programs to operate automated data input and retrieval systems.** The department of general administration and the department of corrections shall implement prison work programs to operate automated data input and retrieval systems for appropriate departments of state government. [1983 c 296 § 3.]

**Findings—1983 c 296:** "The legislature finds and declares that the costs of state government automated data input and retrieval are escalating. The legislature further finds and declares that new record conversion technologies offer a promising means for coping with current records management problems." [1983 c 296 § 1.]

**Policy—1983 c 296:** "It is the policy of the state of Washington that state prisons shall provide prisoners with a work environment in order that, upon their release, inmates may have the skills necessary for the successful reentry into society. It is also the policy of the state to promote the establishment and growth of prison industries whose work shall benefit the state." [1983 c 296 § 2.]

**72.09.106 Subcontracting of data input and microfilm capacities.** Class II correctional industries may subcontract its data input and microfilm capacities to firms from the private sector. Inmates employed under these subcontracts will be paid in accordance with the Class I free venture industries procedures and wage scale. [1989 c 185 § 8; 1983 c 296 § 4.]

**Findings—Policy—1983 c 296:** See notes following RCW 72.09.104.

**72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation and family support.** All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement correctional industries programs, by means of deductions from their gross wages. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account. The secretary shall direct that all moneys received by an inmate for testifying in any judicial proceeding shall be deposited into the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary may also provide deductions for savings and family support. [1993 sp.s. c 20 § 5; 1991 c 133 § 1; 1989 c 185 § 9; 1986 c 162 § 1; 1981 c 136 § 12.]

**Severability—1993 sp.s. c 20:** See note following RCW 43.19.534.

**72.09.111 Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of incarceration.** (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

(i) The time of his or her release from confinement;

(ii) Prior to his or her release from confinement in order to secure approved housing; or

(iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2007 c 483 § 605; 2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

**Finding—Intent—2007 c 483:** See note following RCW 35.82.340.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Intent—Purpose—2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

**Effective date—1994 sp.s. c 7 § 534:** "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1993 sp.s. c 20 § 2:** "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

**Severability—1993 sp.s. c 20:** See note following RCW 43.19.534.

**72.09.115 Proposed new class I correctional industries work program—Threshold analysis—Business impact analysis—Public hearing—Finding.** (1) The department must prepare a threshold analysis for any proposed new class I correctional industries work program or the significant expansion of an existing class I correctional industries work program before the department enters into an agreement to provide such products or services. The analysis must state whether the proposed new or expanded program will impact any Washington business and must be based on information sufficient to evaluate the impact on Washington business.

(2) If the threshold analysis determines that a proposed new or expanded class I correctional industries work program will impact a Washington business, the department must complete a business impact analysis before the department enters into an agreement to provide such products or services. The business impact analysis must include:

(a) A detailed statement identifying the scope and types of impacts caused by the proposed new or expanded correctional industries work program on Washington businesses; and

(b) A detailed statement of the business costs of the proposed correctional industries work program compared to the business costs of the Washington businesses that may be impacted by the proposed class I correctional industries work program. Business costs of the proposed correctional industries work program include rent, water, sewer, electricity, disposal, labor costs, and any other quantifiable expense unique to operating in a prison. Business costs of the impacted Washington business include rent, water, sewer, electricity, disposal, property taxes, and labor costs including employee taxes, unemployment insurance, and workers' compensation.

(3) The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with local chambers of commerce, trade or business associations, local and state labor union organizations, and government entities before a finding required under subsection (4) of this section is made on the proposed new or expanded class I correctional industries work program.

(4) If a business impact analysis is completed, the department must conduct a public hearing to take public testimony on the business impact analysis. The department must, at a minimum, establish a publicly accessible web site containing information reasonably calculated to provide notice to each Washington business assigned the same three-digit standard industrial classification code, or the corresponding North American industry classification system code, as the organization seeking the class I correctional industries work program agreement of the date, time, and place of the hearing. Notice of the hearing shall be posted at least thirty days prior to the hearing.

(5) Following the public hearing, the department shall adopt a finding that the proposed new or expanded class I correctional industries work program: (a) Will not compete with any Washington business; (b) will not compete unfairly with any Washington business; or (c) will compete unfairly

with any Washington business and is therefore prohibited under chapter 167, Laws of 2004. [2004 c 167 § 4.]

**72.09.116 Information obtained under RCW 72.09.115 exempt from public disclosure.** All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter 42.56 RCW. [2005 c 274 § 347; 2004 c 167 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**72.09.120 Distribution of list of inmate job opportunities.** In order to assist inmates in finding work within prison industries, the department shall periodically prepare and distribute a list of prison industries' job opportunities, which shall include job descriptions and the educational and skill requirements for each job. [1981 c 136 § 16.]

**72.09.130 Incentive system for participation in education and work programs—Rules—Dissemination.** (1) The department shall adopt, by rule, a system that clearly links an inmate's behavior and participation in available education and work programs with the receipt or denial of earned early release days and other privileges. The system shall include increases or decreases in the degree of liberty granted the inmate within the programs operated by the department, access to or withholding of privileges available within correctional institutions, and recommended increases or decreases in the number of earned early release days that an inmate can earn for good conduct and good performance.

(2) Earned early release days shall be recommended by the department as a reward for accomplishment. The system shall be fair, measurable, and understandable to offenders, staff, and the public. At least once in each twelve-month period, the department shall inform the offender in writing as to his or her conduct and performance. This written evaluation shall include reasons for awarding or not awarding recommended earned early release days for good conduct and good performance. An inmate is not eligible to receive earned early release days during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under RCW 72.09.460.

(3) The department shall provide each offender in its custody a written description of the system created under this section. [1995 1st sp.s. c 19 § 6; 1981 c 136 § 17.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.135 Adoption of standards for correctional facilities.** The department of corrections shall, no later than July 1, 1987, adopt standards for the operation of state adult correctional facilities. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. The need for each standard shall be documented. [1987 c 462 § 15.]

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**Effective dates—1987 c 462:** See note following RCW 13.04.116.

**72.09.160 \*Corrections standards board—Responsibilities, powers, support.**

**Reviser's note:** \*(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

(2) RCW 72.09.160 was amended by 1987 c 505 § 67 without reference to its repeal by 1987 c 462 § 22, effective January 1, 1988. It has been decodified for publication purposes pursuant to RCW 1.12.025.

**72.09.190 Legal services for inmates.** (1) It is the intent of the legislature that reasonable legal services be provided to persons committed to the custody of the department of corrections. The department shall contract with persons or organizations to provide legal services. The secretary shall adopt procedures designed to minimize any conflict of interest, or appearance thereof, in respect to the provision of legal services and the department's administration of such contracts.

(2) Persons who contract to provide legal services are expressly forbidden to solicit plaintiffs or promote litigation which has not been pursued initially by a person entitled to such services under this section.

(3) Persons who contract to provide legal services shall exhaust all informal means of resolving a legal complaint or dispute prior to the filing of any court proceeding.

(4) Nothing in this section forbids the secretary to supplement contracted legal services with any of the following: (a) Law libraries, (b) law student interns, and (c) volunteer attorneys.

(5) The total due a contractor as compensation, fees, or reimbursement under the terms of the contract shall be reduced by the total of any other compensation, fees, or reimbursement received by or due the contractor for the performance of any legal service to inmates during the contract period. Any amount received by a contractor under contract which is not due under this section shall be immediately returned by the contractor. [1981 c 136 § 23.]

**72.09.200 Transfer of files, property, and appropriations.** All reports, documents, surveys, books, records, files, papers, and other writings in the possession of the department of social and health services pertaining to the functions transferred by RCW 72.09.040 shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed exclusively in carrying out the powers and duties transferred by RCW 72.09.040 shall be made available to the department of corrections. All funds, credits, or other assets held in connection with the functions transferred by RCW 72.09.040 shall be assigned to the department of corrections.

Any appropriations made to the department of social and health services for the purpose of carrying out the powers, duties, and functions transferred by RCW 72.09.040 shall on July 1, 1981, be transferred and credited to the department of corrections for the purpose of carrying out the transferred powers, duties, and functions.

Whenever any question arises as to the transfer of any funds including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers

and the performance of the duties and functions transferred under RCW 72.09.040, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

If apportionments of budgeted funds are required because of the transfers authorized in this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1981 c 136 § 31.]

**72.09.210 Transfer of employees.** All employees of the department of social and health services who are directly employed in connection with the exercise of the powers and performance of the duties and functions transferred to the department of corrections by RCW 72.09.040 shall be transferred on July 1, 1981, to the jurisdiction of the department of corrections.

All such employees classified under chapter 41.06 RCW, the state civil service law, shall be assigned to the department of corrections. Except as otherwise provided, such employees shall be assigned without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1981 c 136 § 32.]

**72.09.220 Employee rights under collective bargaining.** Nothing contained in RCW 72.09.010 through 72.09.190, 72.09.901, and section 13, chapter 136, Laws of 1981 may be construed to downgrade any rights of any employee under any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law. [1993 c 281 § 64; 1981 c 136 § 33.]

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

**72.09.225 Sexual misconduct by state employees, contractors.** (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.56 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [2005 c 274 § 348; 1999 c 72 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Application—1999 c 72:** See note following RCW 13.40.570.

**72.09.230 Duties continued during transition.** All state officials required to maintain contact with or provide services to the department or secretary of social and health services relating to adult corrections shall continue to perform the services for the department of corrections.

In order to ease the transition of adult corrections to the department of corrections, the governor may require an inter-agency agreement between the department and the department of social and health services under which the department of social and health services would, on a temporary basis, continue to perform all or part of any specified function of the department of corrections. [1981 c 136 § 34.]

**72.09.240 Reimbursement of employees for offender assaults.** (1) In recognition of prison overcrowding and the hazardous nature of employment in state correctional institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the department of corrections and the department of natural resources for some of their costs attributable to their being the victims of offender assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the secretary of corrections or the commissioner of public lands, or the secretary's or commissioner's designee, finds that each of the following has occurred:

(a) An offender has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the secretary or the commissioner of public lands, or

the secretary's or commissioner's designee, believes are justified.

(7) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(8) All reimbursement payments required to be made to employees under this section shall be made by the department of corrections or the department of natural resources. The payments shall be considered as a salary or wage expense and shall be paid by the department of corrections or the department of natural resources in the same manner and from the same appropriations as other salary and wage expenses of the department of corrections or the department of natural resources.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender" means: (a) Offender as defined in RCW 9.94A.030; and (b) any other person in the custody of or subject to the jurisdiction of the department of corrections. [2002 c 77 § 2; 1988 c 149 § 1; 1984 c 246 § 9.]

**Severability—1984 c 246:** See note following RCW 9.94A.870.

**72.09.251 Communicable disease prevention guidelines.** (1) The department shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all corrections staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means sexually transmitted diseases, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 4.]

**Findings—Intent—1997 c 345:** See note following RCW 70.24.105.

**72.09.260 Litter cleanup programs—Requirements.** (1) The department shall assist local units of government in establishing community restitution programs for litter cleanup. Community restitution litter cleanup programs must include the following: (a) Procedures for documenting the number of community restitution hours worked in litter cleanup by each offender; (b) plans to coordinate litter cleanup activities with local governmental entities responsible for roadside and park maintenance; (c) insurance coverage for offenders during litter cleanup activities pursuant to RCW 51.12.045; (d) provision of adequate safety equipment and, if needed, weather protection gear; and (e) provision for including felons and misdemeanants in the program.

(2) Community restitution programs established under this section shall involve, but not be limited to, persons convicted of nonviolent, drug-related offenses.

(3) Nothing in this section shall diminish the department's authority to place offenders in community restitution programs or to determine the suitability of offenders for specific programs.

(4) As used in this section, "litter cleanup" includes cleanup and removal of solid waste that is illegally dumped. [2002 c 175 § 50; 1990 c 66 § 2.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Findings—Intent—1990 c 66:** "The legislature finds that the amount of litter along the state's roadways is increasing at an alarming rate and that local governments often lack the human and fiscal resources to remove litter from public roads. The legislature also finds that persons committing nonviolent, drug-related offenses can often be productively engaged through programs to remove litter from county and municipal roads. It is therefore the intent of the legislature to assist local units of government in establishing community restitution programs for litter cleanup and to establish a funding source for such programs." [2002 c 175 § 51; 1990 c 66 § 1.]

**72.09.270 Individual reentry plan. (Effective until August 1, 2009.)** (1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifica-

tions, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody or community placement, the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services. [2007 c 483 § 203.]

**Intent—2007 c 483:** "Individual reentry plans are intended to be a tool for the department of corrections to identify the needs of an offender. Individual reentry plans are meant to assist the department in targeting programming and services to offenders with the greatest need and to the extent that those services are funded and available. The state cannot meet every need that may have contributed to every offender's criminal proclivities. Further, an individual reentry plan, and the programming resulting from that plan, are not a guarantee that an offender will not recidivate. Rather, the legislature intends that by identifying offender needs and offering programs that have been proven to reduce the likelihood of reoffense, the state will benefit by an overall reduction in recidivism." [2007 c 483 § 201.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.270 Individual reentry plan. (Effective August 1, 2009.)** (1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for

every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes the offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those per-

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sons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody, the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services. [2008 c 231 § 48; 2007 c 483 § 203.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—2007 c 483:** "Individual reentry plans are intended to be a tool for the department of corrections to identify the needs of an offender. Individual reentry plans are meant to assist the department in targeting programming and services to offenders with the greatest need and to the extent that those services are funded and available. The state cannot meet every need that may have contributed to every offender's criminal proclivities. Further, an individual reentry plan, and the programming resulting from that plan, are not a guarantee that an offender will not recidivate. Rather, the legislature intends that by identifying offender needs and offering programs that have been proven to reduce the likelihood of reoffense, the state will benefit by an overall reduction in recidivism." [2007 c 483 § 201.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.280 Community justice centers.** (1) The department shall continue to establish community justice centers throughout the state for the purpose of providing comprehensive services and monitoring for offenders who are reentering the community.

(2) For the purposes of this chapter, "community justice center" is defined as a nonresidential facility staffed primarily by the department in which recently released offenders may access services necessary to improve their successful reentry into the community. Such services may include but are not limited to, those listed in the individual reentry plan, mental health, chemical dependency, sex offender treatment, anger management, parenting education, financial literacy, housing assistance, and employment assistance.

(3) At a minimum, the community justice center shall include:

(a) A violator program to allow the department to utilize a range of available sanctions for offenders who violate conditions of their supervision;

(b) An employment opportunity program to assist an offender in finding employment; and

(c) Resources for connecting offenders with services such as treatment, transportation, training, family reunification, and community services.

(4) In addition to any other programs or services offered by a community justice center, the department shall designate a transition coordinator to facilitate connections between the former offender and the community. The department may designate transition coordination services to be provided by a community transition coordination network pursuant to RCW 72.78.030 if one has been established in the community where the community justice center is located and the department has entered into a memorandum of understanding with the county to share resources.

(5) The transition coordinator shall provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release from the correctional facility. The transition coordinator shall, at a minimum, be responsible for the following:

(a) Gathering and maintaining information regarding services currently existing within the community that are available to offenders including, but not limited to:

(i) Programs offered through the department of social and health services, the department of health, the department of licensing, housing authorities, local community and technical colleges, other state or federal entities which provide public benefits, and nonprofit entities;

(ii) Services such as housing assistance, employment assistance, education, vocational training, parent education, financial literacy, treatment for substance abuse, mental health, anger management, and any other service or program that will assist the former offender to successfully transition into the community;

(b) Coordinating access to the existing services with the community providers and provide offenders with information regarding how to access the various type of services and resources that are available in the community.

(6)(a) A minimum of six community justice centers shall be operational by December 1, 2009. The six community justice centers include those in operation on July 22, 2007.

(b) By December 1, 2011, the department shall establish a minimum of three additional community justice centers within the state.

(7) In locating new centers, the department shall:

(a) Give priority to the counties with the largest population of offenders who were under the jurisdiction of the department of corrections and that do not already have a community justice center;

(b) Ensure that at least two centers are operational in eastern Washington; and

(c) Comply with RCW 72.09.290 and all applicable zoning laws and regulations.

(8) Before beginning the siting or opening of the new community justice center, the department shall:

(a) Notify the city, if applicable, and the county within which the community justice center is proposed. Such notice shall occur at least sixty days prior to selecting a specific location to provide the services listed in this section;

(b) Consult with the community providers listed in subsection (5) of this section to determine if they have the capac-

ity to provide services to offenders through the community justice center; and

(c) Give due consideration to all comments received in response to the notice of the start of site selection and consultation with community providers.

(9) The department shall make efforts to enter into memoranda of understanding or agreements with the local community policing and supervision programs as defined in RCW 72.78.010 in which the community justice center is located to address:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders, including services provided through a community transition coordination network established pursuant to RCW 72.78.030 if a network has been established in the county;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives between the department of corrections and local police to supervise offenders.

(i) A neighborhood corrections initiative includes shared mechanisms to facilitate supervision of offenders which may include activities such as joint emphasis patrols to monitor high-risk offenders, service of bench and secretary warrants and detainers, joint field visits, connecting offenders with services, and, where appropriate, directing offenders into sanction alternatives in lieu of incarceration.

(ii) The agreement must address:

(A) The roles and responsibilities of police officers and corrections staff participating in the partnership; and

(B) The amount of corrections staff and police officer time that will be dedicated to partnership efforts. [2007 c 483 § 302.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.290 Correctional facility siting list.** (1) No later than July 1, 2007, and every biennium thereafter starting with the biennium beginning July 1, 2009, the department shall prepare a list of counties and rural multicounty geographic areas in which work release facilities, community justice centers and other community-based correctional facilities are anticipated to be sited during the next three fiscal years and transmit the list to the office of financial management and the counties on the list. The list may be updated as needed.

(2) In preparing the list, the department shall make substantial efforts to provide for the equitable distribution of work release, community justice centers, or other community-based correctional facilities among counties. The department shall give great weight to the following factors in determining equitable distribution:

(a) The locations of existing residential facilities owned or operated by, or operated under contract with, the department in each county;

(b) The number and proportion of adult offenders sentenced to the custody or supervision of the department by the courts of the county or rural multicounty geographic area; and

(c) The number of adult registered sex offenders classified as level II or III and adult sex offenders registered per thousand persons residing in the county.

(3) For purposes of this section, "equitable distribution" means siting or locating work release, community justice centers, or other community-based correctional facilities in a manner that reasonably reflects the proportion of offenders sentenced to the custody or supervision of the department by the courts of each county or rural multicounty geographic area designated by the department, and, to the extent practicable, the proportion of offenders residing in particular jurisdictions or communities within such counties or rural multicounty geographic areas. Equitable distribution is a policy goal, not a basis for any legal challenge to the siting, construction, occupancy, or operation of any facility anywhere in the state. [2007 c 483 § 303.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.300 Local law and justice council—Rules.** (1) Every county legislative authority shall by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county clerk, the county risk manager, and the secretary of corrections and his or her designees. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council may address issues related to:

(a) Maximizing local resources including personnel and facilities, reducing duplication of services, and sharing resources between local and state government in order to accomplish local efficiencies without diminishing effectiveness;

(b) Jail management;

(c) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases; and

(d) Partnerships between the department and local community policing and supervision programs to facilitate supervision of offenders under the respective jurisdictions of each and timely response to an offender's failure to comply with the terms of supervision.

(4) The county legislative authority may request technical assistance in coordinating services with other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(5) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(6) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to

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the department. [2007 c 483 § 108; 1996 c 232 § 7; 1994 sp.s. c 7 § 542; 1993 sp.s. c 21 § 8; 1991 c 363 § 148; 1987 c 312 § 3.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Effective dates—1996 c 232:** See note following RCW 9.94A.850.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Application—1994 sp.s. c 7 §§ 540-545:** See note following RCW 13.50.010.

**Effective dates—1993 sp.s. c 21:** See note following RCW 82.14.310.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Purpose—1987 c 312 § 3:** "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

**72.09.310 Community custody violator.** An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW. [1992 c 75 § 6; 1988 c 153 § 6.]

**Effective date—Application of increased sanctions—1988 c 153:** See notes following RCW 9.94A.030.

**72.09.311 Confinement of community custody violators.** (1) The department of corrections shall conduct an analysis of the necessary capacity throughout the state to appropriately confine offenders who violate community custody and formulate recommendations for future capacity. In conducting its analysis, the department must consider:

(a) The need to decrease reliance on local correctional facilities to house violators; and

(b) The costs and benefits of developing a violator treatment center to provide inpatient treatment, therapies, and counseling.

(2) If the department recommends locating or colocating new violator facilities, for jurisdictions planning under RCW 36.70A.040, the department shall work within the local jurisdiction's comprehensive plan process for identifying and siting an essential public facility under RCW 36.70A.200. For jurisdictions not planning under RCW 36.70A.040, the department shall apply the local jurisdiction's zoning or applicable land use code.

(3) The department shall report the results of its analysis to the governor and the appropriate committees of the legislature by November 15, 2008.

(4) To the extent possible within existing funds, the department is authorized to proceed with the conversion of existing facilities that are appropriate to house violators. [2008 c 30 § 1.]

**72.09.315 Court-ordered treatment—Violations—Required notifications.** (1) When an offender is under

court-ordered mental health or chemical dependency treatment in the community and the supervision of the department of corrections, and the community corrections officer becomes aware that the person is in violation of the terms of the court's treatment order, the community corrections officer shall notify the \*county designated mental health professional or the designated chemical dependency specialist, as appropriate, of the violation and request an evaluation for purposes of revocation of the less restrictive alternative or conditional release.

(2) When a \*county designated mental health professional or the designated chemical dependency specialist notifies the department that an offender in a state correctional facility is the subject of a petition for involuntary treatment under chapter 71.05 or 70.96A RCW, the department shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department classified the offender as a high risk or high needs offender. [2004 c 166 § 17.]

**\*Reviser's note:** The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**72.09.320 Community placement—Liability.** The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035. [1988 c 153 § 10.]

**Effective date—Application of increased sanctions—1988 c 153:** See notes following RCW 9.94A.030.

**72.09.330 Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses.** (1) The department shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270. [1997 c 113 § 8; 1990 c 3 § 405.]

**Findings—1997 c 113:** See note following RCW 4.24.550.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

*Sex offense and kidnapping offense defined: RCW 9A.44.130.*

**72.09.333 Sex offenders—Facilities on McNeil Island.** The secretary is authorized to operate a correctional facility on McNeil Island for the confinement of sex offenders and other offenders sentenced by the courts, and to make

necessary repairs, renovations, additions, and improvements to state property for that purpose, notwithstanding any local comprehensive plans, development regulations, permitting requirements, or any other local laws. Operation of the correctional facility and other state facilities authorized by this section and other law includes access to adequate docking facilities on state-owned tidelands at the town of Steilacoom. [2001 2nd sp.s. c 12 § 202.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**72.09.335 Sex offenders—Treatment opportunity.** The department shall provide offenders sentenced under \*RCW 9.94A.712 with the opportunity for sex offender treatment during incarceration. [2001 2nd sp.s. c 12 § 305.]

**\*Reviser's note:** RCW 9.94A.712 was recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**72.09.337 Sex offenders—Rules regarding.** The secretary of corrections, the secretary of social and health services, and the indeterminate sentence review board may adopt rules to implement chapter 12, Laws of 2001 2nd sp. sess. [2001 2nd sp.s. c 12 § 502.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations.** (1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under \*RCW 9.94A.612(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3)(a) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (i) Includes a minor victim or child of similar age or circumstance as a previous victim who the department deter-

mines may be put at substantial risk of harm by the offender's residence in the household; or (ii) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(b) In addition, for any offender prohibited from living in a community protection zone under **\*\*RCW 9.94A.712(6)(a)(ii)**, the department may not approve a residence location if the proposed residence is in a community protection zone.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under **\*\*\*RCW 9.94A.700(6)**, the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child. [2005 c 436 § 3; 1996 c 215 § 3; 1990 c 3 § 708.]

**Reviser's note:** \*(1) RCW 9.94A.612 was recodified as RCW 72.09.712 pursuant to 2008 c 231 § 56, effective August 1, 2009.

\*\* (2) RCW 9.94A.712 was amended by 2008 c 231 § 33, deleting subsection (6)(a)(ii) effective August 1, 2009. RCW 9.94A.712 was also recodified as RCW 9.94A.507 pursuant to the direction found in section 56(4), chapter 231, Laws of 2008, effective August 1, 2009.

\*\*\* (3) RCW 9.94A.700 was recodified as RCW 9.94B.050 pursuant to 2008 c 231 § 56, effective August 1, 2009.

(4) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. (Effective until August 1, 2009.)**

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984;

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and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community placement or community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [1997 c 364 § 4.]

**Severability—1997 c 364:** See note following RCW 4.24.550.

**72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. (Effective August 1, 2009.)**

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from con-

finement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [2008 c 231 § 49; 1997 c 364 § 4.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Severability—1997 c 364:** See note following RCW 4.24.550.

**72.09.350 Corrections mental health center—Collaborative arrangement with University of Washington—Services for mentally ill offenders—Annual report to the legislature.** (1) The department of corrections and the University of Washington may enter into a collaborative arrangement to provide improved services for mentally ill offenders with a focus on prevention, treatment, and reintegration into society. The participants in the collaborative arrangement may develop a strategic plan within sixty days after May 17, 1993, to address the management of mentally ill offenders within the correctional system, facilitating their reentry into the community and the mental health system, and preventing the inappropriate incarceration of mentally ill individuals. The collaborative arrangement may also specify the estab-

lishment and maintenance of a corrections mental health center located at McNeil Island corrections center. The collaborative arrangement shall require that an advisory panel of key stakeholders be established and consulted throughout the development and implementation of the center. The stakeholders advisory panel shall include a broad array of interest groups drawn from representatives of mental health, criminal justice, and correctional systems. The stakeholders advisory panel shall include, but is not limited to, membership from: The department of corrections, the department of social and health services mental health division and division of juvenile rehabilitation, regional support networks, local and regional law enforcement agencies, the sentencing guidelines commission, county and city jails, mental health advocacy groups for the mentally ill, developmentally disabled, and traumatically brain-injured, and the general public. The center established by the department of corrections and University of Washington, in consultation with the stakeholder advisory groups, shall have the authority to:

(a) Develop new and innovative treatment approaches for corrections mental health clients;

(b) Improve the quality of mental health services within the department and throughout the corrections system;

(c) Facilitate mental health staff recruitment and training to meet departmental, county, and municipal needs;

(d) Expand research activities within the department in the area of treatment services, the design of delivery systems, the development of organizational models, and training for corrections mental health care professionals;

(e) Improve the work environment for correctional employees by developing the skills, knowledge, and understanding of how to work with offenders with special chronic mental health challenges;

(f) Establish a more positive rehabilitative environment for offenders;

(g) Strengthen multidisciplinary mental health collaboration between the University of Washington, other groups committed to the intent of this section, and the department of corrections;

(h) Strengthen department linkages between institutions of higher education, public sector mental health systems, and county and municipal corrections;

(i) Assist in the continued formulation of corrections mental health policies;

(j) Develop innovative and effective recruitment and training programs for correctional personnel working with mentally ill offenders;

(k) Assist in the development of a coordinated continuum of mental health care capable of providing services from corrections entry to community return; and

(l) Evaluate all current and innovative approaches developed within this center in terms of their effective and efficient achievement of improved mental health of inmates, development and utilization of personnel, the impact of these approaches on the functioning of correctional institutions, and the relationship of the corrections system to mental health and criminal justice systems. Specific attention should be paid to evaluating the effects of programs on the reintegration of mentally ill offenders into the community and the prevention of inappropriate incarceration of mentally ill persons.

(2) The corrections mental health center may conduct research, training, and treatment activities for the mentally ill offender within selected sites operated by the department. The department shall provide support services for the center such as food services, maintenance, perimeter security, classification, offender supervision, and living unit functions. The University of Washington may develop, implement, and evaluate the clinical, treatment, research, and evaluation components of the mentally ill offender center. The institute of [for] public policy and management may be consulted regarding the development of the center and in the recommendations regarding public policy. As resources permit, training within the center shall be available to state, county, and municipal agencies requiring the services. Other state colleges, state universities, and mental health providers may be involved in activities as required on a subcontract basis. Community mental health organizations, research groups, and community advocacy groups may be critical components of the center's operations and involved as appropriate to annual objectives. Mentally ill clients may be drawn from throughout the department's population and transferred to the center as clinical need, available services, and department jurisdiction permits.

(3) The department shall prepare a report of the center's progress toward the attainment of stated goals and provide the report to the legislature annually. [1993 c 459 § 1.]

**Effective date—1993 c 459:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 459 § 2.]

### **72.09.370 Dangerous mentally ill offenders—Plan for postrelease treatment and support services—Rules.**

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under \*RCW 9.94A.612 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department

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may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the \*\*county designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a county designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate county designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a county designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a county designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the county designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the county designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section. [2001 2nd sp.s. c 12 § 362; 1999 c 214 § 2.]

**Reviser's note:** \*(1) RCW 9.94A.612 was recodified as RCW 72.09.712 pursuant to 2008 c 231 § 56, effective August 1, 2009.

\*\*\*(2) The term "county designated mental health professional" as defined in RCW 71.05.020 was changed to "designated mental health professional" by 2005 c 504 § 104.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent—1999 c 214:** "The legislature intends to improve the process of identifying, and providing additional mental health treatment for, persons: (1) Determined to be dangerous to themselves or others as a result of a mental disorder or a combination of a mental disorder and chemical dependency or abuse; and (2) under, or being released from, confinement or partial confinement of the department of corrections.

The legislature does not create a presumption that any person subject to

the provisions of this act is dangerous as a result of a mental disorder or chemical dependency or abuse. The legislature intends that every person subject to the provisions of this act retain the amount of liberty consistent with his or her condition, behavior, and legal status and that any restraint of liberty be done solely on the basis of forensic and clinical practices and standards." [1999 c 214 § 1.]

**Effective date—1999 c 214:** "Sections 1, 2, and 4 through 9 of this act take effect March 15, 2000." [1999 c 214 § 12.]

**72.09.380 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.** The secretaries of the department of corrections and the department of social and health services shall adopt rules and develop working agreements which will ensure that offenders identified under RCW 72.09.370(1) will be assisted in making application for medicaid to facilitate a decision regarding their eligibility for such entitlements prior to the end of their term of confinement in a correctional facility. [1999 c 214 § 3.]

**Intent—1999 c 214:** See note following RCW 72.09.370.

**72.09.381 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.** The secretary of the department of corrections and the secretary of the department of social and health services shall, in consultation with the regional support networks and provider representatives, each adopt rules as necessary to implement chapter 214, Laws of 1999. [1999 c 214 § 11.]

**Intent—1999 c 214:** See note following RCW 72.09.370.

**72.09.400 Work ethic camp program—Findings—Intent.** The legislature finds that high crime rates and a heightened sense of vulnerability have led to increased public pressure on criminal justice officials to increase offender punishment and remove the most dangerous criminals from the streets. As a result, there is unprecedented growth in the corrections populations and overcrowding of prisons and local jails. Skyrocketing costs and high rates of recidivism have become issues of major public concern. Attention must be directed towards implementing a long-range corrections strategy that focuses on inmate responsibility through intensive work ethic training.

The legislature finds that many offenders lack basic life skills and have been largely unaffected by traditional correctional philosophies and programs. In addition, many first-time offenders who enter the prison system learn more about how to be criminals than the important qualities, values, and skills needed to successfully adapt to a life without crime.

The legislature finds that opportunities for offenders to improve themselves are extremely limited and there has not been adequate emphasis on alternatives to total confinement for nonviolent offenders.

The legislature finds that the explosion of drug crimes since the inception of the sentencing reform act and the response of the criminal justice system have resulted in a much higher proportion of substance abuse-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are exacerbated by the shortage of drug treatment and counseling programs both in and outside of prisons.

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The legislature finds that the concept of a work ethic camp that requires the offender to complete an appropriate and balanced combination of highly structured and goal-oriented work programs such as correctional industries based work camps and/or class I and class II work projects, drug rehabilitation, and intensive life management work ethic training, can successfully reduce offender recidivism and lower the overall cost of incarceration.

It is the purpose and intent of RCW 72.09.400 through \*72.09.420, 9.94A.690, and \*\*section 5, chapter 338, Laws of 1993 to implement a regimented work ethic camp that is designed to directly address the high rate of recidivism, reduce upwardly spiraling prison costs, preserve scarce and high cost prison space for the most dangerous offenders, and provide judges with a tough and sound alternative to traditional incarceration without compromising public safety. [1993 c 338 § 1.]

**Reviser's note:** \*(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.  
\*\*(2) 1993 c 338 § 5 was vetoed by the governor.

**Severability—1993 c 338:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 338 § 8.]

**Effective date—1993 c 338:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 338 § 9.]

*Sentencing: RCW 9.94A.690.*

**72.09.410 Work ethic camp program—Generally.** The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in RCW 72.09.400 through \*72.09.420, 9.94A.690, and \*\*section 5, chapter 338, Laws of 1993. The department shall be ready to assign inmates to the camp one hundred twenty days after July 1, 1993. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including general education development test achievement, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp. [1993 c 338 § 3.]

**Reviser's note:** \*(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.  
\*\*(2) 1993 c 338 § 5 was vetoed by the governor.

(2008 Ed.)

**Severability—Effective date—1993 c 338:** See notes following RCW 72.09.400.

**72.09.450 Limitation on denial of access to services and supplies—Recoupment of assessments—Collections.**

(1) An inmate shall not be denied access to services or supplies required by state or federal law solely on the basis of his or her inability to pay for them.

(2) The department shall record all lawfully authorized assessments for services or supplies as a debt to the department. The department shall recoup the assessments when the inmate's institutional account exceeds the indigency standard, and may pursue other remedies to recoup the assessments after the period of incarceration.

(3) The department shall record as a debt any costs assessed by a court against an inmate plaintiff where the state is providing defense pursuant to chapter 4.92 RCW. The department shall recoup the debt when the inmate's institutional account exceeds the indigency standard and may pursue other remedies to recoup the debt after the period of incarceration.

(4) In order to maximize the cost-efficient collection of unpaid offender debt existing after the period of an offender's incarceration, the department is authorized to use the following nonexclusive options: (a) Use the collection services available through the department of general administration, or (b) notwithstanding any provision of chapter 41.06 RCW, contract with collection agencies for collection of the debts. The costs for general administration or collection agency services shall be paid by the debtor. Any contract with a collection agency shall only be awarded after competitive bidding. Factors the department shall consider in awarding a collection contract include but are not limited to a collection agency's history and reputation in the community; and the agency's access to a local database that may increase the efficiency of its collections. The servicing of an unpaid obligation to the department does not constitute assignment of a debt, and no contract with a collection agency may remove the department's control over unpaid obligations owed to the department. [1996 c 277 § 1; 1995 1st sp.s. c 19 § 4.]

**Findings—Purpose—1995 1st sp.s. c 19:** "The legislature finds the increasing number of inmates incarcerated in state correctional institutions, and the expenses associated with their incarceration, require expanded efforts to contain corrections costs. Cost containment requires improved planning and oversight, and increased accountability and responsibility on the part of inmates and the department.

The legislature further finds motivating inmates to participate in meaningful education and work programs in order to learn transferable skills and earn basic privileges is an effective and efficient way to meet the penological objectives of the corrections system.

The purpose of this act is to assure that the department fulfills its mission to reduce offender recidivism, to mirror the values of the community by clearly linking inmate behavior to receipt of privileges, and to prudently manage the resources it receives through tax dollars. This purpose is accomplished through the implementation of specific cost-control measures and creation of a planning and oversight process that will improve the department's effectiveness and efficiencies." [1995 1st sp.s. c 19 § 1.]

**Short title—1995 1st sp.s. c 19:** "This act shall be known as the department of corrections cost-efficiency and inmate responsibility omnibus act." [1995 1st sp.s. c 19 § 37.]

**Severability—1995 1st sp.s. c 19:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 19 § 38.]

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**Effective date—1995 1st sp.s. c 19:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 15, 1995]." [1995 1st sp.s. c 19 § 40.]

**72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Payment of costs.**

(1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted as specifically provided in this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(2) The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(3)(a) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(i) Achievement of basic academic skills through obtaining a high school diploma or its equivalent;

(ii) Achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(iii) Additional work and education programs necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465; and

(iv) Other appropriate vocational, work, or education programs that are not necessary for compliance with an offender's individual reentry plan under RCW 72.09.270 with the exception of postsecondary education degree programs as provided in RCW 72.09.465.

(b) If programming is provided pursuant to (a)(i) through (iii) of this subsection, the department shall pay the cost of such programming, including but not limited to books, materials, supplies, and postage costs related to correspondence courses.

(c) If programming is provided pursuant to (a)(iv) of this subsection, inmates shall be required to pay all or a portion of the costs, including books, fees, and tuition, for participation in any vocational, work, or education program as provided in department policies. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any programming provided pursuant to (a)(iv) of this subsection

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on behalf of an inmate. Such payments shall not be subject to any of the deductions as provided in this chapter.

(d) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to complete the purposes of this section.

(e) Any funds collected by the department under (c) and (d) of this subsection and subsections (8) and (9) of this section shall be used solely for the creation, maintenance, or expansion of inmate educational and vocational programs.

(4) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.193 RCW. The program of education established by the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(5)(a) In addition to the policies set forth in this section, the department shall consider the following factors in establishing criteria for assessing the inclusion of education and work programs in an inmate's individual reentry plan and in placing inmates in education and work programs:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(b) The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals.

(6) Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges.

(7) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a health condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all inmates with temporary disabilities to ensure the earliest possible entry or reentry by inmates into available programming.

(8) The department shall establish policies requiring an offender to pay all or a portion of the costs and tuition for any vocational training or postsecondary education program if the offender previously abandoned coursework related to education or vocational training without excuse as defined in rule by the department. Department policies shall include a formula for determining how much an offender shall be required to pay. The formula shall include steps which correlate to an offender average monthly income or average available balance in a personal inmate savings account and which are correlated to a prorated portion or percent of the per credit fee for tuition, books, or other ancillary costs. The formula shall be reviewed every two years. A third party may pay directly to the department all or a portion of costs and tuition for any program on behalf of an inmate under this subsection. Such payments shall not be subject to any of the deductions as provided in this chapter.

(9) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release, sentenced to death under chapter 10.95 RCW, or subject to the provisions of 8 U.S.C. Sec. 1227:

(a) Shall not be required to participate in education programming except as may be necessary for the maintenance of discipline and security;

(b) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers;

(c) May participate in prevocational or vocational training that may be necessary to participate in a work program;

(d) Shall be subject to the applicable provisions of this chapter relating to inmate financial responsibility for programming. [2007 c 483 § 402; 2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

**Findings—Intent—2007 c 483:** "Research and practice show that long-term success in helping offenders prepare for economic self-sufficiency requires strategies that address their education and employment needs. Recent research suggests that a solid academic foundation and employment- and career-focused programs can be cost-effective in reducing the likelihood of reoffense. To this end, the legislature intends that the state strive to provide every inmate with basic academic skills as well as educational and vocational training designed to meet the assessed needs of the offender.

Nonetheless, it is vital that offenders engaged in educational or vocational training contribute to their own success. An offender should financially contribute to his or her education, particularly postsecondary educational pursuits. The legislature intends to provide more flexibility for offenders in obtaining postsecondary education by allowing third parties to make contributions to the offender's education without mandatory deductions. In developing the loan program, the department is encouraged to adopt rules and standards similar to those that apply to students in noninsti-

tutional settings for issues such as applying for a loan, maintaining accountability, and accruing interest on the loan obligation." [2007 c 483 § 401.]

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Effective date—1998 c 244 § 10:** "Section 10 of this act takes effect September 1, 1998." [1998 c 244 § 18.]

**Severability—1998 c 244:** See RCW 28A.193.901.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.465 Postsecondary education degree programs.** (1) The department shall, if funds are appropriated for the specific purpose, implement postsecondary education degree programs within state correctional institutions, including the state correctional institution with the largest population of female inmates. The department shall consider for inclusion in any postsecondary education degree program, any postsecondary education degree program from an accredited community college, college, or university that is part of an associate of arts, baccalaureate, masters of arts, or other graduate degree program.

(2) Except as provided in subsection (3) of this section, inmates shall be required to pay the costs for participation in any postsecondary education degree programs established under this subsection [section], including books, fees, tuition, or any other appropriate ancillary costs, by one or more of the following means:

(a) The inmate who is participating in the postsecondary education degree program shall, during confinement, provide the required payment or payments to the department; or

(b) A third party shall provide the required payment or payments directly to the department on behalf of an inmate, and such payments shall not be subject to any of the deductions as provided in this chapter.

(3) The department may accept any and all donations and grants of money, equipment, supplies, materials, and services from any third party, including but not limited to nonprofit entities, and may receive, utilize, and dispose of same to provide postsecondary education to inmates.

(4) Any funds collected by the department under this section and \*RCW 72.09.450(4) shall be used solely for the creation, maintenance, or expansion of inmate postsecondary education degree programs. [2007 c 483 § 403.]

**\*Reviser's note:** The reference to RCW 72.09.450(4) appears to be a reference to an amendment to that section contained in an early version of ESSB 6157. RCW 72.09.450 was not amended in the final version of ESSB 6157, as amended by the house.

**Findings—Intent—2007 c 483:** See note following RCW 72.09.460.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**72.09.470 Inmate contributions for cost of privileges—Standards.** To the greatest extent practical, all inmates shall contribute to the cost of privileges. The department shall establish standards by which inmates shall contribute a portion of the department's capital costs of providing privileges, including television cable access, extended family visitation, weight lifting, and other recreational sports

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equipment and supplies. The standards shall also require inmates to contribute a significant portion of the department's operating costs directly associated with providing privileges, including staff and supplies. Inmate contributions may be in the form of individual user fees assessed against an inmate's institution account, deductions from an inmate's gross wages or gratuities, or inmates' collective contributions to the institutional welfare/betterment fund. The department shall make every effort to maximize individual inmate contributions to payment for privileges. The department shall not limit inmates' financial support for privileges to contributions from the institutional welfare/betterment fund. The standards shall consider the assets available to the inmates, the cost of administering compliance with the contribution requirements, and shall promote a responsible work ethic. [1995 1st sp.s. c 19 § 7.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.**

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the \*plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

**Reviser's note:** \*(1) 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

(2) This section was amended by 2007 c 91 § 1, 2007 c 365 § 1, and by 2007 c 483 § 404, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—2007 c 483:** See note following RCW 72.09.460.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.490 Policy on extended family visitation.** (1) The department shall establish a uniform policy on the privilege of extended family visitation. Not fewer than sixty days before making any changes in any policy on extended family visitation, the department shall: (a) Notify the appropriate legislative committees of the proposed change; and (b) notify the committee created under \*RCW 72.09.570 of the proposed change. The department shall seek the advice of the committee established under \*RCW 72.09.570 and other appropriate committees on all proposed changes and shall, before the effective date of any change, offer the committees an opportunity to provide input on proposed changes.

(2) In addition to its duties under chapter 34.05 RCW, the department shall provide the committee established under \*RCW 72.09.570 and other appropriate committees of the legislature a written copy of any proposed adoption, revision, or repeal of any rule relating to extended family visitation. Except for adoption, revision, or repeal of a rule on an emergency basis, the copy shall be provided not fewer than thirty days before any public hearing scheduled on the rule. [1995 1st sp.s. c 19 § 9.]

**\*Reviser's note:** RCW 72.09.570 expired July 1, 1997.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.495 Incarcerated parents—Policies to encourage family contact and engagement.** (1) The secretary of corrections shall review current department policies and assess the following:

(a) The impact of existing policies on the ability of offenders to maintain familial contact and engagement between inmates and children; and

(b) The adequacy and availability of programs targeted at inmates with children.

(2) The secretary shall adopt policies that encourage familial contact and engagement between inmates and their children with the goal of reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent and the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed.

(3) The department shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the families of inmates, particularly the children of incarcerated parents;

(b) Evaluate data to determine the impact on recidivism and intergenerational incarceration; and

(c) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 2.]

**Intent—Finding—2007 c 384:** "The legislature recognizes the significant impact on the lives and well-being of children and families when a parent is incarcerated. It is the intent of the legislature to support children and families, and maintain familial connections when appropriate, during the

period a parent is incarcerated. Further, the legislature finds that there must be a greater emphasis placed on identifying state policies and programs impacting children with incarcerated parents. Additionally, greater effort must be made to ensure that the policies and programs of the state are supportive of the children, and meet their needs during the time the parent is incarcerated.

According to the final report of the children of incarcerated parents oversight committee, helping offenders build durable family relationships may reduce the likelihood that their children will go to prison later in life. Additionally, the report indicates that offenders who reconnect with their families in sustaining ways are less likely to reoffend. In all efforts to help offenders build these relationships with their children, the safety of the children will be paramount." [2007 c 384 § 1.]

**72.09.500 Prohibition on weight-lifting.** An inmate found by the superintendent in the institution in which the inmate is incarcerated to have committed an aggravated assault against another person, under rules adopted by the department, is prohibited from participating in weight lifting for a period of two years from the date the finding is made. At the conclusion of the two-year period the superintendent shall review the inmate's infraction record to determine if additional weight-lifting prohibitions are appropriate. If, based on the review, it is determined by the superintendent that the inmate poses a threat to the safety of others or the order of the facility, or otherwise does not meet requirements for the weight-lifting privilege, the superintendent may impose an additional reasonable restriction period. [1995 1st sp.s. c 19 § 10.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.510 Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass.** Purchases of recreational equipment following June 15, 1995, shall be cost-effective and, to the extent possible, minimize an inmate's ability to substantially increase muscle mass. Dietary supplements made for the sole purpose of increasing muscle mass shall not be available for purchase by inmates unless prescribed by a physician for medical purposes or for inmates officially competing in department-sanctioned competitive weight lifting. [1995 1st sp.s. c 19 § 11.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.520 Limitation on purchase of televisions.** No inmate may acquire or possess a television for personal use for at least sixty days following completion of his or her intake and evaluation process at the Washington Corrections Center or the Washington Corrections Center for Women. [1995 1st sp.s. c 19 § 12.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.530 Prohibition on receipt or possession of contraband—Rules.** The secretary shall, in consultation with the attorney general, adopt by rule a uniform policy that prohibits receipt or possession of anything that is determined to be contraband. The rule shall provide consistent maximum protection of legitimate penological interests, including prison security and order and deterrence of criminal activity. The rule shall protect the legitimate interests of the public and inmates in the exchange of ideas. The secretary shall estab-

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lish a method of reviewing all incoming and outgoing material, consistent with constitutional constraints, for the purpose of confiscating anything determined to be contraband. The secretary shall consult regularly with the committee created under \*RCW 72.09.570 on the development of the policy and implementation of the rule. [1995 1st sp.s. c 19 § 13.]

**\*Reviser's note:** RCW 72.09.570 expired July 1, 1997.

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.540 Inmate name change—Limitations on use—Penalty.** The department may require an offender who obtains an order under RCW 4.24.130 to use the name under which he or she was committed to the department during all official communications with department personnel and in all matters relating to the offender's incarceration or community supervision. An offender officially communicating with the department may also use his or her new name in addition to the name under which he or she was committed. Violation of this section is a misdemeanor. [1995 1st sp.s. c 19 § 15.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.560 Camp for alien offenders.** The department is authorized to establish a camp for alien offenders and shall be ready to assign offenders to the camp not later than January 1, 1997. The secretary shall locate the camp within the boundaries of an existing department facility. [1998 c 245 § 140; 1995 1st sp.s. c 19 § 21.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.09.580 Offender records and reports. (Effective until August 1, 2009.)** Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody, community placement, or community supervision as authorized under \*RCW 9.94A.505 and 9.94A.545, the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department. [1999 c 196 § 12.]

**\*Reviser's note:** Effective July 1, 2001, conditions of community custody, community placement, and community supervision are also contained in various sections of chapter 9.94A RCW.

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**72.09.580 Offender records and reports. (Effective August 1, 2009.)** Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitor-

ing compliance with conditions of community custody, the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department. [2008 c 231 § 50; 1999 c 196 § 12.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**72.09.585 Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies.** (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or \*71.34.225 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to

disclose or not shall not result in civil liability for the indeterminate sentence review board or its employees provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or \*71.34.225 may be used to meet the statutory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or \*71.34.225 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or \*71.34.225 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. [2004 c 166 § 5; 2000 c 75 § 4.]

**\*Reviser's note:** RCW 71.34.225 was recodified as RCW 71.34.345 pursuant to 2005 c 371 § 6.

**Severability—Effective dates—2004 c 166:** See notes following RCW 71.05.040.

**Intent—2000 c 75:** See note following RCW 71.05.445.

**72.09.590 Community safety.** To the extent practicable, the department shall deploy community corrections staff

on the basis of geographic areas in which offenders under the department's jurisdiction are located, and shall establish a systematic means of assessing risk to the safety of those communities. [1999 c 196 § 13.]

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**72.09.600 Rules—Chapter 196, Laws of 1999.** The secretary of corrections may adopt rules to implement sections 1 through 13, chapter 196, Laws of 1999. [1999 c 196 § 14.]

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**72.09.610 Community custody study. (Expires December 31, 2010.)** (1) The Washington state institute for public policy shall conduct a study of the effect of the use of community custody under chapter 196, Laws of 1999. The study shall include the effect of chapter 196, Laws of 1999 on recidivism and other outcomes. In its study the institute shall consider:

(a) Recidivism, according to the definition adopted by the institute pursuant to section 59, chapter 338, Laws of 1997;

(b) The number and seriousness level of violations of conditions;

(c) The application of the graduated sanctions by the department;

(d) Unauthorized absences from supervision;

(e) Payment of legal financial obligations;

(f) Unlawful use of controlled substances;

(g) Use of alcohol when abstinence or treatment for alcoholism is a condition of supervision;

(h) Effects on the number of offenders who are employed or participate in vocational rehabilitation;

(i) Participation in vocational and education programs; and

(j) Impact on the receipt of public assistance.

(2) By January 1, 2000, the institute shall report to the legislature on the design for the study. By January 1st of each year thereafter, the institute shall report to the legislature on the progress and findings of the study and make recommendations based on its findings. By January 1, 2010, the institute shall provide to the legislature a final report on the findings of the study.

(3) Subsections (1) and (2) of this section expire December 31, 2010. [1999 c 196 § 16.]

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**72.09.620 Extraordinary medical placement—Reports.** The secretary shall report annually to the legislature on the number of offenders considered for an extraordinary medical placement, the number of offenders who were granted such a placement, the number of offenders who were denied such a placement, the length of time between initial consideration and the placement decision for each offender who was granted an extraordinary medical placement, the

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number of offenders granted an extraordinary medical placement who were later returned to total confinement, and the cost savings realized by the state. [1999 c 324 § 7.]

**72.09.630 Custodial sexual misconduct—Investigation of allegations.** The department shall investigate any alleged violations of RCW 9A.44.160 or 9A.44.170 that are alleged to have been committed by an employee or contract personnel of the department, to determine whether there is probable cause to believe that the allegation is true before reporting the alleged violation to a prosecuting attorney. [1999 c 45 § 7.]

**72.09.650 Use of force by limited authority Washington peace officers—Detention of persons.** (1) An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use reasonable force to detain, search, or remove persons who enter or remain without permission within a correctional facility or institutional grounds or whenever, upon probable cause, it appears to such employee that a person has committed or is attempting to commit a crime, or possesses contraband within a correctional facility or institutional grounds. Should any person be detained, the department shall immediately notify a local law enforcement agency having jurisdiction over the correctional facility or institutional grounds of the detainment. The department is authorized to detain the person for a reasonable time to search the person and confiscate any contraband, and until custody of the person and any illegal contraband can be transferred to a law enforcement officer when appropriate. An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use that force necessary in the protection of persons and properties located within the confines of the correctional facility or institutional grounds.

(2) The rights granted in subsection (1) of this section are in addition to any others that may exist by law including, but not limited to, the rights granted in RCW 9A.16.020. [2001 c 11 § 1.]

**Effective date—2001 c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2001]." [2001 c 11 § 2.]

**72.09.660 Therapeutic drug and alcohol treatment—Additional placements. (Expires June 30, 2010.)** (1) Through June 30, 2010, it is the intent of the legislature to provide one hundred additional placements for therapeutic drug and alcohol treatment in the state's correctional institutions, above the level of placements provided on January 1, 2006.

(2) This section expires June 30, 2010. [2006 c 339 § 102.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**72.09.670 Gang involvement among incarcerated offenders—Intervention programs—Study.** (1) The department shall study and establish best practices to reduce gang involvement and recruitment among incarcerated

offenders. The department shall study and make recommendations regarding the establishment of:

(a) Intervention programs within the institutions of the department for offenders who are seeking to opt out of gangs. The intervention programs shall include, but are not limited to, tattoo removal, anger management, GED, and other interventions; and

(b) An intervention program to assist gang members with successful reentry into the community.

(2) The department shall report to the legislature on its findings and recommendations by January 1, 2009. [2008 c 276 § 601.]

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW 36.28A.200.

**72.09.710 Drug offenders—Notice of release or escape. (Effective August 1, 2009.)** (1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community custody, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney.

Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b). [2008 c 231 § 26; 2003 c 53 § 61; 1996 c 205 § 4; 1991 c 147 § 1. Formerly RCW 9.94A.610, 9.94A.154.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

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

**72.09.712 Prisoner escape, parole, release, community custody or work release placement, or furlough—Notification procedures. (Effective August 1, 2009.)** (1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of correc-

tions shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [2008 c 231 § 27; 1996 c 215 § 4. Prior: 1994 c 129 § 3; 1994 c 77 § 1; prior: 1992 c 186 § 7; 1992 c 45 § 2; 1990 c 3 § 121; 1989 c 30 § 1; 1985 c 346 § 1. Formerly RCW 9.94A.612, 9.94A.155.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

**Severability—1992 c 186:** See note following RCW 9A.46.110.

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**72.09.714 Prisoner escape, release, or furlough—Homicide, violent, and sex offenses—Rights of victims and witnesses. (Effective August 1, 2009.)** The department of corrections shall provide the victims and next of kin in the case of a homicide and witnesses involved in violent offense cases or sex offenses as defined by RCW 9.94A.030 where a judgment and sentence was entered after October 1, 1983, a statement of the rights of victims and witnesses to request and receive notification under \*RCW 9.94A.612 and 9.94A.616.

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[1989 c 30 § 2; 1985 c 346 § 2. Formerly RCW 9.94A.614, 9.94A.156.]

**\*Reviser's note:** RCW 9.94A.612 and 9.94A.616 were recodified as RCW 72.09.712 and 72.09.716 pursuant to 2008 c 231 § 56, effective August 1, 2009.

**72.09.716 Prisoner escape, release, or furlough—Requests for notification. (Effective August 1, 2009.)** Requests for notification under \*RCW 9.94A.612 shall be made by sending a written request by certified mail directly to the department of corrections and giving the defendant's name, the name of the county in which the trial took place, and the month of the trial. Notification information and necessary forms shall be available through the department of corrections, county prosecutors' offices, and other agencies as deemed appropriate by the department of corrections. [1985 c 346 § 3. Formerly RCW 9.94A.616, 9.94A.157.]

**\*Reviser's note:** RCW 9.94A.612 was recodified as RCW 72.09.712 pursuant to 2008 c 231 § 56, effective August 1, 2009.

**72.09.718 Prisoner escape, release, or furlough—Notification as additional requirement. (Effective August 1, 2009.)** The notification requirements of \*RCW 9.94A.612 are in addition to any requirements in RCW 43.43.745 or other law. [1985 c 346 § 4. Formerly RCW 9.94A.618, 9.94A.158.]

**\*Reviser's note:** RCW 9.94A.612 was recodified as RCW 72.09.712 pursuant to 2008 c 231 § 56, effective August 1, 2009.

**72.09.720 Prisoner escape, release, or furlough—Consequences of failure to notify. (Effective August 1, 2009.)** Civil liability shall not result from failure to provide notice required under RCW \*9.94A.612 through 9.94A.618, 9.94A.030, and 43.43.745 unless the failure is the result of gross negligence. [1985 c 346 § 7. Formerly RCW 9.94A.620, 9.94A.159.]

**\*Reviser's note:** RCW 9.94A.612 through 9.94A.618 were recodified as RCW 72.09.712 through 72.09.718 pursuant to 2008 c 231 § 56, effective August 1, 2009.

**72.09.800 Comprehensive plan for character-building residential services in prisons—Establishment of oversight committee.** (1) The department of corrections shall establish an oversight committee to develop a comprehensive interagency plan to provide voluntary, nondenominational moral and character-building residential services and supports for offenders who are incarcerated in prison.

(2) The interagency plan shall include the following:

(a) Identification of existing state services and programs, as well as recognized community-based services and programs, for building moral character for those who are incarcerated;

(b) Identification of methods to improve collaboration and coordination of existing services and the community-based services and programs;

(c) Recommendations concerning new services and programs for adults who are incarcerated, involving both interagency and community-based efforts;

(d) Identification of evidence-based practices and areas for further research to support the long-term provision of

moral and character-building services and programs for adults who are incarcerated;

(e) A plan for offering both nondenominational and secular programming; and

(f) A system to prevent the diversion of public funds to religious activities.

(3) The oversight committee shall include the following:

(a) Representatives with decision-making authority from: The department of corrections; the department of social and health services; the Washington association of sheriffs and police chiefs; county law and justice councils; county community transition coordination networks; specialized county courts such as those addressing child dependency, drug, mental health, and domestic violence related crimes; prosecuting attorneys and public defenders; representatives of at least three faith-based organizations that work primarily in the prisons and at least three faith-based organizations that work primarily with offenders in the community; the religious program manager employed by the department of corrections; one institutional staff chaplain employed by the department of corrections; three chaplains: (i) One of whom volunteers in the institution, (ii) one of whom contracts with the department of corrections, and (iii) one of whom is a Native American program specialist with the department of corrections to serve those who are incarcerated; and six representatives from secular organizations in the private and public sectors that have evidence-based expertise in character and moral skills building, education, and residential programming;

(b) Two persons representing victims of crimes and their family members and friends;

(c) One former inmate of the state department of corrections; and

(d) One individual representing families of inmates who are incarcerated in state correctional institutions.

(4) In developing the interagency plan, the oversight committee shall seek input on moral and character-based residential programs in our state's adult correctional facilities from the public, including faith-based communities, state institutions of higher education, and the business community.

(5) The oversight committee shall develop the interagency plan by June 30, 2010, with an interim report due to the appropriate committees of the legislature by January 1, 2009. [2008 c 104 § 2.]

**Finding—2008 c 104:** "The legislature finds that men and women who are incarcerated have the need to develop prosocial behaviors. These behaviors will better enable these men and women to fully participate in society and adhere to law-abiding behaviors, such as continuing treatment that is undertaken in prison, once the person is released in the community.

Living in an environment where foundational skills are modeled and encouraged fosters positive outcomes for people who have been convicted and sentenced for their crimes. Basic skills include positive decision making, personal responsibility, building a healthy community, religious tolerance and understanding, ethics and morality, conflict management, family life relationships, leadership, managing emotions, restorative justice, transitional issues, and spirituality. Learning and practicing how to overcome minor and significant obstacles in a positive way will prepare offenders who are returning to our communities to begin their new crime-free lives." [2008 c 104 § 1.]

**72.09.900 Effective date—1981 c 136.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its

existing public institutions, and shall take effect July 1, 1981. [1981 c 136 § 124.]

**72.09.901 Short title.** This chapter may be known and cited as the corrections reform act of 1981. [1981 c 136 § 1.]

**72.09.902 Construction—1981 c 136.** All references to the department or secretary of social and health services in other chapters of the Revised Code of Washington shall be construed as meaning the department or secretary of corrections when referring to the functions established by this chapter. [1981 c 136 § 29.]

**72.09.903 Savings—1981 c 136.** All rules and all pending business before the secretary of social and health services and the department of social and health services pertaining to matters transferred by RCW 72.09.040 shall be continued and acted upon by the department of corrections.

All existing contracts and obligations pertaining to the powers, duties, and functions transferred shall remain in full force and effect and shall be performed by the department of corrections.

The transfer of powers, duties, and functions under RCW 72.09.040 shall not affect the validity of any act performed prior to July 1, 1981, by the department of social and health services or its secretary and, except as otherwise specifically provided, shall not affect the validity of any rights existing on July 1, 1981.

If questions arise regarding whether any sort of obligation is properly that of the department of social and health services or the department of corrections, such questions shall be resolved by the director of financial management. [1981 c 136 § 30.]

**72.09.904 Construction—1999 c 196.** Nothing in chapter 196, Laws of 1999 shall be construed to create an immunity or defense from liability for personal injury or wrongful death based solely on availability of funds. [1999 c 196 § 17.]

**72.09.905 Short title—1999 c 196.** This act may be known and cited as the offender accountability act. [1999 c 196 § 18.]

## Chapter 72.10 RCW

### HEALTH CARE SERVICES— DEPARTMENT OF CORRECTIONS

#### Sections

72.10.005	Intent—Application.
72.10.010	Definitions.
72.10.020	Health services delivery plan—Reports to the legislature—Policy for distribution of personal hygiene items—Expiration of subsection.
72.10.030	Contracts for services.
72.10.040	Rules.
72.10.050	Rules to implement RCW 72.10.020.
72.10.060	Inmates who have received mental health treatment—Notification to treatment provider at time of release.

**72.10.005 Intent—Application.** It is the intent of the legislature that inmates in the custody of the department of

corrections receive such basic medical services as may be mandated by the federal Constitution and the Constitution of the state of Washington. Notwithstanding any other laws, it is the further intent of the legislature that the department of corrections may contract directly with any persons, firms, agencies, or corporations qualified to provide such services. Nothing in this chapter is to be construed to authorize a reduction in state employment in service component areas presently rendering such services or to preclude work typically and historically performed by department employees. [1989 c 157 § 1.]

**72.10.010 Definitions.** As used in this chapter:

- (1) "Department" means the department of corrections.
- (2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.
- (3) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).
- (4) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.
- (5) "Health care services" means medical, dental, and mental health care services.
- (6) "Secretary" means the secretary of the department.
- (7) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the department, or his or her designee. [1995 1st sp.s. c 19 § 16; 1989 c 157 § 2.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.020 Health services delivery plan—Reports to the legislature—Policy for distribution of personal hygiene items—Expiration of subsection.** (1) Upon entry into the correctional system, offenders shall receive an initial medical examination. The department shall prepare a health profile for each offender that includes at least the following information: (a) An identification of the offender's serious medical and dental needs; (b) an evaluation of the offender's capacity for work and recreation; and (c) a financial assessment of the offender's ability to pay for all or a portion of his or her health care services from personal resources or private insurance.

(2)(a) The department may develop and implement a plan for the delivery of health care services and personal hygiene items to offenders in the department's correctional facilities, at the discretion of the secretary, and in conformity with federal law.

(b) To discourage unwarranted use of health care services caused by unnecessary visits to health care providers, offenders shall participate in the costs of their health care services by paying a nominal amount of no less than three dollars per visit, as determined by the secretary. Under the authority granted in RCW 72.01.050(2), the secretary may authorize the superintendent to collect this amount directly from an offender's institution account. All copayments collected from offenders' institution accounts shall be deposited into the general fund.

(c) Offenders are required to make copayments for initial health care visits that are offender initiated and, by rule adopted by the department, may be charged a copayment for subsequent visits related to the medical condition which caused the initial visit. Offenders are not required to pay for emergency treatment or for visits initiated by health care staff or treatment of those conditions that constitute a serious health care need.

(d) No offender may be refused any health care service because of indigence.

(e) At no time shall the withdrawal of funds for the payment of a medical service copayment result in reducing an offender's institution account to an amount less than the level of indigency as defined in chapter 72.09 RCW.

(3)(a) The department shall report annually to the legislature the following information for the fiscal year preceding the report: (i) The total number of health care visits made by offenders; (ii) the total number of copayments assessed; (iii) the total dollar amount of copayments collected; (iv) the total number of copayments not collected due to an offender's indigency; and (v) the total number of copayments not assessed due to the serious or emergent nature of the health care treatment or because the health care visit was not offender initiated.

(b) The first report required under this section shall be submitted not later than October 1, 1996, and shall include, at a minimum, all available information collected through the second half of fiscal year 1996. This subsection (3)(b) shall expire December 1, 1996.

(4)(a) The secretary shall adopt, by rule, a uniform policy relating to the distribution and replenishment of personal hygiene items for inmates incarcerated in all department institutions. The policy shall provide for the initial distribution of adequate personal hygiene items to inmates upon their arrival at an institution.

(b) The acquisition of replenishment personal hygiene items is the responsibility of inmates, except that indigent inmates shall not be denied adequate personal hygiene items based on their inability to pay for them.

(c) The policy shall provide that the replenishment personal hygiene items be distributed to inmates only in authorized quantities and at intervals that reflect prudent use and customary wear and consumption of the items.

(5) The following become a debt and are subject to RCW 72.09.450:

(a) All copayments under subsection (2) of this section that are not collected when the visit occurs; and

(b) All charges for replenishment personal hygiene items that are not collected when the item is distributed. [1995 1st sp.s. c 19 § 17; 1989 c 157 § 3.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.030 Contracts for services.** (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to inmates. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [1989 c 157 § 4.]

**72.10.040 Rules.** The secretary shall have the power to make rules necessary to carry out the intent of this chapter. [1989 c 157 § 5.]

**72.10.050 Rules to implement RCW 72.10.020.** The department shall adopt rules to implement RCW 72.10.020. [1995 1st sp.s. c 19 § 18.]

**Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19:** See notes following RCW 72.09.450.

**72.10.060 Inmates who have received mental health treatment—Notification to treatment provider at time of release.** The secretary shall, for any person committed to a state correctional facility after July 1, 1998, inquire at the time of commitment whether the person had received outpatient mental health treatment within the two years preceding confinement and the name of the person providing the treatment.

The secretary shall inquire of the treatment provider if he or she wishes to be notified of the release of the person from confinement, for purposes of offering treatment upon the inmate's release. If the treatment provider wishes to be notified of the inmate's release, the secretary shall attempt to provide such notice at least seven days prior to release.

At the time of an inmate's release if the secretary is unable to locate the treatment provider, the secretary shall notify the regional support network in the county the inmate will most likely reside following release.

If the secretary has, prior to the release from the facility, evaluated the inmate and determined he or she requires post-release mental health treatment, a copy of relevant records and reports relating to the inmate's mental health treatment or status shall be promptly made available to the offender's present or future treatment provider. The secretary shall determine which records and reports are relevant and may provide a summary in lieu of copies of the records. [1998 c 297 § 48.]

**Effective dates—Severability—Intent—1998 c 297:** See notes following RCW 71.05.010.

## Chapter 72.11 RCW

### OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

#### Sections

72.11.010	Definitions.
72.11.020	Inmate funds—Legal financial obligations—Disbursal by secretary.
72.11.030	Inmate accounts—Legal financial obligations—Priority—Deductions.
72.11.040	Cost of supervision fund.

**72.11.010 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereafter used in this chapter shall have the following meanings:

(1) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

(2) "Department" means the department of corrections.

(3) "Offender" means an individual who is currently under the jurisdiction of the Washington state department of corrections, and who also has a court-ordered legal financial obligation as a result of a felony conviction.

(4) "Secretary" means the secretary of the department of corrections or the secretary's designee.

(5) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections. [1989 c 252 § 22.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.020 Inmate funds—Legal financial obligations—Disbursal by secretary.** The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid. [2002 c 126 § 1; 1989 c 252 § 23.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.030 Inmate accounts—Legal financial obligations—Priority—Deductions.** (1) Except as otherwise provided herein, all court-ordered legal financial obligations shall take priority over any other statutorily imposed mandatory withdrawals from inmate's accounts.

(2) For those inmates who are on work release pursuant to chapter 72.65 RCW, before any legal financial obligations are withdrawn from the inmate's account, the inmate is entitled to payroll deductions that are required by law, or such payroll deductions as may reasonably be required by the nature of the employment unless any such amount which his

or her work release plan specifies should be retained to help meet the inmate's needs, including costs necessary for his or her participation in the work release plan such as travel, meals, clothing, tools, and other incidentals.

(3) Before the payment of any court-ordered legal financial obligation is required, the department is entitled to reimbursement for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), for expenses incident to a work release plan pursuant to RCW 72.65.090, payments for board and room charges for the work release participant, and payments that are necessary for the support of the work release participant's dependents, if any. [1989 c 252 § 24.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.11.040 Cost of supervision fund.** The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. During the 2005-2007 biennium, funds from the account may also be used for costs associated with the department's supervision of the offenders in the community. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2005 c 518 § 943; 2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**Chapter 72.16 RCW  
GREEN HILL SCHOOL**

Sections

- 72.16.010 School established.
- 72.16.020 Purpose of school.

*Basic juvenile court act: Chapter 13.04 RCW.*

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.*

*Commitment: Chapter 13.04 RCW.*

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

*Disturbances at state penal facilities*

*development of contingency plans—Scope—Local participation: RCW 72.02.150.*

*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*

*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

*Financial responsibility for cost of detention of minor: RCW 13.16.085.*

*Fugitives of this state: Chapter 10.34 RCW.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**72.16.010 School established.** There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

**72.16.020 Purpose of school.** The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

**Chapter 72.19 RCW  
JUVENILE CORRECTIONAL INSTITUTION  
IN KING COUNTY**

Sections

- 72.19.010 Institution established—Location.
- 72.19.020 Rules and regulations.
- 72.19.030 Superintendent—Appointment.
- 72.19.040 Associate superintendents—Appointment—Acting superintendent.
- 72.19.050 Powers and duties of superintendent.
- 72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
- 72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
- 72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.
- 72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
- 72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
- 72.19.130 Referral to electorate.

*Disturbances at state penal facilities*

*development of contingency plans—Scope—Local participation: RCW 72.02.150.*

*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*

*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

**72.19.010 Institution established—Location.** There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of social

and health services for the establishment and construction of the correctional institution authorized and provided for in this chapter. [1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

**72.19.020 Rules and regulations.** The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 223; 1961 c 183 § 4.]

**72.19.030 Superintendent—Appointment.** The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. [1983 1st ex.s. c 41 § 27; 1979 c 141 § 224; 1963 c 165 § 3.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**72.19.040 Associate superintendents—Appointment—Acting superintendent.** The superintendent, subject to the approval of the secretary, shall appoint such associate superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as may be designated by the secretary. [1979 c 141 § 225; 1963 c 165 § 4.]

**72.19.050 Powers and duties of superintendent.** The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules of the department and the Washington personnel resources board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary. [1993 c 281 § 65; 1979 c 141 § 226; 1963 c 165 § 5.]

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

**72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.** The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible

economies from the lack of necessity for duplication of facilities. [1979 c 141 § 227; 1963 c 165 § 7.]

**72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.** For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: PROVIDED, That none of the bonds herein authorized shall be sold for less than the par value thereof, nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

**72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.** The juvenile correctional institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of**

**revenue.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

**72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

**72.19.130 Referral to electorate.** This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

## Chapter 72.20 RCW MAPLE LANE SCHOOL

### Sections

72.20.001	Definitions.
72.20.010	School established.
72.20.020	Management—Superintendent.
72.20.040	Duties of superintendent.
72.20.050	Parole or discharge—Behavior credits.
72.20.060	Conditional parole—Apprehension on escape or violation of parole.
72.20.065	Intrusion—Enticement away of girls—Interference—Penalty.
72.20.070	Eligibility restricted.
72.20.090	Hiring out—Apprenticeships—Compensation.

*Basic juvenile court act: Chapter 13.04 RCW.*

*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.*

*Commitment: Chapter 13.04 RCW.*

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

*Disturbances at state penal facilities development of contingency plans—Scope—Local participation: RCW 72.02.150.*

*reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.*

*utilization of outside law enforcement personnel—Scope: RCW 72.02.160.*

*Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.*

*Financial responsibility for cost of detention of minor: RCW 13.16.085.*

*Fugitives of this state: Chapter 10.34 RCW.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

**72.20.001 Definitions.** As used in this chapter: "Department" means the department of social and health services; and "Secretary" means the secretary of social and health services. [1981 c 136 § 98.]

**Effective date—1981 c 136:** See RCW 72.09.900.

(2008 Ed.)

**72.20.010 School established.** There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

**72.20.020 Management—Superintendent.** The government, control and business management of such school shall be vested in the secretary. The secretary shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the secretary may deem just and proper, not inconsistent with this chapter. [1979 c 141 § 228; 1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

*Appointment of chief executive officers and subordinate employees, general provisions: RCW 72.01.060.*

**72.20.040 Duties of superintendent.** The superintendent, subject to the direction and approval of the secretary shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1990 c 33 § 593; 1979 ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

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

**Effective date—Severability—1979 ex.s. c 217:** See notes following RCW 28A.190.020.

**72.20.050 Parole or discharge—Behavior credits.** The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

**72.20.060 Conditional parole—Apprehension on escape or violation of parole.** Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of

the secretary, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1979 c 141 § 230; 1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

**72.20.065 Intrusion—Enticement away of girls—Interference—Penalty.** Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

**72.20.070 Eligibility restricted.** No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

**72.20.090 Hiring out—Apprenticeships—Compensation.** The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the secretary endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the secretary, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [1979 c 141 § 232; 1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

## Chapter 72.23 RCW

### PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

#### Sections

72.23.010	Definitions.
72.23.020	State hospitals designated.
72.23.025	Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established.
72.23.027	Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs.
72.23.030	Superintendent—Powers—Direction of clinical care, exception.
72.23.035	Background checks of prospective employees.
72.23.040	Seal of hospital.
72.23.050	Superintendent as witness—Exemptions from military duty.
72.23.060	Gifts—Record—Use.
72.23.080	Voluntary patients—Legal competency—Record.
72.23.100	Voluntary patients—Policy—Duration.
72.23.110	Voluntary patients—Limitation as to number.
72.23.120	Voluntary patients—Charges for hospitalization.
72.23.125	Temporary residential observation and evaluation of persons requesting treatment.
72.23.130	History of patient.
72.23.160	Escape—Apprehension and return.
72.23.170	Escape of patient—Penalty for assisting.
72.23.180	Discharge, parole, death, escape—Notice—Certificate of discharge.
72.23.190	Death—Report to coroner.
72.23.200	Persons under eighteen—Confinement in adult wards.
72.23.210	Persons under eighteen—Special wards and attendants.
72.23.230	Patient's property—Superintendent as custodian—Management and accounting.
72.23.240	Patient's property—Delivery to superintendent as acquittance—Defense, indemnity.
72.23.250	Funds donated to patients.
72.23.260	Federal patients—Agreements authorized.
72.23.280	Nonresidents—Hospitalization.
72.23.290	Transfer of patients—Authority of transferee.
72.23.300	Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty.
72.23.390	Safe patient handling.
72.23.400	Workplace safety plan.
72.23.410	Violence prevention training.
72.23.420	Record of violent acts.
72.23.430	Noncompliance—Citation under chapter 49.17 RCW.
72.23.440	Technical assistance and training.
72.23.451	Annual report to the legislature.
72.23.460	Provisions applicable to hospitals governed by chapter.
72.23.900	Construction—Purpose—1959 c 28.
72.23.910	Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes.

*Commitment to veterans' administration or other federal agency: RCW 73.36.165.*

*County hospitals: Chapter 36.62 RCW.*

*Division of mental health: Chapter 43.20A RCW.*

*Mental illness, commitment procedures, rights, etc.: Chapter 71.05 RCW.*

*Minors—Mental health services, commitment: Chapter 71.34 RCW.*

*Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.*

*Private mental establishments: Chapter 71.12 RCW.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

*Sexual psychopaths: Chapter 71.06 RCW.*

**72.23.010 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Court" means the superior court of the state of Washington.

(2) "Department" means the department of social and health services.

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Licensed physician" means an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his or her official duties.

(5) "Mentally ill person" means any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled.

(6) "Patient" means a person under observation, care, or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

(7) "Resident" means a resident of the state of Washington.

(8) "Secretary" means the secretary of social and health services.

(9) "State hospital" means any hospital, including a child study and treatment center, operated and maintained by the state of Washington for the care of the mentally ill.

(10) "Superintendent" means the superintendent of a state hospital.

(11) "Violence" or "violent act" means any physical assault or attempted physical assault against an employee or patient of a state hospital.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [2000 c 22 § 2; 1981 c 136 § 99; 1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Severability—Construction—Effective date—1973 1st ex.s. c 142:** See RCW 71.05.900 through 71.05.930.

**72.23.020 State hospitals designated.** There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

**72.23.025 Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established.** (1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. To this end, the legislature intends that funds appropriated for mental health programs, including funds for regional support networks and the state hospitals be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of the eastern state hospital board, the western state hospital

board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

(i) The director of the institute for the study and treatment of mental disorders established at the hospital;

(ii) One family member of a current or recent hospital resident;

(iii) One consumer of services;

(iv) One community mental health service provider;

(v) Two citizens with no financial or professional interest in mental health services;

(vi) One representative of the regional support network in which the hospital is located;

(vii) One representative from the staff who is a physician;

(viii) One representative from the nursing staff;

(ix) One representative from the other professional staff;

(x) One representative from the nonprofessional staff; and

(xi) One representative of a minority community.

(b) At least one representative listed in (a)(viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

(a) Monitor the operation and activities of the hospital;

(b) Review and advise on the hospital budget;

(c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;

(d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section; and

(e) Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit mentally ill persons receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section. [2006 c 333 § 204; 1998 c 245 § 141; 1992 c 230 § 1; 1989 c 205 § 21.]

**Finding—Purpose—Intent—Severability—Part headings not law—Effective dates—2006 c 333:** See notes following RCW 71.24.016.

**Intent—1992 c 230:** "It is the intent of this act to:

(1) Focus, restate, and emphasize the legislature's commitment to the mental health reform embodied in chapter 111 [205], Laws of 1989 (SB 5400);

(2) Eliminate, or schedule for repeal, statutes that are no longer relevant to the regulation of the state's mental health program; and

(3) Reaffirm the state's commitment to provide incentives that reduce reliance on inappropriate state hospital or other inpatient care." [1992 c 230 § 3.]

**Evaluation of transition to regional systems—1989 c 205:** See note following RCW 71.24.015.

**72.23.027 Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs.** The secretary shall develop a system of more integrated service delivery, including incentives to discourage the inappropriate placement of persons with developmental disabilities, head injury, and substance abuse, at state mental hospitals and encourage their care in community settings. By December 1, 1992, the department shall submit an implementation strategy, including budget proposals, to the appropriate committees of the legislature for this system.

Under the system, state, local, or community agencies may be given financial or other incentives to develop appropriate crisis intervention and community care arrangements.

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The secretary may establish specialized care programs for persons described in this section on the grounds of the state hospitals. Such programs may operate according to professional standards that do not conform to existing federal or private hospital accreditation standards. [1992 c 230 § 2.]

**Intent—1992 c 230:** See note following RCW 72.23.025.

**72.23.030 Superintendent—Powers—Direction of clinical care, exception.** The superintendent of a state hospital subject to rules of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. If the superintendent is not a psychiatrist, clinical care shall be under the direction of a qualified psychiatrist. [1983 1st ex.s. c 41 § 28; 1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.  
*Appointment of chief executive officers:* RCW 72.01.060.

**72.23.035 Background checks of prospective employees.** In consultation with law enforcement personnel, the secretary shall have the power and duty to investigate the conviction record and the protection proceeding record information under chapter 43.43 RCW of each prospective employee of a state hospital. [1989 c 334 § 12.]

**72.23.040 Seal of hospital.** The superintendent shall provide an official seal upon which shall be inscribed the statutory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

**72.23.050 Superintendent as witness—Exemptions from military duty.** The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and, in time of peace, he and all other persons employed at the hospital shall be exempt from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1979 ex.s. c 135 § 5; 1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

**Severability—1979 ex.s. c 135:** See note following RCW 2.36.080.

**72.23.060 Gifts—Record—Use.** The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the

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amount or kind of gift, the date received, and the name and address of the donor. The superintendent may deposit any money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

**72.23.080 Voluntary patients—Legal competency—Record.** Any person received and detained in a state hospital under chapter 71.34 RCW is deemed a voluntary patient and, except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license, shall not suffer a loss of legal competency by reason of his or her application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, date of birth, place of birth, occupation, social security number, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1994 sp.s. c 7 § 442; 1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**72.23.100 Voluntary patients—Policy—Duration.** It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

**Severability—Construction—Effective date—1973 1st ex.s. c 142:** See RCW 71.05.900 through 71.05.930.

**72.23.110 Voluntary patients—Limitation as to number.** If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

**72.23.120 Voluntary patients—Charges for hospitalization.** Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: PROVIDED, HOWEVER, The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the

payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

**72.23.125 Temporary residential observation and evaluation of persons requesting treatment.** The department is directed to establish at each state hospital a procedure, including the necessary resources, to provide temporary residential observation and evaluation of persons who request treatment, unless admitted under \*RCW 72.23.070. Temporary residential observation and evaluation under this section shall be for a period of not less than twenty-four hours nor more than forty-eight hours and may be provided informally without complying with the admission procedure set forth in \*RCW 72.23.070 or the rules and regulations established thereunder.

It is the intent of the legislature that temporary observation and evaluation as described in this section be provided in all cases except where an alternative such as: (1) Delivery to treatment outside the hospital, or (2) no need for treatment is clearly indicated. [1979 ex.s. c 215 § 18.]

**\*Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

**72.23.130 History of patient.** It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

**72.23.160 Escape—Apprehension and return.** If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

**72.23.170 Escape of patient—Penalty for assisting.** Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a class C felony and shall be punished by imprisonment in a state correctional institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [2003 c 53 § 364; 1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

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

**72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge.** Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

*Disposition of property of deceased inmate of state institution: RCW 11.08.101, 11.08.111, 11.08.120.*

**72.23.190 Death—Report to coroner.** In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

**72.23.200 Persons under eighteen—Confinement in adult wards.** No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hospital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**72.23.210 Persons under eighteen—Special wards and attendants.** The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

**72.23.230 Patient's property—Superintendent as custodian—Management and accounting.** The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have

authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of one thousand dollars or a greater sum as established by rules and regulations of the department, the superintendent may apply the excess to reimbursement for state hospitalization and/or outpatient charges of such patient to the extent of a notice and finding of responsibility issued under RCW 43.20B.340; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient, subject to the conditions of subsection (2) of this section.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: PROVIDED, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: PROVIDED, FURTHER, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to pay state hospitalization charges from funds subject to the control of the guardianship upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds subject to the control of the guardianship or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1987 c 75 § 21; 1985 c 245 § 4; 1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

*Guardianship of estate: Chapters 11.88 and 11.92 RCW.*

**72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity.** Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action

owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person, bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding. [1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

**72.23.250 Funds donated to patients.** The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

**72.23.260 Federal patients—Agreements authorized.** The department shall have the power, in the name of the state, to enter into contracts with any duly authorized representative of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

**72.23.280 Nonresidents—Hospitalization.** Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

**72.23.290 Transfer of patients—Authority of transferee.** Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans administration or other United States government agency

where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

*Commitment to veterans' administration or other federal agency: RCW 73.36.165.*

**72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty.** Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 365; 1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

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

*Uniform controlled substances act: Chapter 69.50 RCW.*

**72.23.390 Safe patient handling.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Lift team" means hospital employees specially trained to conduct patient lifts, transfers, and repositioning using lifting equipment when appropriate.

(b) "Safe patient handling" means the use of engineering controls, lifting and transfer aids, or assistive devices, by lift teams or other staff, instead of manual lifting to perform the acts of lifting, transferring, and repositioning health care patients and residents.

(c) "Musculoskeletal disorders" means conditions that involve the nerves, tendons, muscles, and supporting structures of the body.

(2) By February 1, 2007, each hospital must establish a safe patient handling committee either by creating a new committee or assigning the functions of a safe patient handling committee to an existing committee. The purpose of the committee is to design and recommend the process for implementing a safe patient handling program. At least half of the members of the safe patient handling committee shall be frontline nonmanagerial employees who provide direct care to patients unless doing so will adversely affect patient care.

(3) By December 1, 2007, each hospital must establish a safe patient handling program. As part of this program, a hospital must:

(a) Implement a safe patient handling policy for all shifts and units of the hospital. Implementation of the safe patient handling policy may be phased-in with the acquisition of equipment under subsection (4) of this section;

(b) Conduct a patient handling hazard assessment. This assessment should consider such variables as patient-handling tasks, types of nursing units, patient populations, and the physical environment of patient care areas;

(c) Develop a process to identify the appropriate use of the safe patient handling policy based on the patient's physi-

cal and medical condition and the availability of lifting equipment or lift teams;

(d) Conduct an annual performance evaluation of the program to determine its effectiveness, with the results of the evaluation reported to the safe patient handling committee. The evaluation shall determine the extent to which implementation of the program has resulted in a reduction in musculoskeletal disorder claims and days of lost work attributable to musculoskeletal disorder caused by patient handling, and include recommendations to increase the program's effectiveness; and

(e) When developing architectural plans for constructing or remodeling a hospital or a unit of a hospital in which patient handling and movement occurs, consider the feasibility of incorporating patient handling equipment or the physical space and construction design needed to incorporate that equipment at a later date.

(4) By January 30, 2010, hospitals must complete acquisition of their choice of: (a) One readily available lift per acute care unit on the same floor, unless the safe patient handling committee determines a lift is unnecessary in the unit; (b) one lift for every ten acute care available inpatient beds; or (c) equipment for use by lift teams. Hospitals must train staff on policies, equipment, and devices at least annually.

(5) Nothing in this section precludes lift team members from performing other duties as assigned during their shift.

(6) A hospital shall develop procedures for hospital employees to refuse to perform or be involved in patient handling or movement that the hospital employee believes in good faith will expose a patient or a hospital employee to an unacceptable risk of injury. A hospital employee who in good faith follows the procedure developed by the hospital in accordance with this subsection shall not be the subject of disciplinary action by the hospital for the refusal to perform or be involved in the patient handling or movement. [2006 c 165 § 3.]

**Findings—2006 c 165:** See note following RCW 70.41.390.

**72.23.400 Workplace safety plan.** (1) By November 1, 2000, each state hospital shall develop a plan, for implementation by January 1, 2001, to reasonably prevent and protect employees from violence at the state hospital. The plan shall be developed with input from the state hospital's safety committee, which includes representation from management, unions, nursing, psychiatry, and key function staff as appropriate. The plan shall address security considerations related to the following items, as appropriate to the particular state hospital, based upon the hazards identified in the assessment required under subsection (2) of this section:

(a) The physical attributes of the state hospital including access control, egress control, door locks, lighting, and alarm systems;

(b) Staffing, including security staffing;

(c) Personnel policies;

(d) First aid and emergency procedures;

(e) Reporting violent acts, taking appropriate action in response to violent acts, and follow-up procedures after violent acts;

(f) Development of criteria for determining and reporting verbal threats;

(g) Employee education and training; and

(h) Clinical and patient policies and procedures including those related to smoking; activity, leisure, and therapeutic programs; communication between shifts; and restraint and seclusion.

(2) Before the development of the plan required under subsection (1) of this section, each state hospital shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to analysis of data on violence and worker's compensation claims during at least the preceding year, input from staff and patients such as surveys, and information relevant to subsection (1)(a) through (h) of this section.

(3) In developing the plan required by subsection (1) of this section, the state hospital may consider any guidelines on violence in the workplace or in the state hospital issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and state hospital accrediting organizations.

(4) The plan must be evaluated, reviewed, and amended as necessary, at least annually. [2000 c 22 § 3.]

**Findings—2000 c 22:** "The legislature finds that:

(1) Workplace safety is of paramount importance in state hospitals for patients and the staff that treat them;

(2) Based on an analysis of workers' compensation claims, the department of labor and industries reports that state hospital employees face high rates of workplace violence in Washington state;

(3) State hospital violence is often related to the nature of the patients served, people who are both mentally ill and too dangerous for treatment in their home community, and people whose behavior is driven by elements of mental illness including desperation, confusion, delusion, or hallucination;

(4) Patients and employees should be assured a reasonably safe and secure environment in state hospitals;

(5) The state hospitals have undertaken efforts to assure that patients and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in state hospitals; and

(6) Duplication and redundancy should be avoided so as to maximize resources available for patient care." [2000 c 22 § 1.]

**72.23.410 Violence prevention training.** By July 1, 2001, and at least annually thereafter, as set forth in the plan developed under RCW 72.23.400, each state hospital shall provide violence prevention training to all its affected employees as determined by the plan. Initial training shall occur prior to assignment to a patient unit, and in addition to his or her ongoing training as determined by the plan. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under RCW 72.23.400:

(1) General safety procedures;

(2) Personal safety procedures and equipment;

(3) The violence escalation cycle;

(4) Violence-predicting factors;

(5) Obtaining patient history for patients with violent behavior or a history of violent acts;

- (6) Verbal and physical techniques to de-escalate and minimize violent behavior;
- (7) Strategies to avoid physical harm;
- (8) Restraining techniques;
- (9) Documenting and reporting incidents;
- (10) The process whereby employees affected by a violent act may debrief;
- (11) Any resources available to employees for coping with violence;
- (12) The state hospital's workplace violence prevention plan;
- (13) Use of the intershift reporting process to communicate between shifts regarding patients who are agitated; and
- (14) Use of the multidisciplinary treatment process or other methods for clinicians to communicate with staff regarding patient treatment plans and how they can collaborate to prevent violence. [2000 c 22 § 4.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.420 Record of violent acts.** Beginning no later than July 1, 2000, each state hospital shall keep a record of any violent act against an employee or a patient occurring at the state hospital. Each record shall be kept for at least five years following the act reported during which time it shall be available for inspection by the department of labor and industries upon request. At a minimum, the record shall include:

- (1) Necessary information for the state hospital to comply with the requirements of chapter 49.17 RCW related to employees that may include:
  - (a) A full description of the violent act;
  - (b) When the violent act occurred;
  - (c) Where the violent act occurred;
  - (d) To whom the violent act occurred;
  - (e) Who perpetrated the violent act;
  - (f) The nature of the injury;
  - (g) Weapons used;
  - (h) Number of witnesses; and
  - (i) Action taken by the state hospital in response to the violence; and
- (2) Necessary information for the state hospital to comply with current and future expectations of the joint commission on hospital accreditation related to violence perpetrated upon patients which may include:
  - (a) The nature of the violent act;
  - (b) When the violent act occurred;
  - (c) To whom it occurred; and
  - (d) The nature and severity of any injury. [2000 c 22 § 5.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.430 Noncompliance—Citation under chapter 49.17 RCW.** Failure of a state hospital to comply with this chapter shall subject the hospital to citation under chapter 49.17 RCW. [2000 c 22 § 6.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.440 Technical assistance and training.** A state hospital needing assistance to comply with RCW 72.23.400 through 72.23.420 may contact the department of labor and industries for assistance. The state departments of labor and

industries, social and health services, and health shall collaborate with representatives of state hospitals to develop technical assistance and training seminars on plan development and implementation, and shall coordinate their assistance to state hospitals. [2000 c 22 § 7.]

**Findings—2000 c 22:** See note following RCW 72.23.400.

**72.23.451 Annual report to the legislature.** By September 1st of each year, the department shall report to the house committee on commerce and labor and the senate committee on commerce and trade, or successor committees, on the department's efforts to reduce violence in the state hospitals. [2005 c 187 § 1.]

**72.23.460 Provisions applicable to hospitals governed by chapter.** The provisions of RCW 70.41.410 and 70.41.420 apply to hospitals governed by this chapter. [2008 c 47 § 4.]

**Findings—Intent—2008 c 47:** See note following RCW 70.41.410.

**72.23.900 Construction—Purpose—1959 c 28.** The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

*Civil rights*

*loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.*

*restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes.** Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior: 1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

## Chapter 72.25 RCW

### NONRESIDENT MENTALLY ILL, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS— DEPORTATION, TRANSPORTATION

#### Sections

- 72.25.010 Deportation of aliens—Return of residents.
- 72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined.
- 72.25.030 Assistance—Payment of expenses.

*Council for children and families: Chapter 43.121 RCW.*

**72.25.010 Deportation of aliens—Return of residents.** It shall be the duty of the secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States depart-

ment of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 49; 1965 c 78 § 1; 1959 c 28 § 72.25.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

*Minors—Mental health services, commitment:* Chapter 71.34 RCW.

*Sexual psychopaths:* Chapter 71.06 RCW.

**72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined.** The secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the secretary may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: PROVIDED, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, or mentally ill person he may discharge said patient: PROVIDED FURTHER, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: PROVIDED, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be

counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 50; 1965 c 78 § 2; 1959 c 28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.25.030 Assistance—Payment of expenses.** For the purpose of carrying out the provisions of this chapter the secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 51; 1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

## Chapter 72.27 RCW

### INTERSTATE COMPACT ON MENTAL HEALTH

#### Sections

72.27.010	Compact enacted.
72.27.020	Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.
72.27.030	Supplementary agreements.
72.27.040	Financial arrangements.
72.27.050	Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.
72.27.060	Transmittal of copies of chapter.
72.27.070	Right to deport aliens and return residents of nonparty states preserved.

**72.27.010 Compact enacted.** The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

#### ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made avail-

able for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

## ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

## ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send

the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

## ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

## ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

## ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

## ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

## ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: PROVIDED, HOWEVER, That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee,

conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

## ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

## ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

## ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

## ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

## ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any

patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

#### ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

**Chapter added:** "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

**Effective date—1965 ex.s. c 26:** "This act shall take effect upon July 1, 1965." [1965 ex.s. c 26 § 9.]

**72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies.** Pursuant to said compact provided in RCW 72.27.010, the secretary of social and health services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1979 c 141 § 233; 1965 ex.s. c 26 § 2.]

**72.27.030 Supplementary agreements.** The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

**72.27.040 Financial arrangements.** The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact

or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

**72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable.** No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of \*RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

**\*Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

**72.27.060 Transmittal of copies of chapter.** Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

**72.27.070 Right to deport aliens and return residents of nonparty states preserved.** Nothing in this chapter shall affect the right of the secretary of social and health services to deport aliens and return residents of nonparty states as provided in chapter 72.25 RCW. [1979 c 141 § 234; 1965 ex.s. c 26 § 7.]

### Chapter 72.29 RCW

## MULTI-USE FACILITIES FOR THE MENTALLY OR PHYSICALLY HANDICAPPED OR THE MENTALLY ILL

#### Sections

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).

**72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).** After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling

of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically handicapped or the mentally ill. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically handicapped, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state. [1977 ex.s. c 80 § 52; 1965 c 11 § 3.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Declaration of purpose—1965 c 11:** "The state facilities to provide community services to the mentally and physically deficient and the mentally ill are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for the mentally and physically deficient and the mentally ill." [1965 c 11 § 1.]

*Department created—Powers and duties transferred to:* RCW 43.20A.030.

*Use of Harrison Memorial Hospital property for services for persons with developmental disabilities:* RCW 71A.20.040.

### Chapter 72.36 RCW

#### SOLDIERS' AND VETERANS' HOMES AND VETERANS' CEMETERY

##### Sections

72.36.010	Establishment of soldiers' home.
72.36.020	Superintendents—Licensed nursing home administrator.
72.36.030	Admission—Applicants must apply for federal and state benefits.
72.36.035	Definitions.
72.36.037	Resident rights.
72.36.040	Colony established—Who may be admitted.
72.36.045	State veterans' homes—Maintenance defined.
72.36.050	Regulations of home applicable—Rations, medical attendance, clothing.
72.36.055	Domiciliary and nursing care to be provided.
72.36.060	Federal funds.
72.36.070	Washington veterans' home.
72.36.075	Eastern Washington veterans' home.
72.36.077	Eastern Washington veterans' home—Funding—Intent.
72.36.090	Hobby promotion.
72.36.100	Purchase of equipment, materials for therapy, hobbies.
72.36.110	Burial of deceased member or deceased spouse or domestic partner.
72.36.115	Eastern Washington state veterans' cemetery.
72.36.120	Deposit of veteran income—Expenditures and revenue control.
72.36.140	Medicaid qualifying operations.
72.36.145	Reduction in allowable income—Certification of qualifying operations.
72.36.150	Resident council—Generally.
72.36.160	Personal needs allowance.
72.36.1601	Findings.

*Charitable organizations—Application for registration—Contents—Fee:* RCW 19.09.075.

*Commitment to veterans administration or other federal agency:* RCW 73.36.165.

*Disposition of property of deceased inmate of state institution:* RCW 11.08.101, 11.08.111, 11.08.120.

*Employment of dental hygienist without supervision of dentist authorized in state institutions:* RCW 18.29.056.

*Record as to patients or inmates for purposes of vital statistics:* RCW 70.58.270.

**72.36.010 Establishment of soldiers' home.** There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home. [1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

**72.36.020 Superintendents—Licensed nursing home administrator.** The director of the department of veterans affairs shall appoint a superintendent for each state veterans' home. The superintendent shall exercise management and control of the institution in accordance with either policies or procedures promulgated by the director of the department of veterans affairs, or both, and rules and regulations of the department. In accordance with chapter 18.52 RCW, the individual appointed as superintendent for either state veterans' home shall be a licensed nursing home administrator. The department may request a waiver to, or seek an alternate method of compliance with, the federal requirement for a licensed on-site administrator during a transition phase from July 1, 1993, to June 30, 1994. [1993 sp.s. c 3 § 4; 1977 c 31 § 2; 1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

*Chief executive officers, general provisions:* RCW 72.01.060.

**72.36.030 Admission—Applicants must apply for federal and state benefits.** All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to support themselves and their families may be admitted to a state veterans' home under rules as may be adopted by the director of the department, unless sufficient facilities and resources are not available to accommodate these people:

(1)(a) All honorably discharged veterans of a branch of the armed forces of the United States or merchant marines; (b) members of the state militia disabled while in the line of duty; (c) Filipino World War II veterans who swore an oath to American authority and who participated in military engagements with American soldiers; and (d) the spouses or the domestic partners of these veterans, merchant marines, and members of the state militia. However, it is required that the spouse was married to and living with the veteran, or that the domestic partner was in a domestic partnership and living with the veteran, three years prior to the date of application for admittance, or, if married to or in a domestic partnership with him or her since that date, was also a resident of a state veterans' home in this state or entitled to admission thereto;

(2)(a) The spouses or domestic partners of: (i) All honorably discharged veterans of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who were disabled while in the line of duty and who were residents of a state veterans' home in this state or were entitled to admission to one of this state's state veteran homes at the time of death; (b) the spouses or domestic partners of: (i) All honorably discharged veterans of a branch of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who would have been entitled to admission to one of this state's state veterans' homes at the time of death, but for the fact that the spouse or domestic partner was

not indigent, but has since become indigent and unable to support himself or herself and his or her family. However, the included spouse or included domestic partner shall be at least fifty years old and have been married to and living with their spouse, or in a domestic partnership and living with their domestic partner, for three years prior to the date of their application. The included spouse or included domestic partner shall not have been married since the death of his or her spouse or domestic partner to a person who is not a resident of one of this state's state veterans' homes or entitled to admission to one of this state's state veterans' homes; and

(3) All applicants for admission to a state veterans' home shall apply for all federal and state benefits for which they may be eligible, including medical assistance under chapter 74.09 RCW. [2008 c 6 § 503; 1998 c 322 § 49; 1993 sp.s. c 3 § 5; 1977 ex.s. c 186 § 1; 1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54:** See RCW 74.46.906.

**Severability—1998 c 322:** See RCW 74.46.907.

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**Severability—1977 ex.s. c 186:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 186 § 12.]

**72.36.035 Definitions.** For purposes of this chapter, unless the context clearly indicates otherwise:

(1) "Actual bona fide residents of this state" means persons who have a domicile in the state of Washington immediately prior to application for admission to a state veterans' home.

(2) "Department" means the Washington state department of veterans affairs.

(3) "Domicile" means a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(4) "State veterans' homes" means the Washington soldiers' home and colony in Orting, the Washington veterans' home in Retsil, and the eastern Washington veterans' home.

(5) "Veteran" has the same meaning established in RCW 41.04.007. [2002 c 292 § 5; 2001 2nd sp.s. c 4 § 2; 1993 sp.s. c 3 § 6; 1991 c 240 § 2; 1977 ex.s. c 186 § 11.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.037 Resident rights.** Chapter 70.129 RCW applies to this chapter and persons regulated under this chapter. [1994 c 214 § 23.]

**Severability—Conflict with federal requirements—Captions not law—1994 c 214:** See RCW 70.129.900 through 70.129.902.

**72.36.040 Colony established—Who may be admitted.** There is hereby established what shall be known as the

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"Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district and have been actual bona fide residents of this state at the time of their application and who have personal property of less than one thousand five hundred dollars and/or a monthly income insufficient to meet their needs outside of residence in such colony and soldiers' home as determined by standards of the department of veterans' affairs, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses or domestic partners with whom they have lived for three years prior to application for membership in said colony. Also, the spouse or domestic partner of any such veteran or disabled member of the state militia is eligible for membership in said colony, if such spouse or such domestic partner is the surviving spouse or surviving domestic partner of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: PROVIDED, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses or said domestic partners.

(2) The spouses or domestic partners of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses or domestic partners of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which spouses or domestic partners have since the death of their said spouses or domestic partners become indigent and unable to earn a support for themselves: PROVIDED, That such spouses or such domestic partners are not less than fifty years of age and have not been married or in a domestic partnership since the decease of their said spouses or said domestic partners to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the state soldiers' home for temporary care when requiring treatment. [2008 c 6 § 504; 1977 ex.s. c 186 § 2. Prior: 1973 1st ex.s. c 154 § 102; 1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040; prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.045 State veterans' homes—Maintenance defined.** In the maintenance of the state veterans' homes by the state through the department of veterans' affairs, such maintenance shall include, but not be limited to, the provision of members' room and board, medical and dental care, physical and occupational therapy, and recreational activities, with the necessary implementing transportation, equipment, and personnel therefor. [2001 2nd sp.s. c 4 § 3; 1977 ex.s. c 186 § 10.]

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.050 Regulations of home applicable—Rations, medical attendance, clothing.** The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state soldiers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the director, be supplied with medical attendance and supplies from the home dispensary, rations, and clothing for a member and his or her spouse or domestic partner, or for a spouse or domestic partner admitted under RCW 72.36.040 as now or hereafter amended. The value of the supplies, rations, and clothing furnished such persons shall be determined by the director of veterans affairs and be included in the biennial budget. [2008 c 6 § 505; 1979 c 65 § 1; 1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**72.36.055 Domiciliary and nursing care to be provided.** The state veterans' homes shall provide both domiciliary and nursing care. The level of domiciliary members shall remain consistent with the facilities available to accommodate those members: PROVIDED, That nothing in this section shall preclude the department from moving residents between nursing and domiciliary care in order to better utilize facilities and maintain the appropriate care for the members. [2001 2nd sp.s. c 4 § 4; 1977 ex.s. c 186 § 6.]

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.060 Federal funds.** The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the state veterans' homes. [2001 2nd sp.s. c 4 § 5; 1977 ex.s. c 186 § 3; 1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.070 Washington veterans' home.** There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged veterans who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the spouses or domestic partners of such veterans. [2008 c 6 § 506; 1977 ex.s. c 186 § 4; 1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.075 Eastern Washington veterans' home.** There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "eastern Washington veterans' home," which branch shall be a home for veterans and their spouses who meet admission requirements contained in RCW 72.36.030. [2001 2nd sp.s. c 4 § 6.]

**72.36.077 Eastern Washington veterans' home—Funding—Intent.** The department of veterans affairs indicates that it may acquire and staff an existing one-hundred-bed skilled nursing facility in Spokane and reopen it as an eastern Washington veterans' home by using a combination of funding sources. Funding sources include federal per diem payments, contributions from residents' incomes, and federal and state medicaid payments. In authorizing the establishment of an eastern Washington veterans' home, it is the intent of the legislature that the state general fund shall not provide support in future biennia for the eastern Washington veterans' home except for amounts required to pay the state share of medicaid costs. [2001 2nd sp.s. c 4 § 1.]

**72.36.090 Hobby promotion.** The superintendents of the state veterans' homes are hereby authorized to:

(1) Institute programs of hobby promotion designed to improve the general welfare and mental condition of the persons under their supervision;

(2) Provide for the financing of these programs by grants from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies sponsored to projects which will, in their judgment, be self-liquidating or self-sustaining. [2001 2nd sp.s. c 4 § 8; 1977 ex.s. c 186 § 9; 1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.100 Purchase of equipment, materials for therapy, hobbies.** The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

*Division of purchasing: RCW 43.19.190.*

**72.36.110 Burial of deceased member or deceased spouse or domestic partner.** The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: PROVIDED, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: PROVIDED FURTHER, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide for the burial of spouses or domestic partners of members of the colony of the Washington soldiers' home. [2008 c 6 § 507; 1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

*Disposition of property of deceased inmate of state institution:* RCW 11.08.101, 11.08.111, 11.08.120.

**72.36.115 Eastern Washington state veterans' cemetery.** (1) The department shall establish and maintain in this state an eastern Washington state veterans' cemetery.

(2) All honorably discharged veterans, as defined by RCW 41.04.007, and their spouses are eligible for interment in the eastern Washington state veterans' cemetery.

(3) The department shall collect all federal veterans' burial benefits and other available state or county resources.

(4) The department shall adopt rules defining the services available, eligibility, fees, and the general operations associated with the eastern Washington state veterans' cemetery. [2007 c 43 § 2.]

**Finding—2007 c 43:** "The legislature recognizes the unique sacrifices made by veterans and their family members. The legislature recognizes further that while all veterans are entitled to interment at the Tahoma national cemetery, veterans and families living in eastern Washington desire a veterans' cemetery location closer to their homes. The legislature requested and received the department of veterans affairs feasibility study and business plan outlining the need and feasibility and now intends to establish a state veterans' cemetery to honor veterans in their final resting place." [2007 c 43 § 1.]

**72.36.120 Deposit of veteran income—Expenditures and revenue control.** All income of residents of a state veterans' home, other than the personal needs allowance and income from therapeutic employment, shall be deposited in the state general fund—local and be available to apply against the cost of care provided by the state veterans' homes. The resident council created under RCW 72.36.150 may make recommendations on expenditures under this section. All expenditures and revenue control shall be subject to chapter 43.88 RCW. [1993 sp.s. c 3 § 7; 1977 ex.s. c 186 § 7.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**Severability—1977 ex.s. c 186:** See note following RCW 72.36.030.

**72.36.140 Medicaid qualifying operations.** Qualifying operations at state veterans' homes operated by the department of veterans affairs, may be provided under the state's medicaid reimbursement system as administered by the department of social and health services.

The department of veterans affairs may contract with the department of social and health services under the authority of RCW 74.09.120 but shall be exempt from RCW 74.46.660(6), and the provisions of \*RCW 74.46.420 through 74.46.590 shall not apply to the medicaid rate-setting and reimbursement systems. The nursing care operations at the state veterans' homes shall be subject to inspection by the department of social and health services. This includes every part of the state veterans' home's premises, an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs, methods of supply, and any other records the department of social and health services deems relevant. [1993 sp.s. c 3 § 2.]

**\*Reviser's note:** RCW 74.46.420 through 74.46.590 were repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

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**Effective date—1993 sp.s. c 3:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 3 § 12.]

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**72.36.145 Reduction in allowable income—Certification of qualifying operations.** No reduction in the allowable income provided for in current department rules may take effect until the effective date of certification of qualifying operations at state veterans' homes for participation in the state's medicaid reimbursement system. [1993 sp.s. c 3 § 10.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**72.36.150 Resident council—Generally.** The department of veterans affairs shall provide by rule for the annual election of a resident council for each state veterans' home. The council shall annually elect a chair from among its members, who shall call and preside at council meetings. The resident council shall serve in an advisory capacity to the director of the department of veterans affairs and to the superintendent in all matters related to policy and operational decisions affecting resident care and life in the home.

By October 31, 1993, the department shall adopt rules that provide for specific duties and procedures of the resident council which create an appropriate and effective relationship between residents and the administration. These rules shall be adopted after consultation with the resident councils and the state long-term care ombuds, and shall include, but not be limited to the following:

- (1) Provision of staff technical assistance to the councils;
- (2) Provision of an active role for residents in developing choices regarding activities, foods, living arrangements, personal care, and other aspects of resident life;
- (3) A procedure for resolving resident grievances; and
- (4) The role of the councils in assuring that resident rights are observed.

The development of these rules should include consultation with all residents through the use of both questionnaires and group discussions.

The resident council for each state veterans' home shall annually review the proposed expenditures from the benefit fund that shall contain all private donations to the home, all bequeaths, and gifts. Disbursements from each benefit fund shall be for the benefit and welfare of the residents of the state veterans' homes. Disbursements from the benefits funds shall be on the authorization of the superintendent or his or her authorized representative after approval has been received from the home's resident council.

The superintendent or his or her designated representative shall meet with the resident council at least monthly. The director of the department of veterans affairs shall meet with each resident council at least three times each year. [1993 sp.s. c 3 § 3.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**72.36.160 Personal needs allowance.** The legislature finds that to meet the objectives of RCW 72.36.1601, the per-

sonal needs allowance for all nursing care residents of the state veterans' homes shall be an amount approved by the federal health care financing authority, but not less than ninety dollars or more than one hundred sixty dollars per month during periods of residency. For all domiciliary residents, the personal needs allowance shall be one hundred sixty dollars per month, or a higher amount defined in rules adopted by the department. [1993 sp.s. c 3 § 9.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**72.36.1601 Findings.** The legislature finds that continued operation of state veterans' homes is necessary to meet the needs of eligible veterans for shelter, personal and nursing care, and related services; that certain residents of veterans' homes or services provided to them may be eligible for participation in the state's medicaid reimbursement system; and that authorizing medicaid participation is appropriate to address the homes' long-term funding needs. The legislature also finds that it is important to maintain the dignity and self-respect of residents of veterans' homes, by providing for continued resident involvement in the homes' operation, and through retention of current law guaranteeing a minimum amount of allowable personal income necessary to meet the greater costs for these residents of transportation, communication, and participation in family and community activities that are vitally important to their maintenance and rehabilitation. [1993 sp.s. c 3 § 1.]

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

## Chapter 72.40 RCW

### STATE SCHOOLS FOR BLIND, DEAF, SENSORY HANDICAPPED

#### Sections

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*Employment of dental hygienist without supervision of dentist authorized in state institutions: RCW 18.29.056.*

*Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.*

*Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.*

#### **72.40.010 Schools established—Purpose—Direction.**

There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The school for the blind shall be under the direction of the superintendent with the advice of the board of trustees. The school for the deaf shall be under the direction of the superintendent and the board of trustees. [2002 c 209 § 1; 1985 c 378 § 11; 1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

#### **72.40.019 State school for the deaf—Appointment of superintendent—Qualifications.**

The governor shall appoint a superintendent for the state school for the deaf. The superintendent shall have a masters degree from an accredited college or university in school administration or deaf education, five years of experience teaching deaf students in the classroom, and three years administrative or supervisory experience in programs for deaf students. [1985 c 378 § 14.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

#### **72.40.020 State school for the blind—Appointment of superintendent—Qualifications.**

The governor shall appoint a superintendent for the state school for the blind. The superintendent shall have a masters degree from an accredited college or university in school administration or blind education, five years of experience teaching blind students in the classroom, and three years administrative or supervisory experience in programs for blind students. [1985 c 378 § 13; 1979 c 141 § 247; 1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.022 Superintendent of the state school for the blind—Powers and duties.** In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind:

- (1) Shall have full control of the school and the property of various kinds.
- (2) May establish criteria, in addition to state certification, for teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the board of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May, except as otherwise provided by law, enter into contracts the superintendent deems essential for the operation of the school.

(13) May adopt rules providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(14) Shall prepare and administer the school's budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(15) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school. [2002 c 209 § 2; 1993 c 147 § 1; 1985 c 378 § 15.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.023 Superintendent of the state school for the deaf—Powers and duties.** In addition to any other powers and duties prescribed by law, the superintendent of the state school for the deaf:

(1) Shall have the responsibility for the supervision and management of the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for the teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to

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chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the approval of the board of trustees.

(5) May establish, with the approval of the board of trustees, new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as approved by the board of trustees, as deemed necessary for the governance, management, and operation of the housing facilities.

(7) Shall, as approved by the board of trustees, control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules, as approved by the board of trustees, for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May adopt rules, as approved by the board of trustees, providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(13) Shall prepare, submit to the board of trustees for approval, and administer the budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(14) May adopt rules under chapter 34.05 RCW, as approved by the board of trustees, and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school. [2002 c 209 § 3.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.40.024 Superintendents—Additional powers and duties.** In addition to the powers and duties under RCW 72.40.022 and 72.40.023, the superintendent of each school shall:

(1) Monitor the location and educational placement of each student reported to the superintendents by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superin-

tendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments. [2002 c 209 § 4; 1993 c 147 § 2; 1985 c 378 § 17.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.028 Teachers' qualifications—Salaries—Provisional certification.** All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the Washington professional educator standards board or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty. [2006 c 263 § 829; 1985 c 378 § 18.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.031 School year—School term—Legal holidays—Use of schools.** The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the 30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in the public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in the public schools. The school shall observe all legal holidays, in the same manner as other agencies of state government, and the schools will not be in session on such days and such other days as may be approved by the respective superintendents. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the respective superintendents, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of such schools. [1985 c 378 § 16; 1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.040 Who may be admitted.** (1) The schools shall be free to residents of the state between the ages of three and twenty-one years, who are blind/visually impaired or

deaf/hearing impaired, or with other disabilities where a vision or hearing disability is the major need for services.

(2) The schools may provide nonresidential services to children ages birth through three who meet the eligibility criteria in this section, subject to available funding.

(3) Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school faculty: PROVIDED, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training.

(4) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a student who is an adjudicated sex offender except that the schools shall not admit or retain a student who is an adjudicated level III sex offender as provided in RCW 13.40.217(3). [2000 c 125 § 8; 1993 c 147 § 3; 1985 c 378 § 19; 1984 c 160 § 4; 1977 ex.s. c 80 § 68; 1969 c 39 § 1; 1959 c 28 § 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Severability—1984 c 160:** See note following RCW 28A.155.020.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.40.050 Admission of nonresidents.** (1) The superintendents may admit to their respective schools visually or hearing impaired children from other states as appropriate, but the parents or guardians of such children or other state will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children as set by the applicable superintendent.

(2) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a nonresident student who is an adjudicated sex offender, or the equivalent under the laws of the state in which the student resides, except that the schools shall not admit or retain a nonresident student who is an adjudicated level III sex offender or the equivalent under the laws of the state in which the student resides. [2000 c 125 § 9; 1985 c 378 § 20; 1979 c 141 § 249; 1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.060 Duty of school districts.** It shall be the duty of all school districts in the state, to report to their respective educational service districts the names of all visually or hearing impaired youth residing within their respective school

districts who are between the ages of three and twenty-one years. [1985 c 378 § 21; 1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—1969 ex.s. c 176:** The effective date of this section, RCW 72.40.070, 72.40.080, and 72.40.100 was April 25, 1969.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

*Superintendent's duties:* RCW 28A.400.030.

**72.40.070 Duty of educational service districts.** It shall be the duty of each educational service district to make a full and specific report of visually or hearing impaired youth to the superintendent of the school for the blind or the school for the deaf, as the case may be and the superintendent of public instruction, annually. The superintendent of public instruction shall report about the hearing or visually impaired youth to the school for the blind and the school for the deaf, as the case may be, annually. [1985 c 378 § 22; 1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—1969 ex.s. c 176:** See note following RCW 72.40.060.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

*Educational service districts—Superintendents—Boards:* Chapter 28A.310 RCW.

**72.40.080 Duty of parents.** It shall be the duty of the parents or the guardians of all such visually or hearing impaired youth to send them each year to the proper school. Full and due consideration shall be given to the parent's or guardian's preference as to which program the child should attend. The educational service district superintendent shall take all action necessary to enforce this section. [1993 c 147 § 4; 1985 c 378 § 23; 1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—1969 ex.s. c 176:** See note following RCW 72.40.060.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

*Children with disabilities, parental responsibility, commitment:* Chapter 26.40 RCW.

**72.40.090 Weekend transportation—Expense.** Notwithstanding any other provision of law, the state school for the blind and the school for the deaf may arrange and provide for weekend transportation to and from schools. This transportation shall be at no cost to students and parents, as allowed within the appropriations allocated to the schools. [1993 c 147 § 5; 1985 c 378 § 24; 1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

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**72.40.100 Penalty.** Any parent, guardian, or educational service district superintendent who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any district or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1987 c 202 § 229; 1985 c 378 § 25; 1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**Effective date—1969 ex.s. c 176:** See note following RCW 72.40.060.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**72.40.110 Employees' hours of labor.** Employees' hours of labor shall follow all state merit rules as they pertain to various work classifications and current collective bargaining agreements. [1993 c 147 § 6; 1985 c 378 § 12.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.40.120 School for the deaf—School for the blind—Appropriations.** Any appropriation for the school for the deaf or the school for the blind shall be made directly to the school for the deaf or the school for the blind. [1991 c 65 § 1.]

**Effective date—1991 c 65:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 65 § 3.]

**72.40.200 Safety of students and protection from child abuse and neglect.** The state school for the deaf and the state school for the blind shall promote the personal safety of students and protect the children who attend from child abuse and neglect as defined in RCW 26.44.020. [2000 c 125 § 1.]

**Conflict with federal requirements—2000 c 125:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2000 c 125 § 11.]

**72.40.210 Reports to parents—Requirement.** The superintendents of the state school for the deaf and the state school for the blind or their designees shall immediately report to the persons indicated the following events:

- (1) To the child's parent, custodian, or guardian:
  - (a) The death of the child;
  - (b) Hospitalization of a child in attendance or residence at the school;
  - (c) Allegations of child abuse or neglect in which the parent's child in attendance or residence at the school is the alleged victim;

(d) Allegations of physical or sexual abuse in which the parent's child in attendance or residence at the school is the alleged perpetrator;

(e) Life-threatening illness;

(f) The attendance at the school of any child who is a registered sex offender under RCW 9A.44.130 as permitted by RCW 4.24.550.

(2) Notification to the parent shall be made by the means most likely to be received by the parent. If initial notification is made by telephone, such notification shall be followed by notification in writing within forty-eight hours after the initial oral contact is made. [2000 c 125 § 2.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.220 Behavior management policies, procedures, and techniques.** (1) The superintendents of the state school for the deaf and the state school for the blind shall maintain in writing and implement behavior management policies and procedures that accomplish the following:

(a) Support the child's appropriate social behavior, self-control, and the rights of others;

(b) Foster dignity and self-respect for the child;

(c) Reflect the ages and developmental levels of children in care.

(2) The state school for the deaf and the state school for the blind shall use proactive, positive behavior support techniques to manage potential child behavior problems. These techniques shall include but not be limited to:

(a) Organization of the physical environment and staffing patterns to reduce factors leading to behavior incidents;

(b) Intervention before behavior becomes disruptive, in the least invasive and least restrictive manner available;

(c) Emphasis on verbal deescalation to calm the upset child;

(d) Redirection strategies to present the child with alternative resolution choices. [2000 c 125 § 3.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.230 Staff orientation and training.** (1) The state school for the deaf and the state school for the blind shall ensure that all staff, within two months of beginning employment, complete a minimum of fifteen hours of job orientation which shall include, but is not limited to, presentation of the standard operating procedures manual for each school, describing all policies and procedures specific to the school.

(2) The state school for the deaf and the state school for the blind shall ensure that all new staff receive thirty-two hours of job specific training within ninety days of employment which shall include, but is not limited to, promoting and protecting student personal safety. All staff shall receive thirty-two hours of ongoing training in these areas every two years. [2000 c 125 § 4.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.240 Residential staffing requirement.** The residential program at the state school for the deaf and the state school for the blind shall employ residential staff in sufficient numbers to ensure the physical and emotional needs of the

residents are met. Residential staff shall be on duty in sufficient numbers to ensure the safety of the children residing there.

For purposes of this section, "residential staff" means staff in charge of supervising the day-to-day living situation of the children in the residential portion of the schools. [2000 c 125 § 5.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.250 Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures.** In addition to the powers and duties under RCW 72.40.022 and 72.40.024, the superintendents of the state school for the deaf and the state school for the blind shall:

(1) Develop written procedures for the supervision of employees and volunteers who have the potential for contact with students. Such procedures shall be designed to prevent child abuse and neglect by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

(a) Staffing patterns and the rationale for such;

(b) Responsibilities of supervisors;

(c) The method by which staff and volunteers are made aware of the identity of all supervisors, including designated on-site supervisors;

(d) Provision of written supervisory guidelines to employees and volunteers;

(e) Periodic supervisory conferences for employees and volunteers; and

(f) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the civil service law.

(2) Develop written procedures for the protection of students when there is reason to believe an incident has occurred which would render a child student an abused or neglected child within the meaning of RCW 26.44.020. Such procedures shall include, but need not be limited to, the following:

(a) Investigation. Immediately upon notification that a report of child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent shall:

(i) Preserve any potential evidence through such actions as securing the area where suspected abuse or neglect occurred;

(ii) Obtain proper and prompt medical evaluation and treatment, as needed, with documentation of any evidence of abuse or neglect; and

(iii) Provide necessary assistance to the department of social and health services and local law enforcement in their investigations;

(b) Safety. Upon notification that a report of suspected child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the students, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the students involved in the report and of any other students simi-

larly situated, and take such additional action as is necessary to prevent future acts of abuse or neglect. Such action may include:

- (i) Consistent with federal and state law:
  - (A) Removing the alleged perpetrator from the school;
  - (B) Increasing the degree of supervision of the alleged perpetrator; and
  - (C) Initiating appropriate disciplinary action against the alleged perpetrator;
- (ii) Provision of increased training and increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and neglect;
- (iii) Temporary removal of the students from a program and reassignment of the students within the school, as an emergency measure, if it is determined that there is a risk to the health or safety of such students in remaining in that program. Whenever a student is removed, pursuant to this subsection (2)(b)(iii), from a special education program or service specified in his or her individualized education program, the action shall be reviewed in an individualized education program meeting; and
- (iv) Provision of counseling to the students involved in the report or any other students, as appropriate;
- (c) Corrective action plans. Upon receipt of the results of an investigation by the department of social and health services pursuant to a report of suspected child abuse or neglect, the superintendent, after consideration of any recommendations by the department of social and health services for preventive and remedial action, shall implement a written plan of action designed to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect. [2000 c 125 § 6.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.260 Protection from child abuse and neglect—Student instruction.** In consideration of the needs and circumstances of the program, the state school for the deaf and the state school for the blind shall provide instruction to all students in techniques and procedures which will enable the students to protect themselves from abuse and neglect. Such instruction shall be described in a written plan to be submitted to the board of trustees for review and approval, and shall be:

- (1) Appropriate for the age, individual needs, and particular circumstances of students, including the existence of mental, physical, emotional, or sensory disabilities;
- (2) Provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and
- (3) Provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school. [2000 c 125 § 7.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.270 Protection from sexual victimization—Policy.** (1) The schools shall implement a policy for the children who reside at the schools protecting those who are vulnerable to sexual victimization by other children who are sexually

aggressive and residing at the schools. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every child who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a child is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The definition of "sexually aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who may be vulnerable to victimization by children identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning children who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as children assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in the residential facilities of the schools between children presenting moderate to high risk of sexually aggressive behavior and children assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any child residing at the schools who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

(2) For the purposes of this section, the following terms have the following meanings:

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where children are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances. [2000 c 125 § 10.]

**Conflict with federal requirements—2000 c 125:** See note following RCW 72.40.200.

**72.40.280 Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards.** (1) The department of social and health services must periodically

cally monitor the residential program at the state school for the deaf, including but not limited to examining the residential-related policies and procedures as well as the residential facilities. The department of social and health services must make recommendations to the school's superintendent and the board of trustees or its successor board on health and safety improvements related to child safety and well-being. The department of social and health services must conduct the monitoring reviews at least quarterly until December 1, 2006.

(2) The department of social and health services must conduct a comprehensive child health and safety review, as defined in rule, of the residential program at the state school for the deaf every three years. The department of social and health services must deliver the first health and safety review to the governor, the legislature, the school's superintendent, and the school's board of trustees or successor board by December 1, 2004.

(3) The state school for the deaf must provide the department of social and health services' staff with full and complete access to all records and documents that the department staff may request to carry out the requirements of this section. The department of social and health services must have full and complete access to all students and staff of the state school for the deaf to conduct interviews to carry out the requirements of this section.

(4) For the purposes of this section, the department of social and health services must use the safety standards established in this chapter when conducting the reviews. [2002 c 208 § 2.]

**Chapter 72.41 RCW**

**BOARD OF TRUSTEES—SCHOOL FOR THE BLIND**

Sections

72.41.010	Intention—Purpose.
72.41.015	"Superintendent" defined.
72.41.020	Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.
72.41.025	Membership, effect of creation of new congressional districts or boundaries.
72.41.030	Bylaws—Rules and regulations—Officers.
72.41.040	Powers and duties.
72.41.060	Travel expenses.
72.41.070	Meetings.

**72.41.010 Intention—Purpose.** It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and to the superintendent of the Washington state school for the blind, in the development of programs for the visually impaired, and in the operation of the Washington state school for the blind. [1985 c 378 § 28; 1973 c 118 § 1.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.41.015 "Superintendent" defined.** Unless the context clearly requires otherwise, as used in this chapter "superintendent" means superintendent of the state school for the blind. [1985 c 378 § 27.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.41.020 Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations.**

There is hereby created a board of trustees for the state school for the blind to be composed of a resident from each of the state's congressional districts now or hereafter existing. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the national federation of the blind of Washington, one representative designated by the teacher association of the Washington state school for the blind, and a representative of the classified staff designated by his or her exclusive bargaining representative shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator, appointed after July 1, 1986, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may convene from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1993 c 147 § 7; 1985 c 378 § 29; 1982 1st ex.s. c 30 § 13; 1973 c 118 § 2.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.41.025 Membership, effect of creation of new congressional districts or boundaries.** The terms of office of trustees on the board for the state school for the blind who are appointed from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each trustee may continue to serve in office for the balance of

the term for which he or she was appointed: PROVIDED, That the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any such term shall be filled pursuant to RCW 72.41.020, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her election. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [1982 1st ex.s. c 30 § 14.]

#### **72.41.030 Bylaws—Rules and regulations—Officers.**

Within thirty days of their appointment or July 1, 1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

**72.41.040 Powers and duties.** The board of trustees of the state school for the blind:

(1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the superintendent;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the superintendent;

(3) Shall submit a list of three qualified candidates for superintendent to the governor and shall advise the superintendent about the criteria and policy to be used in the selection of members of the faculty and such other administrative officers and other employees, who shall with the exception of the superintendent all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after July 1, 1986, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) Shall submit an evaluation of the superintendent to the governor by July 1 of each odd-numbered year and may recommend to the governor that the superintendent be removed for misfeasance, malfeasance, or wilful neglect of duty;

(5) May recommend to the superintendent the establishment of new facilities as needs demand;

(6) May recommend to the superintendent rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(7) May make recommendations to the superintendent concerning classrooms and other facilities to be used for

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summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(8) May make recommendations to the superintendent for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the blind;

(9) Shall recommend to the superintendent, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(10) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(11) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(12) Shall perform any other duties and responsibilities prescribed by the superintendent. [1985 c 378 § 30; 1973 c 118 § 4.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.41.060 Travel expenses.** Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

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

**72.41.070 Meetings.** The board of trustees shall meet at least quarterly. [1993 c 147 § 8; 1973 c 118 § 7.]

## **Chapter 72.42 RCW**

### **BOARD OF TRUSTEES—SCHOOL FOR THE DEAF**

#### Sections

72.42.010	Intention—Purpose.
72.42.015	"Superintendent" defined.
72.42.016	"School" defined.
72.42.021	Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies.
72.42.031	Bylaws—Rules—Officers—Quorum.
72.42.041	Powers and duties.
72.42.060	Travel expenses.
72.42.070	Meetings.

**72.42.010 Intention—Purpose.** It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform needed oversight services to the governor and the legislature of the Washington state school for the deaf in the development of programs for the hearing impaired, and in the operation of the Washington state school for the deaf. [2002 c 209 § 5; 1985 c 378 § 31; 1972 ex.s. c 96 § 1.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.42.015 "Superintendent" defined.** Unless the context clearly requires otherwise as used in this chapter "superintendent" means superintendent of the Washington state school for the deaf. [1985 c 378 § 32.]

**Severability—Effective date—1985 c 378:** See notes following RCW 72.01.050.

**72.42.016 "School" defined.** Unless the context clearly requires otherwise, as used in this chapter "school" means the Washington state school for the deaf. [2002 c 209 § 6.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.021 Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies.** (1) The governance of the school shall be vested in a board of trustees. The board shall consist of nine members appointed by the governor, with the consent of the senate. The board shall be composed of a resident from each of the state's congressional districts and may include:

- (a) One member who is deaf or hearing impaired;
- (b) Two members who are experienced educational professionals;
- (c) One member who is experienced in providing residential services to youth; and
- (d) One member who is the parent of a child who is deaf or hearing impaired and who is receiving or has received educational services related to deafness or hearing impairment from a public educational institution.

(2) No voting trustee may be an employee of the school, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator appointed after July 1, 1986, or an elected officer or member of the legislative authority of any municipal corporation.

(3) Trustees shall be appointed by the governor to serve a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term. Of the initial members, three must be appointed for two-year terms, three must be appointed for three-year terms, and the remainder must be appointed for five-year terms.

(4) The board shall not be deemed unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed so long as the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any term shall be filled pursuant to subsection (3) of this section by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the con-

gressional district which corresponds in number with the congressional district from which the incumbent was appointed. [2002 c 209 § 7.]

**Effective date—2002 c 209:** "This act takes effect July 1, 2002, except that the governor may appoint the members of the board of trustees under section 7 of this act prior to the beginning of their terms of office on July 1, 2002." [2002 c 209 § 12.]

**72.42.031 Bylaws—Rules—Officers—Quorum.** (1) The board of trustees shall organize, adopt bylaws for its own governance, and adopt rules not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice-chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified.

(2) A majority of the voting members of the board in office constitutes a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed by its bylaws, rules, or regulations. [2002 c 209 § 9.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.041 Powers and duties.** The board of trustees of the school:

(1) Shall adopt rules and regulations for its own governance;

(2) Shall direct the development of, approve, and monitor the enforcement of policies, rules, and regulations pertaining to the school, including but not limited to:

(a) The use of classrooms and other facilities for summer or night schools or for public meetings and any other uses;

(b) Pedestrian and vehicular traffic on property owned, operated, or maintained by the school;

(c) Governance, management, and operation of the residential facilities;

(d) Transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect; and

(e) Compliance with state and federal education civil rights laws at the school;

(3) Shall develop a process for recommending candidates for the position of superintendent and upon a vacancy shall submit a list of three qualified candidates for superintendent to the governor;

(4) Shall submit an evaluation of the superintendent to the governor by July 1st of each odd-numbered year that includes a recommendation regarding the retention of the superintendent;

(5) May recommend to the governor at any time that the superintendent be removed for conduct deemed by the board to be detrimental to the interests of the school;

(6) Shall prepare and submit by July 1st of each even-numbered year a report to the governor and the appropriate committees of the legislature which contains a detailed summary of the school's progress on performance objectives and the school's work, facility conditions, and revenues and costs of the school for the previous year and which contains those recommendations it deems necessary and advisable for the governor and the legislature to act on;

(7) Shall approve the school's budget and all funding requests, both operating and capital, submitted to the governor;

(8) Shall direct and approve the development and implementation of comprehensive programs of education, training, and as needed residential living, such that students served by the school receive a challenging and quality education in a safe school environment;

(9) Shall direct, monitor, and approve the implementation of a comprehensive continuous quality improvement system for the school;

(10) Shall monitor and inspect all existing facilities of the school and report its findings in its biennial report to the governor and appropriate committees of the legislature; and

(11) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate. [2002 c 209 § 8.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**72.42.060 Travel expenses.** Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the deaf. [1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

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

**72.42.070 Meetings.** The board of trustees shall meet at least quarterly but may meet more frequently at such times as the board by resolution determines or the bylaws of the board prescribe. [2002 c 209 § 10; 1993 c 147 § 10; 1972 ex.s. c 96 § 7.]

**Effective date—2002 c 209:** See note following RCW 72.42.021.

**Chapter 72.49 RCW**

**NARCOTIC OR DANGEROUS DRUGS—  
TREATMENT AND REHABILITATION**

Sections

72.49.010	Purpose.
72.49.020	Treatment and rehabilitation programs authorized—Rules and regulations.

**72.49.010 Purpose.** The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

**Effective date—1969 ex.s. c 123:** "The effective date of this act shall be July 1, 1969." [1969 ex.s. c 123 § 3.]

**72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations.** There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the

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department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

**Effective date—1969 ex. s. c 123:** See note following RCW 72.49.010.

**Chapter 72.60 RCW**

**CORRECTIONAL INDUSTRIES**

(Formerly: Institutional industries)

Sections

72.60.100	Civil rights of inmates not restored—Other laws inapplicable.
72.60.102	Industrial insurance—Application to certain inmates.
72.60.110	Employment of inmates according to needs of state.
72.60.160	State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.220	List of goods to be supplied to all departments, institutions, agencies.
72.60.235	Implementation plan for prison industries.

*Correctional industries administered by department of corrections: RCW 72.09.070 through 72.09.120.*

**72.60.100 Civil rights of inmates not restored—Other laws inapplicable.** Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. [1989 c 185 § 10; 1987 c 185 § 38; 1981 c 136 § 101; 1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

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

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1972 ex.s. c 40:** "This act shall be effective July 1, 1973." [1972 ex.s. c 40 § 4.]

*Restoration of civil rights: Chapter 9.96 RCW.*

**72.60.102 Industrial insurance—Application to certain inmates.** From and after July 1, 1973, any inmate employed in classes I, II, and IV of correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW. However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the indeterminate sentence review board, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any inmate who is employed in class III or V of correctional industries as defined in RCW 72.09.100. [1989 c 185 § 11; 1983 1st ex.s. c 52 § 7; 1981 c 136 § 102; 1979 ex.s. c 160 § 3; 1972 ex.s. c 40 § 2.]

**Severability—1983 1st ex.s. c 52:** See RCW 63.42.900.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1972 ex.s. c 40:** See note following RCW 72.60.100.

**72.60.110 Employment of inmates according to needs of state.** The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

**72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.** All articles, materials, and supplies herein authorized to be produced or manufactured in correctional institutions may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state, and the secretary shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are so produced. [1981 c 136 § 103; 1979 c 141 § 260; 1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.60.220 List of goods to be supplied to all departments, institutions, agencies.** The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state of Washington. [1981 c 136 § 105; 1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.60.235 Implementation plan for prison industries.**

(1) The department of corrections shall develop, in accordance with RCW 72.09.010, a site-specific implementation plan for prison industries space at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature.

(2) Each implementation plan shall include, but not be limited to, sufficient space and design elements that try to achieve a target of twenty-five percent of the total inmates in class I employment programs and twenty-five percent of the total inmates in class II employment programs or as much of the target as possible without jeopardizing the efficient and necessary day-to-day operation of the prison. The implementation plan shall also include educational opportunities and employment, wage, and other incentives. The department shall include in the implementation plans an incentive program based on wages, and the opportunity to contribute all or a portion of their wages towards an array of incentives. The funds recovered from the sale, lease, or rental of incentives should be considered as a possible source of revenue to cover the capitalized cost of the additional space necessary to

accommodate the increased class I and class II industries programs.

(3) The incentive program shall be developed so that inmates can earn higher wages based on performance and production. Only those inmates employed in class I and class II jobs may participate in the incentive program. The department shall develop special program criteria for inmates with physical or mental handicaps so that they can participate in the incentive program.

(4) The department shall propose rules specifying that inmate wages, other than the amount an inmate owes for taxes, legal financial obligations, and to the victim restitution fund, shall be returned to the department to pay for the cost of prison operations, including room and board.

(5) The plan shall identify actual or potential legal or operational obstacles, or both, in implementing the components of the plan as specified in this section, and recommend strategies to remove the obstacles.

(6) The department shall submit the plan to the appropriate committees of the legislature and to the governor by October 1, 1991. [1991 c 256 § 2.]

**Finding—1991 c 256:** "The legislature finds that the rehabilitation process may be enhanced by participation in training, education, and employment-related incentive programs and may be a consideration in reducing time in confinement." [1991 c 256 § 1.]

**Application to prison construction—1991 c 256:** "The overall prison design plans for new construction at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature shall not be inconsistent with the implementation plan outlined in this act. No provision under this act shall require the department of corrections to redesign, postpone, or delay the construction of any of the facilities outlined in RCW 72.60.235." [1991 c 256 § 3.]

**Severability—1991 c 256:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 256 § 4.]

## Chapter 72.62 RCW

### VOCATIONAL EDUCATION PROGRAMS

#### Sections

72.62.010	Purpose.
72.62.020	"Vocational education" defined.
72.62.030	Sale of products—Recovery of costs.
72.62.040	Crediting of proceeds of sales.
72.62.050	Trade advisory and apprenticeship committees.

**72.62.010 Purpose.** The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

**72.62.020 "Vocational education" defined.** When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which

is repetitive work for the purpose of production, including the correctional industries program. Nothing in this section shall be construed to prohibit the correctional industries board of directors from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs. [1989 c 185 § 12; 1972 ex.s. c 7 § 2.]

**72.62.030 Sale of products—Recovery of costs.** Products, goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1983 c 255 § 6; 1972 ex.s. c 7 § 3.]

**Severability—1983 c 255:** See RCW 72.74.900.

**72.62.040 Crediting of proceeds of sales.** The secretary of the department of social and health services or the secretary of corrections, as the case may be, shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1981 c 136 § 107; 1972 ex.s. c 7 § 4.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.62.050 Trade advisory and apprenticeship committees.** Labor-management trade advisory and apprenticeship committees shall be constituted by the department for each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

**Chapter 72.63 RCW**

**PRISON WORK PROGRAMS—FISH AND GAME**

Sections

72.63.010	Legislative finding.
72.63.020	Prison work programs for fish and game projects.
72.63.030	Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided.
72.63.040	Available funds to support costs of implementation.

**72.63.010 Legislative finding.** The legislature finds and declares that the establishment of prison work programs that allow prisoners to undertake food fish, shellfish, and game fish rearing projects and game bird and game animal improvement, restoration, and protection projects is needed to reduce idleness, promote the growth of prison industries, and provide prisoners with skills necessary for their successful reentry into society. [1985 c 286 § 1.]

**72.63.020 Prison work programs for fish and game projects.** The departments of corrections and fish and wild-

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life shall establish at or near appropriate state institutions, as defined in RCW 72.65.010, prison work programs that use prisoners to undertake state food fish, shellfish, and game fish rearing projects and state game bird and game animal improvement, restoration, and protection projects and that meet the requirements of RCW 72.09.100.

The department of corrections shall seek to identify a group of prisoners at each appropriate state institution, as defined by RCW 72.65.010, that are interested in participating in prison work programs established by this chapter.

If the department of corrections is unable to identify a group of prisoners to participate in work programs authorized by this chapter, it may enter into an agreement with the department of fish and wildlife for the purpose of designing projects for any institution. Costs under this section shall be borne by the department of corrections.

The departments of corrections and fish and wildlife shall use prisoners, where appropriate, to perform work in state projects that may include the following types:

(1) Food fish, shellfish, and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding: PROVIDED, That no project shall be established at the department of fish and wildlife's south Tacoma game farm;

(3) Manufacturing of equipment for use in fish and game volunteer cooperative projects permitted by the department of fish and wildlife, or for use in prison work programs with fish and game; and

(4) Maintenance, repair, restoration, and redevelopment of facilities operated by the department of fish and wildlife. [1994 c 264 § 43; 1988 c 36 § 29; 1985 c 286 § 2.]

**72.63.030 Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided.** (1)

The department of fish and wildlife shall provide professional assistance from biologists, fish culturists, pathologists, engineers, habitat managers, and other departmental staff to assist the development and productivity of prison work programs under RCW 72.63.020, upon agreement with the department of corrections.

(2) The department of fish and wildlife shall identify and describe potential and pilot projects that are compatible with the goals of the various departments involved and that are particularly suitable for prison work programs.

(3) The department of fish and wildlife may make available surplus hatchery rearing space, net pens, egg boxes, portable rearing containers, incubators, and any other departmental facilities or property that are available for loan to the department of corrections to carry out prison work programs under RCW 72.63.020.

(4) The department of fish and wildlife shall provide live fish eggs, bird eggs, juvenile fish, game animals, or other appropriate seed stock, juveniles, or brood stock of acceptable disease history and genetic composition for the prison work projects at no cost to the department of corrections, to

the extent that such resources are available. Fish food, bird food, or animal food may be provided by the department of fish and wildlife to the extent that funding is available.

(5) The department of natural resources shall assist in the implementation of the program where project sites are located on public beaches or state owned aquatic lands. [1994 c 264 § 44; 1988 c 36 § 30; 1985 c 286 § 3.]

**72.63.040 Available funds to support costs of implementation.** The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 77.100 RCW, and from correctional industries funds. [2003 c 39 § 31; 1989 c 185 § 13; 1985 c 286 § 4.]

## Chapter 72.64 RCW

### LABOR AND EMPLOYMENT OF PRISONERS

#### Sections

72.64.001	Definitions.
72.64.010	Useful employment of prisoners—Contract system barred.
72.64.020	Rules and regulations.
72.64.030	Prisoners required to work—Private benefit of enforcement officer prohibited.
72.64.040	Crediting of earnings—Payment.
72.64.050	Branch institutions—Work camps for certain purposes.
72.64.060	Labor camps authorized—Type of work permitted—Contracts.
72.64.065	Industrial insurance—Application to certain inmates—Payment of premiums and assessments.
72.64.070	Industrial insurance—Eligibility for employment—Procedure—Return.
72.64.080	Industrial insurance—Duties of employing agency—Costs—Supervision.
72.64.090	Industrial insurance—Department's jurisdiction.
72.64.100	Regional jail camps—Authorized—Purposes—Rules.
72.64.110	Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner.
72.64.150	Interstate forest fire suppression compact.
72.64.160	Inmate forest fire suppression crews—Classification.

*Contract system barred: State Constitution Art. 2 § 29.*

*Correctional industries: Chapter 72.60 RCW.*

*Labor prescribed by the indeterminate sentence review board: RCW 9.95.090.*

**72.64.001 Definitions.** As used in this chapter: "Department" means the department of corrections; and "Secretary" means the secretary of corrections. [1981 c 136 § 108.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.64.010 Useful employment of prisoners—Contract system barred.** The secretary shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: PROVIDED, That no prisoners shall be employed in what is known as the contract system of labor. [1979 c 141 § 265; 1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279-1. Formerly RCW 72.08.220.]

**72.64.020 Rules and regulations.** The secretary shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1979 c 141 § 266; 1959 c 28 §

72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279-2. Formerly RCW 72.08.230.]

**72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited.** Every prisoner in a state correctional facility shall be required to work in such manner as may be prescribed by the secretary, other than for the private financial benefit of any enforcement officer. [1992 c 7 § 54; 1979 c 141 § 267; 1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223-1.]

**72.64.040 Crediting of earnings—Payment.** Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223-3. Formerly RCW 72.08.250.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**72.64.050 Branch institutions—Work camps for certain purposes.** The secretary shall also have the power to establish temporary branch institutions for state correctional facilities in the form of camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas, and other work to conserve the natural resources and protect and improve the public domain and construction of water supply facilities to state institutions. [1992 c 7 § 55; 1979 c 141 § 268; 1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279-3. Formerly RCW 72.08.240.]

*Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.*

**72.64.060 Labor camps authorized—Type of work permitted—Contracts.** Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: PROVIDED, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The secretary may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1979 c 141 § 269; 1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

**72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments.**

From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state \*board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1972 ex.s. c 40:** See note following RCW 72.60.100.

**72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return.** The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The secretary may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be released for such employment until his eligibility therefor has been determined by the department.

The secretary may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1979 c 141 § 270; 1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

**72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision.** The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The secretary shall supervise and manage the necessary camps and commissaries. [1979 c 141 § 271; 1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

**72.64.090 Industrial insurance—Department's jurisdiction.** The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

**72.64.100 Regional jail camps—Authorized—Purposes—Rules.** The secretary is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1979 c 141 § 272; 1961 c 171 § 4.]

**72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner.** (1) The secretary may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanor in a jail camp pursuant to this chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1980 c 17 § 1. Prior: 1979 c 147 § 1; 1979 c 141 § 273; 1961 c 171 § 5.]

**72.64.150 Interstate forest fire suppression compact.** The Interstate Forest Fire Suppression Compact as set forth in this section is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

#### INTERSTATE FOREST FIRE SUPPRESSION COMPACT

##### ARTICLE I—Purpose

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property, and natural resources in the party states. The purpose of this compact is also to, in emergent situations, allow a sending state to cross

state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

#### ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(b) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(c) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(d) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(e) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security, and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(f) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

#### ARTICLE III—Contracts

Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving state.

The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

#### ARTICLE IV—Procedures and Rights

(a) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(b) Whenever the duly constituted judicial or administrative authorities in a state party to this compact that has entered into a contract pursuant to this compact decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(c) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(d) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a dis-

cretionary determination that an inmate requires institutional confinement.

(e) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(f) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(g) Further, in emergent situations a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

#### ARTICLE V—Acts Not Reviewable in Receiving State; Extradition

(a) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI—Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Idaho, Oregon, and Washington.

#### ARTICLE VII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

#### ARTICLE VIII—Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement that a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE IX—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1991 c 131 § 1.]

**Severability—1991 c 131:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 131 § 3.]

**72.64.160 Inmate forest fire suppression crews—Classification.** For the purposes of RCW 72.64.150, inmate forest fire suppression crews may be considered a class I free venture industry, as defined in RCW 72.09.100, when fighting fires on federal lands. [1991 c 131 § 2.]

**Severability—1991 c 131:** See note following RCW 72.64.150.

Chapter 72.65 RCW

WORK RELEASE PROGRAM

Sections

72.65.010	Definitions.
72.65.020	Places of confinement—Extension of limits authorized, conditions—Application of section.
72.65.030	Application of prisoner to participate in program, contents—Application of section.
72.65.040	Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section.
72.65.050	Disposition of earnings.
72.65.060	Earnings not subject to legal process.
72.65.080	Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities.
72.65.090	Transportation, clothing, supplies for participants.
72.65.100	Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed.
72.65.110	Earnings to be deposited in personal funds—Disbursements.
72.65.120	Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.
72.65.130	Authority of board of prison terms and paroles not impaired.
72.65.200	Participation in work release plan or program must be authorized by sentence or RCW 9.94A.728.
72.65.210	Inmate participation eligibility standards—Department to conduct overall review of work release program.
72.65.220	Facility siting process.
72.65.900	Effective date—1967 c 17.

*Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.*

**72.65.010 Definitions.** As used in this chapter, the following terms shall have the following meanings:

- (1) "Department" shall mean the department of corrections.
- (2) "Secretary" shall mean the secretary of corrections.
- (3) "State correctional institutions" shall mean and include all state adult correctional facilities established pur-

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suant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.

(4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.

(5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1992 c 7 § 56; 1985 c 350 § 4; 1981 c 136 § 110; 1979 c 141 § 274; 1967 c 17 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

*Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.*

**72.65.020 Places of confinement—Extension of limits authorized, conditions—Application of section.**

(1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

(a) Work at paid employment.

(b) Participate in a vocational training program: PROVIDED, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: PROVIDED FURTHER, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.

(c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2) a county or city jail, which jail has been approved after inspection pursuant to \*RCW 70.48.050, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 28; 1979 ex.s. c 160 § 1; 1979 c 141 § 275; 1967 c 17 § 2.]

**\*Reviser's note:** RCW 70.48.050 was repealed by 1987 c 462 § 23, effective January 1, 1988.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**72.65.030 Application of prisoner to participate in program, contents—Application of section.**

(1) Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It

shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 29; 1979 c 141 § 276; 1967 c 17 § 3.]

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section.** (1) The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the secretary or his designee, according to the individual circumstances in each case.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 30; 1979 c 141 § 277; 1967 c 17 § 4.]

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**72.65.050 Disposition of earnings.** A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his or her total earnings, less payroll deductions required by

law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his or her work release plan specifies he or she should retain to help meet his or her personal needs, including costs necessary for his or her participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: PROVIDED, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: PROVIDED FURTHER, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Ten percent for payment of legal financial obligations for all work release participants who have legal financial obligations owing in any Washington state superior court.

(5) Payments to creditors of the work release participant, which may be made at his or her discretion and request, upon proper proof of personal indebtedness.

(6) Payments to the work release participant himself or herself upon parole or discharge, or for deposit in his or her personal account if returned to a state correctional institution for confinement and treatment. [2002 c 126 § 3; 1979 c 141 § 278; 1967 c 17 § 5.]

**72.65.060 Earnings not subject to legal process.** The earnings of a work release participant shall not be subject to garnishment, attachment, or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds, except for payment of a court-ordered legal financial obligation as that term is defined in RCW 72.11.010. [1989 c 252 § 21; 1967 c 17 § 6.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**72.65.080 Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities.** The secretary may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the secretary is authorized to acquire, by lease or contract, appropriate facilities for

the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased or contracted facilities shall be required to reimburse the department the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1982 1st ex.s. c 48 § 18; 1981 c 136 § 111; 1979 c 141 § 279; 1969 c 109 § 1; 1967 c 17 § 8.]

**Severability—1982 1st ex.s. c 48:** See note following RCW 28B.14G.900.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1969 c 109:** "This act shall become effective on July 1, 1969." [1969 c 109 § 2.]

**72.65.090 Transportation, clothing, supplies for participants.** The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participation from the community services revolving fund as established in RCW 9.95.360: PROVIDED, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants and deposited in the community services revolving fund. [1986 c 125 § 6; 1967 c 17 § 9.]

**72.65.100 Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed.** The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

- (1) Supervise and consult with work release participants;
- (2) Locate available employment or vocational training opportunities for qualified work release participants;
- (3) Effect placement of work release participants under the program;
- (4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter, including accounting for all inmate debt in the community services revolving fund. RCW 9.95.370 applies to inmates assigned to work/training release facilities who receive assistance as provided in RCW 9.95.310, 9.95.320, 72.65.050, and 72.65.090;
- (5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department in the administration of the work release program as provided by this chapter. [1986 c 125 § 7; 1981 c 136 § 112; 1979 c 141 § 280; 1967 c 17 § 10.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.65.110 Earnings to be deposited in personal funds—Disbursements.** All earnings of work release participants shall be deposited by the secretary, or the superintendent of a state correctional institution designated by the secretary in the work release plan, in personal funds. All dis-

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bursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1979 c 141 § 281; 1967 c 17 § 11.]

**72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to.** All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its jurisdiction: PROVIDED, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

**72.65.130 Authority of board of prison terms and paroles not impaired.** This chapter shall not be construed as affecting the authority of the \*board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

\*Reviser's note: The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1971 ex.s. c 58:** See note following RCW 72.66.010.

**72.65.200 Participation in work release plan or program must be authorized by sentence or RCW 9.94A.728.** The secretary may permit a prisoner to participate in any work release plan or program but only if the participation is authorized pursuant to the prisoner's sentence or pursuant to RCW 9.94A.728. This section shall become effective July 1, 1984. [1981 c 137 § 35.]

**Severability—1981 c 137:** See RCW 9.94A.910.

**72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program.** (1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

- (a) Conduct an annual examination of each work release facility and its security procedures;
- (b) Investigate and set standards for the inmate supervision policies of each work release facility;
- (c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;
- (d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) The department shall establish a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community, trade, and economic development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990. [1998 c 245 § 142; 1995 c 399 § 203; 1989 c 89 § 1.]

**72.65.220 Facility siting process.** (1) The department or a private or public entity under contract with the department may establish or relocate for the operation of a work release or other community-based facility only after public notifications and local public meetings have been completed consistent with this section.

(2) The department and other state agencies responsible for siting department-owned, operated, or contracted facilities shall establish a process for early and continuous public participation in establishing or relocating work release or other community-based facilities. This process shall include public meetings in the local communities affected, opportunities for written and oral comments, and wide dissemination of proposals and alternatives, including at least the following:

(a) When the department or a private or public entity under contract with the department has selected three or fewer sites for final consideration of a department-owned, operated, or contracted work release or other community-based facility, the department or contracting organization shall make public notification and conduct public hearings in the local communities of the final three or fewer proposed sites. An additional public hearing after public notification shall also be conducted in the local community selected as the final proposed site.

(b) Notifications required under this section shall be provided to the following:

(i) All newspapers of general circulation in the local area and all local radio stations, television stations, and cable networks;

(ii) Appropriate school districts, private schools, kindergartens, city and county libraries, and all other local government offices within a one-half mile radius of the proposed site or sites;

(iii) The local chamber of commerce, local economic development agencies, and any other local organizations that request such notification from the department; and

(iv) In writing to all residents and/or property owners within a one-half mile radius of the proposed site or sites.

(3) When the department contracts for the operation of a work release or other community-based facility that is not owned or operated by the department, the department shall require as part of its contract that the contracting entity comply with all the public notification and public hearing requirements as provided in this section for each located and relocated work release or other community-based facility. [1997 c 348 § 1; 1994 c 271 § 1001.]

**Effective date—1994 c 271 § 1001:** "Section 1001 of this act shall take effect July 1, 1994." [1994 c 271 § 1101.]

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**72.65.900 Effective date—1967 c 17.** This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

## Chapter 72.66 RCW

### FURLOUGHS FOR PRISONERS

#### Sections

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72.66.042	Emergency furlough—Waiver of certain requirements.
72.66.044	Application proceeding not deemed adjudicative proceeding.
72.66.050	Revocation or modification of furlough plan—Reapplication.
72.66.070	Transportation, clothing and funds for furloughed prisoners.
72.66.080	Powers and duties of secretary—Certain agreements—Rules and regulations.
72.66.090	Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.

**Reviser's note:** Throughout this chapter "this act" has been changed to "this chapter." "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

*Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.*

**72.66.010 Definitions.** As used in this chapter the following words shall have the following meanings:

(1) "Department" means the department of corrections.

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of corrections, or his designee or designees. [1981 c 136 § 113; 1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**Construction—Prior rules and regulations—1973 c 20:** "The provisions of this 1973 amendatory act shall not affect the validity of any rule or regulation adopted prior to the effective date of this 1973 amendatory act [June 7, 1973], if such rule or regulation is not in conflict with any provision of this 1973 amendatory act." [1973 c 20 § 17.]

**Effective date—1971 ex.s. c 58:** "This act shall become effective on July 1, 1971." [1971 ex.s. c 58 § 11.]

**72.66.012 Granting of furloughs authorized.** The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

**72.66.014 Ineligibility.** A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

- (1) He is not classified by the secretary as eligible for or on minimum security status; or
- (2) His minimum term of imprisonment has not been set; or
- (3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

**72.66.016 Minimum time served requirement.** (1) A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

- (a) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;
- (b) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;
- (c) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term.

(2) A person convicted and sentenced for a violent offense as defined in RCW 9.94A.030 is not eligible for furlough until the person has served at least one-half of the minimum term as established by the \*board of prison terms and paroles or the sentencing guidelines commission. [1983 c 255 § 8; 1973 c 20 § 5.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

**Severability—1983 c 255:** See RCW 72.74.900.

**72.66.018 Grounds for granting furlough.** A furlough may only be granted to enable the resident:

- (1) To meet an emergency situation, such as death or critical illness of a member of his family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities, but only when:

(a) There are scheduled specific work interviews to take place during the furlough;

(b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or

(c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;

(6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or

(7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

**72.66.022 Application—Contents.** Each resident applying for a furlough shall include in his application for the furlough:

(1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;

(2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and

(3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

**72.66.024 Sponsor.** No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

(1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;

(2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;

(3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

(4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

**72.66.026 Furlough terms and conditions.** The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

(1) The furloughed person shall abide by the terms of his furlough plan.

(2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.

(3) The furloughed person shall abide by all local, state and federal laws.

(4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.

(5) The furloughed person shall not leave the state at any time while on furlough.

(6) Other limitations on movement within the state may be imposed as a condition of furlough.

(7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.

(8) A furloughed person who drives a motor vehicle shall:

(a) have a valid Washington driver's license in his possession,

(b) have the owner's written permission to drive any vehicle not his own or his spouse's,

(c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and

(d) observe all traffic laws.

(9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.

(10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

**72.66.028 Furlough order—Contents.** Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

**72.66.032 Furlough identification card.** The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

**72.66.034 Applicant's personality and conduct—Examination.** Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past con-

duct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

**72.66.036 Furlough duration—Extension.** (1) The furlough or furloughs granted to any one resident, excluding furloughs for medical care, may not exceed thirty consecutive days or a total of sixty days during a calendar year.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1983 c 255 § 7; 1973 c 20 § 13.]

**Severability—1983 c 255:** See RCW 72.74.900.

**72.66.038 Furlough infractions—Reporting—Regaining custody.** Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

**72.66.042 Emergency furlough—Waiver of certain requirements.** In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

**72.66.044 Application proceeding not deemed adjudicative proceeding.** Any proceeding involving an application for a furlough shall not be deemed an adjudicative proceeding under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 144; 1973 c 20 § 16.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**72.66.050 Revocation or modification of furlough plan—Reapplication.** At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

**72.66.070 Transportation, clothing and funds for furloughed prisoners.** The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

**72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations.** The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

**72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.** The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough. Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

### Chapter 72.68 RCW

#### TRANSFER, REMOVAL, TRANSPORTATION— DETENTION CONTRACTS

##### Sections

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72.68.080	Federal prisoners, or from other state—Authority to receive.
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*Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.*

*Correctional employees: RCW 9.94.050.*

*Western interstate corrections compact: Chapter 72.70 RCW.*

**72.68.001 Definitions.** As used in this chapter: "Department" means the department of corrections; and "Secretary" means the secretary of corrections. [1981 c 136 § 114.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.68.010 Transfer of prisoners.** (1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer offenders out-of-state to private or governmental institutions if the secretary determines that transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the offender. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed if the offender is returned to the state.

(2) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries. [2000 c 62 § 2; 1983 c 255 § 10; 1979 c 141 § 282; 1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

**Severability—1983 c 255:** See RCW 72.74.900.

**72.68.012 Transfer to private institutions—Intent—Authority.** The legislature has in the past allowed funding for transfer of convicted felons to a private institution in another state. It is the legislature's intent to clarify the law to reflect that the secretary of corrections has authority to contract with private corporations to house felons out-of-state and has had that authority since before February 1, 1999, when specific authority to expend funds during specified bienniums was granted under RCW 72.09.050. The secretary has the authority to expend funds between February 1, 1999, and June 30, 2001, for contracts with private corporations to house felons out-of-state. [2000 c 62 § 1.]

[Title 72 RCW—page 93]

**Effective date—2000 c 62:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 62 § 5.]

**72.68.020 Transportation of prisoners.** (1) The secretary shall transport prisoners under supervision:

(a) To and between state correctional facilities under the jurisdiction of the secretary;

(b) From a county, city, or municipal jail to an institution mentioned in (a) of this subsection and to a county, city, or municipal jail from an institution mentioned in (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1992 c 7 § 57; 1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

*Correctional employees: RCW 9.94.050.*

**72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill.** When, in the judgment of the secretary, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary, with the consent of the secretary of social and health services, is authorized to order and effect such move or transfer: PROVIDED, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: PROVIDED, FURTHER, That the secretary and the \*board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correctional institutions or facilities. [1981 c 136 § 115; 1972 ex.s. c 59 § 1.]

\*Reviser's note: The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.68.032 Transfer or removal of person in institution for mentally ill to other institution.** When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary of social and health services is authorized to order and effect such move or transfer. [1981 c 136 § 116; 1972 ex.s. c 59 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined.** As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: PROVIDED, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

**72.68.037 Transfer or removal of committed or confined persons—Record—Notice.** Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

**72.68.040 Contracts for detention of felons convicted in this state.** The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States, private companies in other states, or any county or city in this state providing for the detention in an institution or jail operated by such entity, for prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [2000 c 62 § 3; 1981 c 136 § 117; 1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.68.045 Transfer to out-of-state institution—Notice to victims.** (1) If the secretary transfers any offender to an institution in another state after March 22, 2000, the secretary shall, prior to the transfer, review the records of victims registered with the department. If any registered victim of the offender resides: (a) In the state to which the offender is to be transferred; or (b) in close proximity to the institution to which the offender is to be transferred, the secretary shall notify the victim prior to the transfer and consider the victim's concerns about the transfer.

(2) Any victim notified under subsection (1) of this section shall also be notified of the return of the offender to a facility in Washington, prior to the return.

(3) The secretary shall develop a written policy to define "close proximity" for purposes of this section. [2000 c 62 § 4.]

**Effective date—2000 c 62:** See note following RCW 72.68.012.

**72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner.** Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

**72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings.** Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superintendent or his assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

**72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires.** Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4;

1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

**72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners.** The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

**72.68.080 Federal prisoners, or from other state—Authority to receive.** All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and imprisoned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1983 c 255 § 11; 1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

**Severability—1983 c 255:** See RCW 72.74.900.

**72.68.090 Federal prisoners, or from other state—Per diem rate for keep.** The secretary is authorized to enter into contracts with the proper officers or agencies of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

**72.68.100 Federal prisoners, or from other state—Space must be available.** The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in state correctional facilities. [1992 c 7 § 58; 1979 c 141 § 289; 1967 ex.s. c 122 § 11; 1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

## Chapter 72.70 RCW

### WESTERN INTERSTATE CORRECTIONS COMPACT

#### Sections

72.70.010	Compact enacted—Provisions.
72.70.020	Secretary authorized to receive or transfer inmates pursuant to contract.
72.70.030	Responsibilities of courts, departments, agencies and officers.
72.70.040	Hearings.
72.70.050	Secretary may enter into contracts.
72.70.060	Secretary may provide clothing, etc., to inmate released in another state.
72.70.900	Severability—Liberal construction—1959 c 287.

*Compacts for out-of-state supervision of parolees or probationers:* RCW 9.95.270.

*Interstate compact on juveniles:* Chapter 13.24 RCW.

**72.70.010 Compact enacted—Provisions.** The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE  
CORRECTIONS COMPACT

ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility except facilities for the mentally ill or mentally handicapped in which inmates may lawfully be confined.

ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentage of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and

treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

#### ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2008 Ed.)

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

#### ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

#### ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

#### ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

#### ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the

confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

#### ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1977 ex.s. c 80 § 69; 1959 c 287 § 1.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**72.70.020 Secretary authorized to receive or transfer inmates pursuant to contract.** The secretary of corrections is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1981 c 136 § 118; 1979 c 141 § 290; 1959 c 287 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.70.030 Responsibilities of courts, departments, agencies and officers.** The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

**72.70.040 Hearings.** The secretary and members of the \*board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the secretary and members of the \*board of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1979 c 141 § 291; 1959 c 287 § 4.]

**\*Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

**72.70.050 Secretary may enter into contracts.** The secretary of corrections is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No

such contract shall be of any force or effect until approved by the attorney general. [1981 c 136 § 119; 1979 c 141 § 292; 1959 c 287 § 5.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.70.060 Secretary may provide clothing, etc., to inmate released in another state.** If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the secretary is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of chapter 72.02 RCW. [1983 c 3 § 186; 1979 c 141 § 293; 1959 c 287 § 6.]

**72.70.900 Severability—Liberal construction—1959 c 287.** The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

### Chapter 72.72 RCW

#### CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

##### Sections

72.72.010	Legislative intent.
72.72.020	Definitions.
72.72.030	Institutional impact account—Reimbursement to political subdivisions—Limitations.
72.72.040	Reimbursement—Rules.
72.72.050	Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding.
72.72.060	Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations.

**Reviser's note:** 1979 ex.s. c 108 was to be added to chapter 72.06 RCW but has been codified as chapter 72.72 RCW.

**72.72.010 Legislative intent.** The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs. [1979 ex.s. c 108 § 1.]

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

(1) "Political subdivisions" means counties, cities, and towns.

(2) "Institution" means any state institution for the confinement of adult offenders committed pursuant to chapters 10.64, 10.77, and 71.06 RCW or juvenile offenders committed pursuant to chapter 13.40 RCW. [1983 c 279 § 1; 1981 c 136 § 120; 1979 ex.s. c 108 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations.** (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of social and health services may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of social and health services. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [1991 sp.s. c 13 § 10; 1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

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

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

**72.72.040 Reimbursement—Rules.** (1) The secretary of social and health services and the secretary of corrections shall each promulgate rules pursuant to chapter 34.05 RCW regarding the reimbursement process for their respective agencies.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [1983 c 279 § 3; 1979 ex.s. c 108 § 4.]

**72.72.050 Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding.** The state shall reimburse cities and counties for their expenses incurred directly as a result of their providing personnel and material pursuant to a contingency plan adopted under RCW 72.02.150. Reimbursement to cities and counties shall be expended solely from the institutional impact account within funds available in that account. If the costs of reimbursements to cities and counties exceed available funds, the secretary of corrections shall request the legislature to appropriate sufficient funds to enable the secretary of corrections to make full reimbursement. [1983 c 279 § 4; 1982 c 49 § 3.]

**72.72.060 Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations.** The state shall reimburse cities and counties for their costs incurred under chapter 41.26 RCW if the costs are the direct result of physical injuries sustained in the implementation of a contingency plan adopted under RCW 72.02.150 and if reimbursement is not precluded by the following provisions: If the secretary of corrections

identifies in the contingency plan the prison walls or other perimeter of the secured area, then reimbursement will not be made unless the injuries occur within the walls or other perimeter of the secured area. If the secretary of corrections does not identify prison walls or other perimeter of the secured area, then reimbursement shall not be made unless the injuries result from providing assistance, requested by the secretary of corrections or the secretary's designee, which is beyond the description of the assistance contained in the contingency plan. In no case shall reimbursement be made when the injuries result from conduct which either is not requested by the secretary of corrections or the secretary's designee, or is in violation of orders by superiors of the local law enforcement agency. [1983 c 279 § 5; 1982 c 49 § 4.]

## Chapter 72.74 RCW

### INTERSTATE CORRECTIONS COMPACT

#### Sections

72.74.010	Short title.
72.74.020	Authority to execute, terms of compact.
72.74.030	Authority to receive or transfer inmates.
72.74.040	Enforcement.
72.74.050	Hearings.
72.74.060	Contracts for implementation.
72.74.070	Clothing, transportation, and funds for state inmates released in other states.
72.74.900	Severability—1983 c 255.

**72.74.010 Short title.** This chapter shall be known and may be cited as the Interstate Corrections Compact. [1983 c 255 § 12.]

**72.74.020 Authority to execute, terms of compact.** The secretary of the department of corrections is hereby authorized and requested to execute, on behalf of the state of Washington, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to, or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (2)(d) of this section may lawfully be confined.

(3)(a) Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(iv) Delivery and retaking of inmates;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4)(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to subsection (3)(a) of this section, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the

terms of any contract entered into under the terms of subsection (3)(a) of this section.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5)(a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to

remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be

affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 255 § 13.]

#### **72.74.030 Authority to receive or transfer inmates.**

The secretary of corrections is authorized to receive or transfer an inmate as defined in the Interstate Corrections Compact to any institution as defined in the Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to subsection (3) of the Interstate Corrections Compact. [1983 c 255 § 14.]

**72.74.040 Enforcement.** The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1983 c 255 § 15.]

**72.74.050 Hearings.** The secretary is authorized and directed to hold such hearings as may be requested by any other party state pursuant to subsection (4)(f) of the Interstate Corrections Compact. Additionally, the secretary may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Interstate Corrections Compact. [1983 c 255 § 16.]

**72.74.060 Contracts for implementation.** The secretary of corrections is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Interstate Corrections Compact pursuant to subsection (3) of the compact. No such contract shall be of any force or effect until approved by the attorney general. [1983 c 255 § 17.]

**72.74.070 Clothing, transportation, and funds for state inmates released in other states.** If any agreement between this state and any other state party to the Interstate Corrections Compact enables an inmate of this state confined in an institution of another state to be released in such other state in accordance with subsection (4)(g) of this compact, then the secretary is authorized to provide clothing, transportation, and funds to such inmate in accordance with RCW 72.02.100. [1983 c 255 § 18.]

**72.74.900 Severability—1983 c 255.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 255 § 20.]

## Chapter 72.76 RCW

## INTRASTATE CORRECTIONS COMPACT

## Sections

72.76.005	Intent.
72.76.010	Compact enacted—Provisions.
72.76.020	Costs and accounting of offender days.
72.76.030	Contracts authorized for implementation of participation— Application of chapter.
72.76.040	Fiscal management.
72.76.900	Short title.

**72.76.005 Intent.** It is the intent of the legislature to enable and encourage a cooperative relationship between the department of corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders. [1989 c 177 § 2.]

**72.76.010 Compact enacted—Provisions.** The Washington intrastate corrections compact is enacted and entered into on behalf of this state by the department with any and all counties of this state legally joining in a form substantially as follows:

WASHINGTON INTRASTATE  
CORRECTIONS COMPACT

A compact is entered into by and among the contracting counties and the department of corrections, signatories hereto, for the purpose of maximizing the use of existing resources and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders.

The contracting counties and the department do solemnly agree that:

(1) As used in this compact, unless the context clearly requires otherwise:

(a) "Department" means the Washington state department of corrections.

(b) "Secretary" means the secretary of the department of corrections or designee.

(c) "Compact jurisdiction" means the department of corrections or any county of the state of Washington which has executed this compact.

(d) "Sending jurisdiction" means a county party to this agreement or the department of corrections to whom the courts have committed custody of the offender.

(e) "Receiving jurisdiction" means the department of corrections or a county party to this agreement to which an offender is sent for confinement.

(f) "Offender" means a person who has been charged with and/or convicted of an offense established by applicable statute or ordinance.

(g) "Convicted felony offender" means a person who has been convicted of a felony established by state law and is eighteen years of age or older, or who is less than eighteen years of age, but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110 or has been tried in a criminal court pursuant to \*RCW 13.04.030(1)(e)(iv).

(h) An "offender day" includes the first day an offender is delivered to the receiving jurisdiction, but ends at midnight

of the day immediately preceding the day of the offender's release or return to the custody of the sending jurisdiction.

(i) "Facility" means any state correctional institution, camp, or other unit established or authorized by law under the jurisdiction of the department of corrections; any jail, holding, detention, special detention, or correctional facility operated by the county for the housing of adult offenders; or any contract facility, operated on behalf of either the county or the state for the housing of adult offenders.

(j) "Extraordinary medical expense" means any medical expense beyond that which is normally provided by contract or other health care providers at the facility of the receiving jurisdiction.

(k) "Compact" means the Washington intrastate corrections compact.

(2)(a) Any county may make one or more contracts with one or more counties, the department, or both for the exchange or transfer of offenders pursuant to this compact. Appropriate action by ordinance, resolution, or otherwise in accordance with the law of the governing bodies of the participating counties shall be necessary before the contract may take effect. The secretary is authorized and requested to execute the contracts on behalf of the department. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving jurisdiction by the sending jurisdiction for offender maintenance, extraordinary medical and dental expenses, and any participation in or receipt by offenders of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of offender employment, if any; the disposition or crediting of any payments received by offenders on their accounts; and the crediting of proceeds from or the disposal of any products resulting from the employment;

(iv) Delivery and retaking of offenders;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving jurisdictions.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant to the contract. Nothing in any contract may be inconsistent with the compact.

(3)(a) Whenever the duly constituted authorities of any compact jurisdiction decide that confinement in, or transfer of an offender to a facility of another compact jurisdiction is necessary or desirable in order to provide adequate housing and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within a facility of the other compact jurisdiction, the receiving jurisdiction to act in that regard solely as agent for the sending jurisdiction.

(b) The receiving jurisdiction shall be responsible for the supervision of all offenders which it accepts into its custody.

(c) The receiving jurisdiction shall be responsible to establish screening criteria for offenders it will accept for transfer. The sending jurisdiction shall be responsible for ensuring that all transferred offenders meet the screening criteria of the receiving jurisdiction.

(d) The sending jurisdiction shall notify the sentencing courts of the name, charges, cause numbers, date, and place of transfer of any offender, prior to the transfer, on a form to be provided by the department. A copy of this form shall accompany the offender at the time of transfer.

(e) The receiving jurisdiction shall be responsible for providing an orientation to each offender who is transferred. The orientation shall be provided to offenders upon arrival and shall address the following conditions at the facility of the receiving jurisdiction:

- (i) Requirements to work;
- (ii) Facility rules and disciplinary procedures;
- (iii) Medical care availability; and
- (iv) Visiting.

(f) Delivery and retaking of inmates shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall deliver offenders to the facility of the receiving jurisdiction where the offender will be housed, at the dates and times specified by the receiving jurisdiction. The receiving jurisdiction retains the right to refuse or return any offender. The sending jurisdiction shall be responsible to retake any transferred offender who does not meet the screening criteria of the receiving jurisdiction, or who is refused by the receiving jurisdiction. If the receiving jurisdiction has notified the sending jurisdiction to retake an offender, but the sending jurisdiction does not do so within a seven-day period, the receiving jurisdiction may return the offender to the sending jurisdiction at the expense of the sending jurisdiction.

(g) Offenders confined in a facility under the terms of this compact shall at all times be subject to the jurisdiction of the sending jurisdiction and may at any time be removed from the facility for transfer to another facility within the sending jurisdiction, for transfer to another facility in which the sending jurisdiction may have a contractual or other right to confine offenders, for release or discharge, or for any other purpose permitted by the laws of the state of Washington.

(h) Unless otherwise agreed, the sending jurisdiction shall provide at least one set of the offender's personal clothing at the time of transfer. The sending jurisdiction shall be responsible for searching the clothing to ensure that it is free of contraband. The receiving jurisdiction shall be responsible for providing work clothing and equipment appropriate to the offender's assignment.

(i) The sending jurisdiction shall remain responsible for the storage of the offender's personal property, unless prior arrangements are made with the receiving jurisdiction. The receiving jurisdiction shall provide a list of allowable items which may be transferred with the offender.

(j) Copies or summaries of records relating to medical needs, behavior, and classification of the offender shall be transferred by the sending jurisdiction to the receiving jurisdiction at the time of transfer. At a minimum, such records shall include:

- (i) A copy of the commitment order or orders legally authorizing the confinement of the offender;
- (ii) A copy of the form for the notification of the sentencing courts required by subsection (3)(d) of this section;
- (iii) A brief summary of any known criminal history, medical needs, behavioral problems, and other information which may be relevant to the classification of the offender; and

(iv) A standard identification card which includes the fingerprints and at least one photograph of the offender.

Disclosure of public records shall be the responsibility of the sending jurisdiction, except for those documents generated by the receiving jurisdiction.

(k) The receiving jurisdiction shall be responsible for providing regular medical care, including prescription medication, but extraordinary medical expenses shall be the responsibility of the sending jurisdiction. The costs of extraordinary medical care incurred by the receiving jurisdiction for transferred offenders shall be reimbursed by the sending jurisdiction. The receiving jurisdiction shall notify the sending jurisdiction as far in advance as practicable prior to incurring such costs. In the event emergency medical care is needed, the sending jurisdiction shall be advised as soon as practicable after the offender is treated. Offenders who are required by the medical authority of the sending jurisdiction to take prescription medication at the time of the transfer shall have at least a three-day supply of the medication transferred to the receiving jurisdiction with the offender, and at the expense of the sending jurisdiction. Costs of prescription medication incurred after the use of the supply shall be borne by the receiving jurisdiction.

(l) Convicted offenders transferred under this agreement may be required by the receiving jurisdiction to work. Transferred offenders participating in programs of offender employment shall receive the same reimbursement, if any, as other offenders performing similar work. The receiving jurisdiction shall be responsible for the disposition or crediting of any payments received by offenders, and for crediting the proceeds from or disposal of any products resulting from the employment. Other programs normally provided to offenders by the receiving jurisdiction such as education, mental health, or substance abuse treatment shall also be available to transferred offenders, provided that usual program screening criteria are met. No special or additional programs will be provided except by mutual agreement of the sending and receiving jurisdiction, with additional expenses, if any, to be borne by the sending jurisdiction.

(m) The receiving jurisdiction shall notify offenders upon arrival of the rules of the jurisdiction and the specific rules of the facility. Offenders will be required to follow all rules of the receiving jurisdiction. Disciplinary detention, if necessary, shall be provided at the discretion of the receiving jurisdiction. The receiving jurisdiction may require the sending jurisdiction to retake any offender found guilty of a serious infraction; similarly, the receiving jurisdiction may require the sending jurisdiction to retake any offender whose behavior requires segregated or protective housing.

(n) Good-time calculations and notification of each offender's release date shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall provide the receiving jurisdiction with a formal notice of the date upon which each offender is to be released from custody. If the receiving jurisdiction finds an offender guilty of a violation of its disciplinary rules, it shall notify the sending jurisdiction of the date and nature of the violation. If the sending jurisdiction resets the release date according to its good-time policies, it shall provide the receiving jurisdiction with notice of the new release date.

(o) The sending jurisdiction shall retake the offender at the receiving jurisdiction's facility on or before his or her release date, unless the sending and receiving jurisdictions shall agree upon release in some other place. The sending jurisdiction shall bear the transportation costs of the return.

(p) Each receiving jurisdiction shall provide monthly reports to each sending jurisdiction on the number of offenders of that sending jurisdiction in its facilities pursuant to this compact.

(q) Each party jurisdiction shall notify the others of its coordinator who is responsible for administrating the jurisdiction's responsibilities under the compact. The coordinators shall arrange for alternate contact persons in the event of an extended absence of the coordinator.

(r) Upon reasonable notice, representatives of any party to this compact shall be allowed to visit any facility in which another party has agreed to house its offenders, for the purpose of inspecting the facilities and visiting its offenders that may be confined in the institution.

(4) This compact shall enter into force and become effective and binding upon the participating parties when it has been executed by two or more parties. Upon request, each party county shall provide any other compact jurisdiction with a copy of a duly enacted resolution or ordinance authorizing entry into this compact.

(5) A party participating may withdraw from the compact by formal resolution and by written notice to all other parties then participating. The withdrawal shall become effective, as it pertains to the party wishing to withdraw, thirty days after written notice to the other parties. However, such withdrawal shall not relieve the withdrawing party from its obligations assumed prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing participant shall notify the other parties to retake the offenders it has housed in its facilities and shall remove to its facilities, at its own expense, offenders it has confined under the provisions of this compact.

(6) Legal costs relating to defending actions brought by an offender challenging his or her transfer to another jurisdiction under this compact shall be borne by the sending jurisdiction. Legal costs relating to defending actions arising from events which occur while the offender is in the custody of a receiving jurisdiction shall be borne by the receiving jurisdiction.

(7) The receiving jurisdiction shall not be responsible to provide legal services to offenders placed under this agreement. Requests for legal services shall be referred to the sending jurisdiction.

(8) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution or laws of the state of Washington or is held invalid, the validity of the remainder of this compact and its applicability to any county or the department shall not be affected.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a county or the department may have with each other or with a nonparty county for the confinement, rehabilitation, or treatment of offenders. [1994 sp.s. c 7 § 539; 1989 c 177 § 3.]

\*Reviser's note: RCW 13.04.030 was amended by 1997 c 341 § 3, changing subsection (1)(e)(iv) to subsection (1)(e)(v).

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

#### **72.76.020 Costs and accounting of offender days. (1)**

The costs per offender day to the sending jurisdiction for the custody of offenders transferred according to the terms of this agreement shall be at the rate set by the state of Washington, office of financial management under RCW 70.48.440, unless the parties agree to another rate in a particular transfer. The costs may not include extraordinary medical costs, which shall be billed separately. Except in the case of prisoner exchanges, as described in subsection (2) of this section, the sending jurisdiction shall be billed on a monthly basis by the receiving jurisdiction. Payment shall be made within thirty days of receipt of the invoice.

(2) When two parties to this agreement transfer offenders to each other, there shall be an accounting of the number of "offender days." If the number is exactly equal, no payment is necessary for the affected period. The payment by the jurisdiction with the higher net number of offender days may be reduced by the amount otherwise due for the number of offender days its offenders were held by the receiving jurisdiction. Billing and reimbursement shall remain on the monthly schedule, and shall be supported by the forms and procedures provided by applicable regulations. The accounting of offender days exchanged may be reconciled on a monthly basis, but shall be at least quarterly. [1989 c 177 § 4.]

**72.76.030 Contracts authorized for implementation of participation—Application of chapter.** The secretary is empowered to enter into contracts on behalf of this state on the terms and conditions as may be appropriate to implement the participation of the department in the Washington intrastate corrections compact under RCW 72.76.010(2). Nothing in this chapter is intended to create any right or entitlement in any offender transferred or housed under the authority granted in this chapter. The failure of the department or the county to comply with any provision of this chapter as to any particular offender or transfer shall not invalidate the transfer nor give rise to any right for such offender. [1989 c 177 § 5.]

**72.76.040 Fiscal management.** Notwithstanding any other provisions of law, payments received by the department pursuant to contracts entered into under the authority of this chapter shall be treated as nonappropriated funds and shall be exempt from the allotment controls established under chapter 43.88 RCW. The secretary may use such funds, in addition to appropriated funds, to provide institutional and community corrections programs. The secretary may, in his or her discretion and in lieu of direct fiscal payment, offset the obligation of any sending jurisdiction against any obligation the department may have to the sending jurisdiction. Outstanding obligations of the sending jurisdiction may be carried forward across state fiscal periods by the department as a credit against future obligations of the department to the sending jurisdiction. [1989 c 177 § 6.]

**72.76.900 Short title.** This chapter shall be known and may be cited as the Washington Intrastate Corrections Compact. [1989 c 177 § 1.]

### Chapter 72.78 RCW

## COMMUNITY TRANSITION COORDINATION NETWORKS

#### Sections

72.78.005	Findings—2007 c 483.
72.78.010	Definitions.
72.78.020	Inventory of services and resources by counties.
72.78.030	Pilot program established—Participation standards—Selection criteria—Advisory committee.
72.78.040	Pilot program limitations—Individual reentry plan liability limited.
72.78.050	Funding—Requirements—Evaluation and report.
72.78.060	Community transition coordination network account.
72.78.070	Funding entitlement, obligation to maintain network not created.
72.78.900	Part headings not law—2007 c 483.
72.78.901	Severability—2007 c 483.

**72.78.005 Findings—2007 c 483.** The people of the state of Washington expect to live in safe communities in which the threat of crime is minimized. Attempting to keep communities safe by building more prisons and paying the costs of incarceration has proven to be expensive to taxpayers. Incarceration is a necessary consequence for some offenders, however, the vast majority of those offenders will eventually return to their communities. Many of these former offenders will not have had the opportunity to address the deficiencies that may have contributed to their criminal behavior. Persons who do not have basic literacy and job skills, or who are ill-equipped to make the behavioral changes necessary to successfully function in the community, have a high risk of reoffense. Recidivism represents serious costs to victims, both financial and nonmonetary in nature, and also burdens state and local governments with those offenders who recycle through the criminal justice system.

The legislature believes that recidivism can be reduced and a substantial cost savings can be realized by utilizing evidence-based, research-based, and promising programs to address offender deficits, developing and better coordinating the reentry efforts of state and local governments and local communities. Research shows that if quality assurances are adhered to, implementing an optimal portfolio of evidence-based programming options for offenders who are willing to take advantage of such programs can have a notable impact on recidivism.

While the legislature recognizes that recidivism cannot be eliminated and that a significant number of offenders are unwilling or unable to work to develop the tools necessary to successfully reintegrate into society, the interests of the public overall are better served by better preparing offenders while incarcerated, and continuing those efforts for those recently released from prison or jail, for successful, productive, and healthy transitions to their communities. Educational, employment, and treatment opportunities should be designed to address individual deficits and ideally give offenders the ability to function in society. In order to foster reintegration, chapter 483, Laws of 2007 recognizes the importance of a strong partnership between the department of corrections, local governments, law enforcement, social ser-

vice providers, and interested members of communities across our state. [2007 c 483 § 1.]

**72.78.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) A "community transition coordination network" is a system of coordination that facilitates partnerships between supervision and service providers. It is anticipated that an offender who is released to the community will be able to utilize a community transition coordination network to be connected directly to the supervision and/or services needed for successful reentry.

(2) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(3) An "individual reentry plan" means the plan to prepare an offender for release into the community. A reentry plan is developed collaboratively between the supervising authority and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offenders' risks and needs. An individual reentry plan describes actions that should occur to prepare individual offenders for release from jail or prison and specifies the supervision and/or services he or she will experience in the community, taking into account no contact provisions of the judgment and sentence. An individual reentry plan should be updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(4) "Local community policing and supervision programs" include probation, work release, jails, and other programs operated by local police, courts, or local correctional agencies.

(5) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(6) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(7) "Supervising authority" means the agency or entity that has the responsibility for supervising an offender. [2007 c 483 § 101.]

**72.78.020 Inventory of services and resources by counties.** (1) Each county or group of counties shall conduct an inventory of the services and resources available in the county or group of counties to assist offenders in reentering the community.

(2) In conducting its inventory, the county or group of counties should consult with the following:

(a) The department of corrections, including community corrections officers;

(b) The department of social and health services in applicable program areas;

(c) Representatives from county human services departments and, where applicable, multicounty regional support networks;

(d) Local public health jurisdictions;

- (e) City and county law enforcement;
- (f) Local probation/supervision programs;
- (g) Local community and technical colleges;
- (h) The local worksource center operated under the state-wide workforce investment system;
- (i) Faith-based and nonprofit organizations providing assistance to offenders;
- (j) Housing providers;
- (k) Crime victims service providers; and
- (l) Other community stakeholders interested in reentry efforts.

(3) The inventory must include, but is not limited to:

(a) A list of programs available through the entities listed in subsection (2) of this section and services currently available in the community for offenders including, but not limited to, housing assistance, employment assistance, education, vocational training, parenting education, financial literacy, treatment for substance abuse, mental health, anger management, life skills training, specialized treatment programs such as batterers treatment and sex offender treatment, and any other service or program that will assist the former offender to successfully transition into the community; and

(b) An indication of the availability of community representatives or volunteers to assist the offender with his or her transition.

(4) No later than January 1, 2008, each county or group of counties shall present its inventory to the policy advisory committee convened in RCW 72.78.030(8). [2007 c 483 § 102.]

**72.78.030 Pilot program established—Participation standards—Selection criteria—Advisory committee. (Expires June 30, 2013.)**

(1) The department of community, trade, and economic development shall establish a community transition coordination network pilot program for the purpose of awarding grants to counties or groups of counties for implementing coordinated reentry efforts for offenders returning to the community. Grant awards are subject to the availability of amounts appropriated for this specific purpose.

(2) By September 1, 2007, the Washington state institute for public policy shall, in consultation with the department of community, trade, and economic development, develop criteria for the counties in conducting its evaluation as directed by subsection (6)(c) of this section.

(3) Effective February 1, 2008, any county or group of counties may apply for participation in the community transition coordination network pilot program by submitting a proposal for a community transition coordination network.

(4) A proposal for a community transition coordination network initiated under this section must be collaborative in nature and must seek locally appropriate evidence-based or research-based solutions and promising practices utilizing the participation of public and private entities or programs to support successful, community-based offender reentry.

(5) In developing a proposal for a community transition coordination network, counties or groups of counties and the department of corrections shall collaborate in addressing:

(a) Efficiencies that may be gained by sharing space or resources in the provision of reentry services to offenders;

(b) Mechanisms for communication of information about offenders, including the feasibility of shared access to databases;

(c) Partnerships to establish neighborhood corrections initiatives as defined in RCW 72.09.280.

(6) A proposal for a community transition coordination network must include:

(a) Descriptions of collaboration and coordination between local community policing and supervision programs and those agencies and entities identified in the inventory conducted pursuant to RCW 72.78.020 to address the risks and needs of offenders under a participating county or city misdemeanor probation or other supervision program including:

(i) A proposed method of assessing offenders to identify the offenders' risks and needs. Counties and cities are encouraged, where possible, to make use of assessment tools developed by the department of corrections in this regard;

(ii) A proposal for developing and/or maintaining an individual reentry plan for offenders;

(iii) Connecting offenders to services and resources that meet the offender's needs as identified in his or her individual reentry plan including the identification of community representatives or volunteers that may assist the offender with his or her transition; and

(iv) The communication of assessment information, individual reentry plans, and service information between parties involved with [the] offender's reentry;

(b) Mechanisms to provide information to former offenders regarding services available to them in the community regardless of the length of time since the offender's release and regardless of whether the offender was released from prison or jail. Mechanisms shall, at a minimum, provide for:

(i) Maintenance of the information gathered in RCW 72.78.020 regarding services currently existing within the community that are available to offenders; and

(ii) Coordination of access to existing services with community providers and provision of information to offenders regarding how to access the various type of services and resources that are available in the community; and

(c) An evaluation of the county's or group of counties' readiness to implement a community transition coordination network including the social service needs of offenders in general, capacity of local facilities and resources to meet offenders' needs, and the cost to implement and maintain a community transition coordination network for the duration of the pilot project.

(7) The department of community, trade, and economic development shall review county applications for funding through the community transition coordination network pilot program and, no later than April 1, 2008, shall select up to four counties or groups of counties. In selecting pilot counties or regions, the department shall consider the extent to which the proposal:

(a) Addresses the requirements set out in subsection (6) of this section;

(b) Proposes effective partnerships and coordination between local community policing and supervision programs, social service and treatment providers, and the depart-

ment of corrections' community justice center, if a center is located in the county or region;

(c) Focuses on measurable outcomes such as increased employment and income, treatment objectives, maintenance of stable housing, and reduced recidivism;

(d) Contributes to the diversity of pilot programs, considering factors such as geographic location, size of county or region, and reentry services currently available. The department shall ensure that a grant is awarded to at least one rural county or group of counties and at least one county or group of counties where a community justice center operated by the department of corrections is located; and

(e) Is feasible, given the evaluation of the social service needs of offenders, the existing capacity of local facilities and resources to meet offenders' needs, and the cost to implement a community transition coordination network in the county or group of counties.

(8) The department of community, trade, and economic development shall convene a policy advisory committee composed of representatives from the senate, the house of representatives, the governor's office of financial management, the department of corrections, to include one representative who is a community corrections officer, the office of crime victims' advocacy, the Washington state association of counties, association of Washington cities, a nonprofit provider of reentry services, and an ex-offender who has discharged the terms of his or her sentence. The advisory committee shall meet no less than annually to receive status reports on the implementation of community transition coordination networks, review annual reports and the pilot project evaluations submitted pursuant to RCW 72.78.050, and identify evidence-based, research-based, and promising practices for other counties seeking to establish community transition coordination networks.

(9) Pilot networks established under this section shall extend for a period of four fiscal years, beginning July 1, 2008, and ending June 30, 2012.

(10) This section expires June 30, 2013. [2007 c 483 § 103.]

**72.78.040 Pilot program limitations—Individual reentry plan liability limited.** (1) Nothing in RCW 72.78.030 is intended to shift the supervising responsibility or sanctioning authority from one government entity to another or give a community transition coordination network oversight responsibility for those activities or allow imposition of civil liability where none existed previously.

(2) An individual reentry plan may not be used as the basis of liability against local government entities, or its officers or employees. [2007 c 483 § 104.]

**Intent—2007 c 483:** See note following RCW 72.09.270.

**72.78.050 Funding—Requirements—Evaluation and report.** (*Expires June 30, 2013.*) (1) It is the intent of the legislature to provide funding for this project.

(2) Counties receiving state funds must:

(a) Demonstrate the funds allocated pursuant to this section will be used only for those purposes in establishing and maintaining a community transition coordination network;

(2008 Ed.)

(b) Consult with the Washington state institute for public policy at the inception of the pilot project to refine appropriate outcome measures and data tracking systems;

(c) Submit to the advisory committee established in RCW 72.78.030(8) an annual progress report by June 30th of each year of the pilot project to report on identified outcome measures and identify evidence-based, research-based, or promising practices;

(d) Cooperate with the Washington state institute for public policy at the completion of the pilot project to conduct an evaluation of the project.

(3) The Washington state institute for public policy shall provide direction to counties in refining appropriate outcome measures for the pilot projects and establishing data tracking systems. At the completion of the pilot project, the institute shall conduct an evaluation of the projects including the benefit-cost ratio of service delivery through a community transition coordination network, associated reductions in recidivism, and identification of evidence-based, research-based, or promising practices. The institute shall report to the governor and the legislature with the results of its evaluation no later than December 31, 2012.

(4) This section expires June 30, 2013. [2007 c 483 § 105.]

**72.78.060 Community transition coordination network account.** (*Expires June 30, 2013.*) (1) The community transition coordination network account is created in the state treasury. The account may receive legislative appropriations, gifts, and grants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of RCW 72.78.030.

(2) This section expires June 30, 2013. [2007 c 483 § 106.]

**72.78.070 Funding entitlement, obligation to maintain network not created.** Nothing in chapter 483, Laws of 2007 creates an entitlement for a county or group of counties to receive funding under the program created in RCW 72.78.030, nor an obligation for a county or group of counties to maintain a community transition coordination network established pursuant to RCW 72.78.030 upon expiration of state funding. [2007 c 483 § 107.]

**72.78.900 Part headings not law—2007 c 483.** Part headings used in this act are not any part of the law. [2007 c 483 § 701.]

**72.78.901 Severability—2007 c 483.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2007 c 483 § 702.]

## Chapter 72.98 RCW CONSTRUCTION

### Sections

72.98.010	Continuation of existing law.
72.98.020	Title, chapter, section headings not part of law.

- 72.98.030 Invalidity of part of title not to affect remainder.  
 72.98.040 Repeals and saving.  
 72.98.050 Bonding acts exempted.  
 72.98.060 Emergency—1959 c 28.

**72.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 28 § 72.98.010.]

**72.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 28 § 72.98.020.]

**72.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 28 § 72.98.030.]

**72.98.040 Repeals and saving.** See 1959 c 28 § 72.98.040.

**72.98.050 Bonding acts exempted.** This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

**72.98.060 Emergency—1959 c 28.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately, with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

## Chapter 72.99 RCW

### STATE BUILDING CONSTRUCTION ACT

#### Sections

- 72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.  
 72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.

**72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.**

**Reviser's note:** RCW 72.99.100 was amended by 1983 c 3 § 187 without reference to its repeal by 1983 c 189 § 4. It has been decodified for publication purposes pursuant to RCW 1.12.025.

**72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.**

**Reviser's note:** RCW 72.99.120 was amended by 1983 c 3 § 188 without reference to its repeal by 1983 c 189 § 4. It has been decodified for publication purposes pursuant to RCW 1.12.025.

# Title 73

## VETERANS AND VETERANS' AFFAIRS

### Chapters

- 73.04** General provisions.
- 73.08** Veterans' relief.
- 73.16** Employment and reemployment.
- 73.20** Acknowledgments and powers of attorney.
- 73.24** Burial.
- 73.36** Uniform veterans' guardianship act.
- 73.40** Veterans' memorials.

*Colony of the state soldiers' home:* RCW 72.36.040.

*Estates of absentees:* Chapter 11.80 RCW.

*Firefighters' retirement, credit for military service:* RCW 41.16.220, 41.18.150.

*Liquor control board employment, veteran preference:* RCW 66.08.016.

*Mental illness, commitment:* Chapter 71.05 RCW.

*Militia and military affairs:* Title 38 RCW.

*Nuncupative wills:* RCW 11.12.025.

*Oaths, military personnel, who may administer:* RCW 38.38.844.

*Police retirement, credit for military service:* RCW 41.20.050.

*Professional, occupational licenses, moratorium:* RCW 43.24.130.

*Property taxation exemptions:* RCW 84.36.030.

*Public employment, veterans' scoring criteria status in examinations:* RCW 41.04.010.

*Soldiers' and veterans' homes and veterans' cemetery:* Chapter 72.36 RCW.

*State employees' retirement credit for military service:* RCW 41.40.170.

*exception from membership:* RCW 41.40.023(6).

*State hospitals for insane, war veterans:* RCW 73.36.165.

*Statewide city employees' retirement, prior service credit:* RCW 41.44.120(4).

*Teachers' retirement, credit for military service:* RCW 41.32.260.

*Veterans' rehabilitation council:* Chapter 43.61 RCW.

### Wills

*proof when witness in war service:* RCW 11.20.040.

*who may make:* RCW 11.12.010.

- 73.04.120 Documents available for free—Who may request.
- 73.04.130 Veteran estate management program—Director authority—Criteria.
- 73.04.131 Veteran estate management program—Definitions.
- 73.04.135 Veteran estate management program—Claims against veteran's estate—Account created.
- 73.04.140 Guardians—Department officers and employees prohibited.
- 73.04.150 Joint committee on veterans' and military affairs.
- 73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans.

*Department of veterans affairs:* Chapter 43.60A RCW.

*Veterans classified as resident students:* RCW 28B.15.014.

### 73.04.010 Pension papers—Fees not to be charged.

No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the spouse or domestic partner, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [2008 c 6 § 510; 1973 1st ex.s. c 154 § 106; 1891 c 14 § 1; RRS § 4232.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**73.04.020 Pension papers—Fees not to be charged—Penalty.** Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [1891 c 14 § 2; RRS § 4233.]

**73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee.** Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington.

The department of veterans affairs, in consultation with the association of county auditors, shall develop and distribute to county auditors the form referred to in RCW 42.56.440 entitled "request for exemption from public disclosure of discharge papers."

The county auditor may charge a basic recording fee and preservation fee that together shall not exceed a total of seven dollars for the recording of the "request for exemption from public disclosure of discharge papers."

County auditors shall develop a form for requestors of military discharge papers (form DD214) to verify that the requestor is authorized to receive or view the military discharge paper. [2005 c 274 § 349; 2002 c 224 § 3; 1989 c 50

### Chapter 73.04 RCW GENERAL PROVISIONS

#### Sections

- 73.04.010 Pension papers—Fees not to be charged.
- 73.04.020 Pension papers—Fees not to be charged—Penalty.
- 73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee.
- 73.04.040 Discharges recorded without charge—Certified copy as proof.
- 73.04.042 Honorable discharge recorded—Veterans of Spanish-American War and World War I.
- 73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.
- 73.04.060 Right to peddle, vend, sell goods without license—Issuance of license.
- 73.04.070 Meeting hall may be furnished veterans' organizations.
- 73.04.080 Meeting place rental may be paid out of county fund.
- 73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.
- 73.04.110 Free license plates for veterans with disabilities, prisoners of war—Penalty.
- 73.04.115 Free license plates for surviving spouses or surviving domestic partners of deceased prisoners of war.

§ 1; 1943 c 38 § 1; Rem. Supp. 1943 § 10758-10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Working group on veterans' records:** See note following RCW 42.56.210.

**73.04.040 Discharges recorded without charge—Certified copy as proof.** A certified copy of such record shall be prima facie proof for all purposes of the services rendered, citizenship, place and date of birth of such veteran. [1943 c 38 § 2; Rem. Supp. 1943 § 10758-11.]

**73.04.042 Honorable discharge recorded—Veterans of Spanish-American War and World War I.** It shall be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies and veterans of the Spanish-American War. [1923 c 17 § 1; 1919 c 86 § 1; RRS § 4094-1. Formerly RCW 73.04.030, part.]

**73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.** Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in RCW 73.04.060.

No county, city or political subdivision in this state shall charge or collect any license fee on any business established by any veteran under the provisions of Public Law 346 of the 78th congress. [1945 c 144 § 9; 1903 c 69 § 1; Rem. Supp. 1945 § 10755. Formerly RCW 73.04.050, part and 73.04.060. FORMER PART OF SECTION: 1945 c 144 § 10 now codified as RCW 73.04.060.]

**Reviser's note:** 1945 c 144 §§ 9 and 10 amending 1903 c 69 §§ 1 and 2 were declared unconstitutional in *Larsen v. City of Shelton*, 37 Wn. (2d) 481.

*Peddlers' and hawkers' licenses: Chapter 36.71 RCW.*

**73.04.060 Right to peddle, vend, sell goods without license—Issuance of license.** On presentation to the county auditor or city clerk of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, such county auditor or city clerk, as the case may be, shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler, as provided in RCW 73.04.050. [1945 c 144 § 10; 1903 c 69 § 2; Rem. Supp. 1945 § 10756. Formerly RCW 73.04.050, part. FORMER PART OF SECTION: 1945 c 144 § 9, part now codified in RCW 73.04.050.]

**Reviser's note:** 1945 c 144 § 10 amending 1903 c 69 § 2 declared unconstitutional, see note following RCW 73.04.050.

**73.04.070 Meeting hall may be furnished veterans' organizations.** Counties, cities and other political subdivisions of the state of Washington are authorized to furnish free of charge a building, office and/or meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries, subject to the direction of the committee or person in charge of such building, office and/or meeting hall. The several nationally recognized veterans' organizations shall have access at all times to said building, office and/or meeting hall. Counties, cities and other political subdivisions shall further have the right to furnish heat, light, utilities, furniture and janitor service at no cost to the veterans' organizations and their auxiliaries. [1945 c 108 § 1; Rem. Supp. 1945 § 10758-60.]

**73.04.080 Meeting place rental may be paid out of county fund.** Any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which has qualified to accept relief from the veteran's assistance fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: PROVIDED, That no post, camp or chapter shall be allowed to draw on such fund for this purpose to exceed a reasonable amount approved by the county legislative authority in any one year, or in any amount for hall rental where said post, camp or chapter is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county legislative authority, the commander or authorized disbursing officer of such posts, camps or chapters shall file a proper claim each month with the county auditor for such rental. [1985 c 181 § 1; 1947 c 180 § 7; 1945 c 144 § 8; 1921 c 41 § 8; 1915 c 69 § 1; 1909 c 64 § 1; Rem. Supp. 1947 § 10743.]

**73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.** All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces or to persons defined as "veterans" in RCW 41.04.007. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his or her service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits. Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization. [2002 c 292 § 6; 1991 c 240 § 3; 1974 ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

*Emergency management: Chapter 38.52 RCW.*

**73.04.110 Free license plates for veterans with disabilities, prisoners of war—Penalty.** (1) Any person who is a veteran as defined in RCW 41.04.007 who submits to the department of licensing satisfactory proof of a service-connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

- (a) Has lost the use of both hands or one foot;
- (b) Was captured and incarcerated by an enemy of the United States during a period of war with the United States and received a prisoner of war medal;
- (c) Has become blind in both eyes as the result of military service; or
- (d) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year; is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of ten dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (1)(d) of this section.

(2) Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

(3) For the purposes of this section: (a) "Blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW; and (b) "special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.16.30920.

Any unauthorized use of a special plate is a gross misdemeanor. [2008 c 183 § 4; 2005 c 216 § 6. Prior: 2004 c 223 § 6; 2004 c 125 § 1; 1987 c 98 § 2; 1983 c 230 § 2; 1982 c 115 § 1; 1980 c 88 § 2; 1979 c 158 § 221; 1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

**Effective date—1983 c 230:** See note following RCW 41.04.005.

*Persons with disabilities, versions of special plates for:* RCW 46.16.385.

**73.04.115 Free license plates for surviving spouses or surviving domestic partners of deceased prisoners of war.**

(1) The department shall issue to the surviving spouse or surviving domestic partner of any deceased former prisoner of war described in RCW 73.04.110(1)(b), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

(2) The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. If

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the surviving spouse remarries or the surviving domestic partner registers in a new domestic partnership, he or she shall return the special plates to the department within fifteen days and apply for regular license plates.

(3) For purposes of this section, the term "special license plates" does not include any plate from the armed forces license plate collection established in RCW 46.16.30920. [2008 c 6 § 511; 2005 c 216 § 5; 1990 c 250 § 91; 1987 c 98 § 1.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—1990 c 250:** See note following RCW 46.16.301.

*Persons with disabilities, versions of special plates for:* RCW 46.16.385.

**73.04.120 Documents available for free—Who may request.** County clerks and county auditors, respectively, are authorized and directed to furnish free of charge to the legal representative, surviving spouse or surviving domestic partner, child or parent of any deceased veteran certified copies of marriage certificates, decrees of dissolution of marriage or domestic partnership, or annulment, or other documents contained in their files and to record and issue, free of charge, certified copies of such documents from other states, territories, or foreign countries affecting the marital status of such veteran whenever any such document shall be required in connection with any claim pending before the United States veterans' bureau or other governmental agency administering benefits to war veterans. Where these same documents are required of service personnel of the armed forces of the United States for determining entitlement to family allowances and other benefits, they shall be provided without charge by county clerks and county auditors upon request of the person in the service or his dependents. [2008 c 6 § 508; 1985 c 44 § 19; 1984 c 84 § 1; 1967 c 89 § 1; 1949 c 16 § 1; Rem. Supp. 1949 § 10758-13b.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**73.04.130 Veteran estate management program—Director authority—Criteria.** The director is authorized to implement a veteran estate management program and manage the estate of any incapacitated veteran or incapacitated veteran's dependent who:

- (1) Is a bona fide resident of the state of Washington; and
- (2) The United States department of veterans affairs or the social security administration has determined that the payment of benefits or entitlements is dependent upon the appointment of a federal fiduciary or representative payee; and
- (3) Requires the services of a fiduciary and a responsible family member is not available; or
- (4) Is deceased and has not designated an executor to dispose of the estate.

The director or any other interested person may petition the appropriate authority for the appointment as fiduciary for an incapacitated veteran or as the executor of the deceased veteran's estate. If appointed, the director may serve without bond. This section shall not affect the prior right to act as administrator of a veteran's estate of such persons as are denominated in RCW 11.28.120 (1) and (2), nor shall this section affect the appointment of executor made in the last

will of any veteran. [1994 c 147 § 2; 1979 c 64 § 1; 1977 c 31 § 3; 1974 ex.s. c 63 § 1; 1972 ex.s. c 4 § 1.]

#### **73.04.131 Veteran estate management program—**

**Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Director" means the director of the department of veterans affairs or the director's designee.

(2) "Veteran estate management program" means the program under which the director serves as administrator or federal fiduciary of an incapacitated veteran's estate or incapacitated veteran's dependent's estate, or the executor of a deceased veteran's estate. [1994 c 147 § 1.]

#### **73.04.135 Veteran estate management program—**

**Claims against veteran's estate—Account created.** (1) The director may place a claim against the estate of an incapacitated or deceased veteran who is a veteran estate management program client. The claim shall not exceed the amount allowed by rule of the United States department of veterans affairs and charges for reasonable expenses incurred in the execution or administration of the estate. The director shall waive all or any portion of the claim if the payment or a portion thereof would pose a hardship to the veteran.

(2) The veteran estate management account is hereby created in the custody of the state treasurer. Fees, reimbursements, and grants collected from estates of incapacitated veterans or incapacitated veterans' dependents shall be deposited into the account. Funds in the account shall be expended solely for the purpose of providing financial operating and maintenance support to the veteran estate management program and shall be the sole source of funding for the program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2006 c 372 § 905; 1994 c 147 § 3.]

**Severability—2006 c 372:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 372 § 908.]

**Effective date—2006 c 372:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2006]." [2006 c 372 § 909.]

**73.04.140 Guardians—Department officers and employees prohibited.** The director or any other department of veterans affairs employee shall not serve as guardian for any resident at the Washington state veterans' homes. [1994 c 147 § 5.]

**73.04.150 Joint committee on veterans' and military affairs.** (1) There is hereby created a joint committee on veterans' and military affairs. The committee shall consist of: (a) Eight members of the senate appointed by the president of the senate, four of whom shall be members of the majority party and four of whom shall be members of the minority party; and (b) eight members of the house of representatives appointed by the speaker, four of whom shall be members of the majority party and four of whom shall be members of the

minority party. Members of the committee shall be appointed before the close of the 2005 legislative session, and before the close of each regular session during an odd-numbered year thereafter.

(2) Each member's term of office shall run from the close of the session in which he or she was appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term shall continue until the member is reappointed or a successor is appointed. The term of office for a committee member who does not continue as a member of the senate or house of representatives shall cease upon the convening of the next session of the legislature during an odd-numbered year after the member's appointment, or upon the member's resignation, whichever is earlier. Vacancies on the committee shall be filled by appointment in the same manner as described in subsection (1) of this section. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(3) The committee shall establish an executive committee of four members, two of whom are members of the senate and two of whom are members of the house of representatives. The executive committee shall appoint one cochair from the two executive committee members who are senators and one cochair from the two executive committee members who are representatives. The two cochairs shall be from different political parties and their terms of office shall run from the close of the session in which they are appointed until the close of the next regular session in an odd-numbered year. The executive committee is responsible for performing all general administrative and personnel duties assigned to it in the rules and procedures adopted by the joint committee, as well as other duties delegated to it by the joint committee.

(4) The joint committee on veterans' and military affairs has the following powers and duties:

(a) To study veterans' issues, active military forces issues, and national guard and reserve component issues, and make recommendations to the legislature; and

(b) To study structure and administration of the department of veterans affairs and the military department, and make recommendations to the legislature.

(5) The joint committee shall adopt rules and procedures for its orderly operation. The joint committee may create subcommittees to perform duties under this section. [2005 c 141 § 1; 2001 c 268 § 1.]

**73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans.** The legislature declares that:

(1) November of each year will be known as veterans' history awareness month;

(2) The week in November in which veterans' day occurs is designated as a time for people of this state to celebrate the contributions to the state by veterans; and

(3) Educational institutions, public entities, and private organizations are encouraged to designate time for appropriate activities in commemoration of the contributions of America's veterans. [2003 c 161 § 1.]

**Chapter 73.08 RCW**  
**VETERANS' RELIEF**

## Sections

73.08.005	Definitions.
73.08.010	County veterans' assistance programs for indigent veterans and families—Requirements.
73.08.035	Veterans' advisory boards.
73.08.070	County burial of indigent deceased veterans.
73.08.080	Tax levy authorized.
73.08.090	Public assistance eligibility.

*Soldiers' and veterans' homes and veterans' cemetery: Chapter 72.36 RCW.*

*Soldiers' home: State Constitution Art. 10 § 3.*

**73.08.005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Direct costs" includes those allowable costs that can be readily assigned to the statutory objectives of this chapter, consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(2) "Family" means the spouse or domestic partner, surviving spouse, surviving domestic partner, and dependent children of a living or deceased veteran.

(3) "Indigent" means a person who is defined as such by the county legislative authority using one or more of the following definitions:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income;

(b) Receiving an annual income, after taxes, of up to one hundred fifty percent or less of the current federally established poverty level, or receiving an annual income not exceeding a higher qualifying income established by the county legislative authority; or

(c) Unable to pay reasonable costs for shelter, food, utilities, and transportation because his or her available funds are insufficient.

(4) "Indirect costs" includes those allowable costs that are generally associated with carrying out the statutory objectives of this chapter, but the identification and tracking of those costs cannot be readily assigned to a specific statutory objective without an accounting effort that is disproportionate to the benefit received. A county legislative authority may allocate allowable indirect costs to its veterans' assistance fund if it is accomplished in a manner consistent with the cost principles promulgated by the federal office of management and budget in circular No. A-87, dated May 10, 2004.

(5) "Veteran" has the same meaning as defined in RCW 41.04.005 and 41.04.007.

(6) "Veterans' advisory board" means a board established by a county legislative authority under the authority of RCW 73.08.035.

(7) "Veterans' assistance fund" means an account in the custody of the county auditor, or the chief financial officer in a county operating under a charter, that is funded by taxes levied under the authority of RCW 73.08.080.

(8) "Veterans' assistance program" means a program approved by the county legislative authority under the authority of RCW 73.08.010 that is fully or partially funded by the veterans' assistance fund authorized by RCW 73.08.080. [2008 c 6 § 502; 2005 c 250 § 2.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Intent—2005 c 250:** "(1) It is the intent of the legislature that each county establish a veterans' assistance program to benefit indigent veterans and their families. These programs must be funded, at least in part, by veterans' assistance funds. The legislature intends also for each county to establish a veterans' advisory board responsible for advising the county legislative authority on needed and appropriate assistance programs for local indigent veterans and their families. Recognizing the valuable insight and perspectives that veterans offer, it is the intent of the legislature that each board be comprised entirely of veterans.

(2) The legislature recognizes that ongoing veterans' relief or assistance programs in some areas of the state have provided meaningful assistance to indigent veterans and family members. The legislature further recognizes that veterans' service organizations have traditionally been the initial point of contact for indigent veterans and family members seeking assistance. In recognition of these factors, the legislature intends to authorize, upon the satisfaction of certain administrative requirements, existing veterans' relief or assistance programs to continue providing needed and effective assistance to indigent veterans and their families.

(3) The legislature recognizes that counties respond to the needs of indigent veterans and family members in the manner most appropriate to the needs and resources of the county. The legislature intends for the provisions of this act to facilitate the effective use of assistance funds through efficient model programs that benefit veterans and family members experiencing financial hardships.

(4) It is the policy of the state of Washington that bias shall not play a role in the distribution of the veterans' assistance fund." [2005 c 250 § 1.]

**73.08.010 County veterans' assistance programs for indigent veterans and families—Requirements.** (1) For the relief of indigent veterans, their families, and the families of deceased indigent veterans, the legislative authority of each county shall establish a veterans' assistance program to address the needs of local indigent veterans and their families. The county legislative authority shall consult with and solicit recommendations from the veterans' advisory board established under RCW 73.08.035 to determine the appropriate services needed for local indigent veterans. Veterans' assistance programs shall be funded, at least in part, by the veterans' assistance fund created under the authority of RCW 73.08.080.

(2) The county legislative authority may authorize other entities to administer a veterans' assistance program or programs through grants, contracts, or interlocal agreements. If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the terms of the grant, contract, or interlocal agreement must, for each program, specify:

- (a) The details of the program;
- (b) The responsibilities of all parties;
- (c) The duration of the program;
- (d) The costs and sources of funding;
- (e) Any insurance or bond requirements;
- (f) The format and frequency of progress and final reports; and
- (g) Any other information deemed necessary or appropriate by either party.

(3) If the county legislative authority authorizes another entity to administer a veterans' assistance program or programs, the authorized entity should, to the extent feasible and

consistent with this chapter, ensure that a local branch of a nationally recognized veterans' service organization is the initial point of contact for a veteran or family member seeking assistance.

(4) Nothing in this section shall prohibit or be construed as prohibiting a county from authorizing the continued operation of a veterans' relief or assistance program or programs existing on January 1, 2005, if the authorizing legislative authority:

(a) Solicits advice from the veterans' advisory board established in RCW 73.08.035; and

(b) Satisfies the grant, contractual, or interlocal agreement requirements of subsection (2) of this section. [2005 c 250 § 3; 2002 c 292 § 7; 1983 c 295 § 1; 1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

*Soldiers' home and colony:* Chapter 72.36 RCW.

*Veterans' rehabilitation council:* Chapter 43.61 RCW.

**73.08.035 Veterans' advisory boards.** (1) The legislative authority for each county must establish a veterans' advisory board. Upon its establishment, the board shall advise the county legislative authority on the needs of local indigent veterans, the resources available to local indigent veterans, and programs that could benefit the needs of local indigent veterans and their families.

(2) The county legislative authority must solicit representatives from either local branches of nationally recognized veterans' service organizations or the veterans' community at large, or both, to serve on the board. No fewer than a majority of the board members shall be members from nationally recognized veterans' service organizations and only veterans are eligible to serve as board members.

(3) Service on the board is voluntary. The county legislative authority may provide for reimbursement to board members for expenses incurred. [2005 c 250 § 4.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

**73.08.070 County burial of indigent deceased veterans.** (1) The legislative authority for each county must designate a proper authority to be responsible, at the expense of the county, for the burial or cremation of any deceased indigent veteran or deceased family member of an indigent veteran who died without leaving means sufficient to defray funeral expenses. The costs of such a burial or cremation may not exceed the limit established by the county legislative authority nor be less than three hundred dollars.

(2) If the deceased has relatives or friends who desire to conduct the burial or cremation of such deceased person, then a sum not to exceed the limit established by the county legislative authority nor less than three hundred dollars shall be paid to the relatives or friends by the county auditor, or by the chief financial officer in a county operating under a charter. Payment shall be made to the relatives or friends upon presenting to the auditor or chief financial officer due proof of the death, burial or cremation, and expenses incurred.

(3) Expenses incurred for the burial or cremation of a deceased indigent veteran or the deceased family member of

an indigent veteran as provided by this section shall be paid from the veterans' assistance fund authorized by RCW 73.08.080. [2005 c 250 § 5; 2002 c 292 § 9; 1997 c 286 § 1; 1983 c 295 § 5; 1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

*Counties, disposal of remains of indigent persons:* RCW 36.39.030.

**73.08.080 Tax levy authorized.** (1) The legislative authority in each county shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating a veterans' assistance fund. Expenditures from the veterans' assistance fund, and interest earned on balances from the fund, may be used only for:

(a) The veterans' assistance programs authorized by RCW 73.08.010;

(b) The burial or cremation of a deceased indigent veteran or deceased family member of an indigent veteran as authorized by RCW 73.08.070; and

(c) The direct and indirect costs incurred in the administration of the fund as authorized by subsection (2) of this section.

(2) If the funds on deposit in the veterans' assistance fund, less outstanding warrants, on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county legislative authority may levy a lesser amount. The direct and indirect costs incurred in the administration of the veterans' assistance fund shall be computed by the county auditor, or the chief financial officer in a county operating under a charter, not less than annually. Following the computation of these direct and indirect costs, an amount equal to these costs may then be transferred from the veterans' assistance fund to the county current expense fund.

(3) The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [2005 c 250 § 6; 1985 c 181 § 2; 1983 c 295 § 6; 1980 c 155 § 6; 1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

**Effective date—Applicability—1980 c 155:** See note following RCW 84.40.030.

**Emergency—Effective dates—1973 2nd ex.s. c 4:** See notes following RCW 84.52.043.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**73.08.090 Public assistance eligibility.** The department of social and health services shall exempt payments provided under RCW 73.08.005, 73.08.035, 73.08.010, 73.08.070, and 73.08.080 when determining eligibility for public assistance. [2005 c 250 § 7.]

**Intent—2005 c 250:** See note following RCW 73.08.005.

**Chapter 73.16 RCW**

**EMPLOYMENT AND REEMPLOYMENT**

Sections

73.16.005	Intent—Purpose.
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73.16.015	Enforcement of preference—Civil action.
73.16.020	Failure to comply—Infraction.
73.16.031	Definitions.
73.16.032	Employment rights—Prohibited actions.
73.16.033	Reemployment of returned veterans.
73.16.035	Eligibility requirements—Exceptions—Burden of proof.
73.16.041	Leaves of absence of elective and judicial officers.
73.16.051	Restoration without loss of seniority or benefits.
73.16.053	Continuation of health plan coverage during absence—Reinstatement of health plan coverage upon reemployment.
73.16.055	Determination of pension benefits and liabilities for reemployed persons.
73.16.061	Enforcement of provisions.
73.16.070	Federal act to apply in state courts.
73.16.080	Bona fide executive, administrative, and professional employees—Offset of military pay.
73.16.090	Application of chapter—Other rights and benefits preserved.
73.16.100	Legislative declaration—Other civil actions abolished.

**73.16.005 Intent—Purpose.** (1) It is the intent of the legislature to guarantee employment rights of members of the reserve and national guard forces who are called to active duty. The federal uniformed services employment and reemployment rights act of 1994 protects all such federal personnel. The legislature intends that similar provisions should apply to all such state personnel. Therefore, the legislature intends for chapter 133, Laws of 2001 to ensure protections for state-activated personnel similar to those provided by federal law for federal-activated personnel.

(2) The purposes of this chapter are to:

(a) Encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment that can result from such service;

(b) Minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(c) Prohibit discrimination against persons because of their service in the uniformed services.

(3) Therefore, the legislature intends that the governmental agencies of the state of Washington, and all the political subdivisions thereof, should be model employers in carrying out the provisions of this chapter. [2001 c 133 § 1.]

**Effective date—2001 c 133:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2001]." [2001 c 133 § 15.]

**73.16.010 Preference in public employment.** In every public department, and upon all public works of the state, and of any county thereof, honorably discharged soldiers, sailors,

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and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved: PROVIDED, That spouses of honorably discharged veterans who have a service connected permanent and total disability shall also be preferred for appointment and employment. [1975 1st ex.s. c 198 § 1; 1973 1st ex.s. c 154 § 107; 1951 c 29 § 1; 1943 c 141 § 1; 1919 c 26 § 1; 1915 c 129 § 1; 1895 c 84 § 1; Rem. Supp. 1943 § 10753.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

*Veterans to receive scoring criteria status in competitive examinations for public employment: RCW 41.04.010.*

**73.16.015 Enforcement of preference—Civil action.** Any veteran entitled to the benefits of RCW 73.16.010 may enforce his or her rights hereunder by civil action in superior court. [2001 c 133 § 2; 1951 c 29 § 2.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.020 Failure to comply—Infraction.** All officials or other persons having power to appoint to or employment in the public service set forth in RCW 73.16.010, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a class 1 civil infraction. [1987 c 456 § 30; 1895 c 84 § 2; RRS § 10754.]

**Legislative finding—1987 c 456:** See RCW 7.80.005.

**Effective date—1987 c 456 §§ 9 through 31:** See RCW 7.80.901.

**73.16.031 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the attorney general of the state of Washington or any person designated by the attorney general to carry out a responsibility of the attorney general under this chapter.

(2) "Benefit," "benefit of employment," or "rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) "Employee" means a person in a position of employment.

(4) "Employer" means the person, firm, or corporation, the state, or any elected or appointed public official currently having control over the position that has been vacated.

(5) "Health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(6) "Notice" means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(7) "Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, or the state.

(8) "Qualified," with respect to an employment position, means having the ability to perform the essential tasks of the position.

(9) "Rejectee" means a person rejected because he or she is not, physically or otherwise, qualified to enter the uniformed service.

(10) "Resident" means any person residing in the state with the intent to remain other than on a temporary or transient basis.

(11) "Seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(12) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty (including state-ordered active duty), and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(13) "State" means the state of Washington, including the agencies and political subdivisions thereof.

(14) "Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his or her engagement.

(15) "Undue hardship," in the case of actions taken by an employer, means actions requiring significant difficulty or expense when considered in light of:

(a) The nature and cost of the action needed under this chapter;

(b) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources; or the impact otherwise of such action upon the operation of the facility; and

(c) The type of operation or operations of the employer, including the composition, structure, and functions of the workforce of such employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency. [2001 c 133 § 3; 1953 c 212 § 1.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

*Employment and reemployment rights of members of organized militia upon return from militia duty: RCW 38.24.060.*

### **73.16.032 Employment rights—Prohibited actions.**

(1) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(2) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (a) has taken an action to enforce a protection afforded any person under this chapter, (b) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (c) has assisted or otherwise participated in an investigation under this chapter, or (d) has exercised a right provided for in this chapter. The prohibition in this subsection (2) applies with respect to a person regardless of whether that person has performed service in the uniformed services.

(3) An employer shall be considered to have engaged in actions prohibited:

(a) Under subsection (1) of this section, if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(b) Under subsection (2) of this section if the person's (i) action to enforce a protection afforded any person under this chapter, (ii) testimony or making of a statement in or in connection with any proceeding under this chapter, (iii) assistance or other participation in an investigation under this chapter, or (iv) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right. [2001 c 133 § 4.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.033 Reemployment of returned veterans.** Any person who is a resident of this state or is employed within this state, and who voluntarily or upon order from competent authority, vacates a position of employment for service in the uniformed services, shall, provided he or she meets the requirements of RCW 73.16.035, be reemployed forthwith: PROVIDED, That the employer need not reemploy such person if circumstances have so changed such that reemployment would be impossible or unreasonable due to a change in the employer's circumstances, or would impose an undue hardship on the employer: PROVIDED FURTHER, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his or her former position, he or she shall be restored to that position or to a position of like seniority, status and pay. If he or she is not so qualified as a result of disability sustained

during his or her service in the uniformed services, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he or she shall be reemployed in such other position: PROVIDED, That such position shall provide him or her with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case. [2001 c 133 § 5; 1953 c 212 § 2.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.035 Eligibility requirements—Exceptions—Burden of proof.** (1) In order to be eligible for the benefits of this chapter, an applicant must comply with the following requirements:

(a) The applicant must notify his or her employer as to his or her membership in the uniformed services within a reasonable time of accepting employment or becoming a member of the uniformed services. An employer may not take any action prohibited in RCW 73.16.032 against a person because the person provided notice of membership in the uniformed services to the employer.

(b) The applicant must furnish a receipt of an honorable, or under honorable conditions discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his or her service. Rejectees must furnish proof of orders for examination and rejection.

(c) The applicant must make written application to the employer or his or her representative as follows:

(i) In the case of an applicant whose period of service in the uniformed services was less than thirty-one days, by reporting to the employer:

(A) Not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the applicant from the place of that service to the applicant's residence; or

(B) As soon as possible after the expiration of the eight-hour period in (c)(i)(A) of this subsection, if reporting within that period is impossible or unreasonable through no fault of the applicant;

(ii) In the case of an applicant who is absent from a position of employment for a period of any length for the purposes of an examination to determine the applicant's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in (c)(i) of this subsection;

(iii) In the case of an applicant whose period of service in the uniformed services was for more than thirty days but less than one hundred eighty-one days, by submitting an application for reemployment with the employer not later than fourteen days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the applicant, the next first full calendar day when submission of such application becomes possible;

(iv) In the case of an applicant whose period of service in the uniformed services was for more than one hundred eighty days, by submitting an application for reemployment with the employer not later than ninety days after the completion of the period of service;

(v) In the case of an applicant who is hospitalized for, or convalescing from, an illness or injury incurred or aggravated during the performance of service in the uniformed services, at the end of the period that is necessary for the applicant to recover from such illness or injury, the applicant shall submit an application for reemployment with such employer. The period of recovery may not exceed two years. This two-year period shall be extended by the minimum time required to accommodate the circumstances beyond the applicant's control that make reporting within the two-year period impossible or unreasonable;

(vi) In the case of an applicant who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection (1)(c), the applicant does not automatically forfeit his or her entitlement to the rights and benefits conferred by this chapter, but is subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(d) An applicant who submits an application for reemployment shall provide to the applicant's employer, upon the request of that employer, documentation to establish that:

(i) The application is timely;

(ii) The applicant has not exceeded the service limitations set forth in this section, except as permitted under (c)(v) of this subsection; and

(iii) The applicant's entitlement to the benefits under this chapter has not been terminated pursuant to (e) of this subsection.

(e) The applicant must return and reenter the office or position within the appropriate period specified in (c) of this subsection after serving four years or less in the uniformed services other than state-ordered active duty: PROVIDED, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him or her from active duty, will not affect reemployment rights.

(f) The applicant must return and reenter the office or position within the appropriate period specified in (c) of this subsection after serving twelve weeks or less in a calendar year in state-ordered active duty: PROVIDED, That the governor, when declaring an emergency that necessitates a longer period of service, may extend the period of service in state-ordered active duty to up to twelve months after which the applicant is eligible for the benefits of this chapter.

(2) The failure of an applicant to provide documentation that satisfies rules adopted pursuant to subsection (1)(c) of this section shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that the applicant does not meet one or more of the requirements referred to in subsection (1)(d) of this section, that applicant's employer may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(3) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(4) The application in subsection (1) of this section is not required if the giving of such application is precluded by mil-

itary necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made by the adjutant general of the state of Washington military department and is not subject to judicial review.

(5) In any proceeding involving an issue of whether (a) reemployment is impossible or unreasonable because of a change in an employer's circumstances, (b) reemployment would impose an undue hardship on the employer, or (c) the employment is for a temporary position, the employer has the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period. [2001 c 133 § 6; 1969 c 16 § 1; 1953 c 212 § 3.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.041 Leaves of absence of elective and judicial officers.** When any elective officer of this state or any political subdivision thereof, including any judicial officer, shall enter upon active service or training as provided in RCW 73.16.031, 73.16.033 and 73.16.035, the proper officer, board or other agency, which would ordinarily be authorized to grant leave of absence or fill a vacancy created by the death or resignation of the elective official so ordered to such service, shall grant an extended leave of absence to cover the period of such active service or training and may appoint a temporary successor to the position so vacated. No leave of absence provided for herein shall operate to extend the term for which the occupant of any elective position shall have been elected. [1953 c 212 § 4.]

**73.16.051 Restoration without loss of seniority or benefits.** Any person who is entitled to be restored to a position in accordance with this chapter shall be considered as having been on furlough or leave of absence, from his or her position of employment, during his or her period of active military duty or service, and he or she shall be so restored without loss of seniority. He or she shall further be entitled to participate in insurance, vacations, retirement pay, and other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he or she shall not be discharged from such position without cause within one year after restoration. [2001 c 133 § 7; 1953 c 212 § 5.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.053 Continuation of health plan coverage during absence—Reinstatement of health plan coverage upon reemployment.** (1) If a person, or the person's dependents, have coverage under a health plan in connection with the person's position of state employment, and the person is absent from his or her position of state employment by reason of service in the uniformed services, the plan shall provide that the person may elect to continue the coverage as provided in this section. The maximum period of coverage of a person and person's dependents under such an election shall be the lesser of:

(a) The eighteen-month period beginning on the date on which the person's absence begins; or

(b) The day after the date on which the person fails to apply for or return to a position of state employment, as determined under RCW 73.16.035.

(2) A person who elects to continue health plan coverage under this section may be required to pay not more than one hundred two percent of the full premium under the plan associated with the coverage for the state employer's other employees, except that in the case of a person who performs service in the uniformed services for less than thirty-one days, the person may not be required to pay more than the employee share, if any, for the coverage.

(3) Except as provided in subsection (2) of this section, if a person's coverage under a health plan was terminated because of service in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of the person by the plan not been terminated as a result of his or her service. This subsection applies to the person who is reemployed and to any dependent who is covered by the plan because of the reinstatement of the coverage of the person. [2001 c 133 § 8.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.055 Determination of pension benefits and liabilities for reemployed persons.** (1)(a) In the case of a right provided under any state law governing pension benefits for state employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(b) A person reemployed under this chapter shall be treated as not having incurred a break in service with the state because of the person's period of service in the uniformed services.

(c) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the state for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(2) When the state is reemploying a person under this chapter, the state is liable to an employee pension benefit plan for funding any obligation of the plan to provide the pension benefits described in this section and shall allocate the amounts of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and purposes of a state law governing pension benefits for state employees, service in the uniformed services that is deemed under subsection (1) of this section to be service with the state shall be deemed to be service with the state under the terms of the plan or any applicable collective bargaining agreement.

(3) A person reemployed by the state under this chapter is entitled to accrued benefits pursuant to subsection (1)(a) of

this section that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the internal revenue code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the state throughout the period of uniformed service. Any payment to the plan described in this subsection shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's services, such payment period in the uniformed services, not to exceed five years.

(4) For purposes of computing an employer's liability of the employee's contributions under subsection (2) of this section, the employee's compensation during the period of service shall be computed:

(a) At the rate the employee would have received but for the period of service in subsection (1)(b) of this section; or

(b) In the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve-month period immediately preceding such period or if shorter, the period of employment immediately preceding such period. [2001 c 133 § 9.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.061 Enforcement of provisions.** (1) In case any employer, his or her successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061 and 73.16.090, the attorney general shall bring action in the superior court in the county in which the employer is located or does business to obtain an order to specifically require such employer to comply with the provisions of this chapter, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act if:

(a) The service in question was state duty not covered by the uniformed services employment and reemployment rights act of 1994, P.L. 103-353 (38 U.S.C. Sec. 4301 et seq.); and

(b) The employer support for guard and reserve ombudsman, or his or her designee, has inquired in the matter and has been unable to resolve it.

(2) If the conditions in subsection (1)(a) and (b) of this section are met, any such person who does not desire the services of the attorney general may, by private counsel, bring such action. [2001 c 133 § 10; 1953 c 212 § 6.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.070 Federal act to apply in state courts.** The federal soldiers' and sailors' civil relief act of 1940, Public Act No. 861, is hereby specifically declared to apply in proper cases in all the courts of this state. [2001 c 133 § 11; 1941 c 201 § 5; Rem. Supp. 1941 § 10758-7.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.080 Bona fide executive, administrative, and professional employees—Offset of military pay.** An offset of any military pay for temporary service in the uniformed services in a particular week against the salary of a bona fide

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executive, administrative, or professional employee in a particular week shall not be a factor in determining whether the employee is exempt under RCW 49.46.010(5)(c). [2001 c 133 § 12.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.090 Application of chapter—Other rights and benefits preserved.** This chapter shall not supersede, nullify, or diminish any federal or state law, ordinance, rule, regulation, contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter. [2001 c 133 § 13.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**73.16.100 Legislative declaration—Other civil actions abolished.** The legislature declares that the public policies articulated in chapter 133, Laws of 2001 depend on the procedures established in chapter 133, Laws of 2001. No civil or criminal action may be maintained relying on the public policies articulated in chapter 133, Laws of 2001 without complying with the procedures in this chapter. To that end, all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this chapter. [2001 c 133 § 14.]

**Effective date—2001 c 133:** See note following RCW 73.16.005.

**Chapter 73.20 RCW**

**ACKNOWLEDGMENTS AND POWERS OF ATTORNEY**

Sections

- 73.20.010 Acknowledgments.
- 73.20.050 Agency created by power of attorney not revoked by unverified report of death.
- 73.20.060 Affidavit of agent as to knowledge of revocation.
- 73.20.070 "Missing in action" report not construed as actual knowledge.
- 73.20.080 Provision in power for revocation not affected.

**73.20.010 Acknowledgments.** In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either

(1) is a member of the armed forces of the United States, or

(2) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or

(3) is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the

prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

*Acknowledgments, generally: Chapter 64.08 RCW.*

**73.20.050 Agency created by power of attorney not revoked by unverified report of death.** No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either (1) a member of the armed forces of the United States, or (2) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (3) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. [1945 c 139 § 1; Rem. Supp. 1945 § 10758-70.]

**Severability—1945 c 139:** "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 139 § 5.]

**73.20.060 Affidavit of agent as to knowledge of revocation.** An affidavit, executed by the attorney-in-fact or agent, setting forth that the maker of the power of attorney is a member of the armed forces of the United States or within the class of persons described in RCW 73.20.050, and that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the non-revocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. [1945 c 139 § 2; Rem. Supp. 1945 § 10758-71.]

**73.20.070 "Missing in action" report not construed as actual knowledge.** No report or listing, either official or otherwise, of "missing" or "missing in action", as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [1945 c 139 § 3; Rem. Supp. 1945 § 10758-72.]

**73.20.080 Provision in power for revocation not affected.** RCW 73.20.050 through 73.20.070 shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. [1945 c 139 § 4; Rem. Supp. 1945 § 10758-73.]

## Chapter 73.24 RCW BURIAL

### Sections

- 73.24.020 Contract for care of veterans' plot at Olympia.
- 73.24.030 Authorized burials in plot.

**73.24.020 Contract for care of veterans' plot at Olympia.** The director of the \*department of finance, budget and business is hereby authorized and directed to contract with Olympia Lodge No. 1, F.&A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [1937 c 36 § 1; RRS § 10758-1.]

**\*Reviser's note:** Powers and duties of the "department of finance, budget and business" have devolved upon the department of general administration through a chain of statutes as follows: 1935 c 176 § 11; 1947 c 114 § 5; and 1955 c 285 §§ 4, 14, 16, and 18 (RCW 43.19.010 and 43.19.015).

*Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.*

**73.24.030 Authorized burials in plot.** The said plot shall be available, to the extent such space is available, without charge or cost for the burial of persons who have served in the army, navy, or marine corps in the United States, in the Spanish-American war, Philippine insurrection, or the Chi-

nese Relief Expedition, or who served in any said branches of said service at any time between April 21, 1898 and July 4, 1902 and any veteran as defined in RCW 41.04.007. [2002 c 292 § 10; 1977 c 31 § 4; 1937 c 36 § 2; RRS § 10758-2.]

### Chapter 73.36 RCW

## UNIFORM VETERANS' GUARDIANSHIP ACT

### Sections

73.36.010	Terms defined.
73.36.020	Administrator party in interest in guardianship proceedings—Notice.
73.36.030	Appointment of guardian—Necessary when.
73.36.040	Guardian—Number of wards permitted.
73.36.050	Guardian—Appointment—Contents of petition.
73.36.060	Guardian for minor—Appointment—Prima facie evidence.
73.36.080	Notice of petition.
73.36.090	Guardian's bond.
73.36.100	Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.
73.36.110	Failure to account—Penalties.
73.36.120	Compensation of guardian.
73.36.130	Investment of funds—Procedure.
73.36.140	Use of funds—Procedure.
73.36.150	Purchase of real estate—Procedure.
73.36.155	Public records—Free copies.
73.36.160	Discharge of guardian—Final account.
73.36.165	Commitment to veterans administration or other federal agency.
73.36.170	Application of chapter to other guardianships of veterans.
73.36.180	Construction of chapter—Uniformity.
73.36.190	Short title.

*Guardianship, generally: Chapters 11.88, 11.92 RCW.*

#### **73.36.010 Terms defined.** As used in this chapter:

"Person" means an individual, a partnership, a corporation or an association.

"Veterans administration" means the veterans administration, its predecessors or successors.

"Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all moneys paid or payable by the United States through the veterans administration.

"Administrator" means the administrator of veterans affairs of the United States or his successor.

"Ward" means a beneficiary of the veterans administration.

"Guardian" means any fiduciary for the person or estate of a ward. [1951 c 53 § 1.]

**73.36.020 Administrator party in interest in guardianship proceedings—Notice.** The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans administration having jurisdiction over the area in

which any such suit or any such proceeding is pending. [1951 c 53 § 2.]

**73.36.030 Appointment of guardian—Necessary when.** Whenever, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided. [1951 c 53 § 3.]

**73.36.040 Guardian—Number of wards permitted.** No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than five wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of five and forthwith appoint a successor. [1951 c 53 § 4.]

**73.36.050 Guardian—Appointment—Contents of petition.** (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration.

(5) All proceedings under this chapter shall be governed by the provisions of chapters 11.88 and 11.92 RCW which shall prevail over any conflicting provisions of this chapter. [1994 c 147 § 4; 1951 c 53 § 5.]

*Prohibitions: RCW 73.04.140.*

**73.36.060 Guardian for minor—Appointment—Prima facie evidence.** Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 6.]

**73.36.080 Notice of petition.** Upon the filing of a petition for the appointment of a guardian under this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter. [1951 c 53 § 8.]

**73.36.090 Guardian's bond.** (1) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing two years, except in cases where banks or trust companies are appointed as guardian and no bond is required by the general state law. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds in which he is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. [1951 c 53 § 9.]

*Guardianship, generally: Chapters 11.88 and 11.92 RCW.*

**73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.**

(1) Every guardian, who has received or shall receive on account of his ward any money or other thing of value from the veterans administration, at the expiration of two years from date of his appointment, and every two years thereafter on the anniversary date of his appointment, or as much oftener as the court may require, shall file with the court a full, true and accurate account under oath of all moneys or other things of value received by him, all earnings, interest or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. Each year when not required to file an account with the court, the guardian shall file an account with the proper office of the veterans administration. If the interim account be not filed with the veterans administration, or, if filed, shall be unsatisfactory, the court shall upon receipt of notice thereof from the veterans administration require the guardian

forthwith to file an account which shall be subject in all respects to the next succeeding paragraphs. Any account filed with the veterans administration and approved by the chief attorney thereof may be filed with the court and be approved by the court without hearing, unless a hearing thereon be requested by some party in interest.

(2) The guardian, at the time of filing any account with the court or veterans administration shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the veterans administration having jurisdiction over the area in which such court is located. A duplicate signed copy or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceedings for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the persons filing the same to the proper office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading, not less than fifteen days nor more than sixty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and to the guardian and any others entitled to notice, not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or per-

sons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section. [1951 c 53 § 10.]

**73.36.110 Failure to account—Penalties.** If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within thirty days after citation issues and provided by law, or shall fail to furnish the veterans administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal, in addition to other penalties provided by law. [1951 c 53 § 11.]

**73.36.120 Compensation of guardian.** Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of moneys received during the period covered by the account, except that the court may allow a fee of not exceeding twenty-five dollars per year, as a minimum fee, upon the approval of the chief attorney for the veterans administration. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. [1951 c 53 § 12.]

**73.36.130 Investment of funds—Procedure.** Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. [1951 c 53 § 13.]

**73.36.140 Use of funds—Procedure.** A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person including the ward, the spouse or the domestic partner, and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading. [2008 c 6 § 509; 1951 c 53 § 14.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

(2008 Ed.)

**73.36.150 Purchase of real estate—Procedure.** (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty. [1951 c 53 § 15.]

**73.36.155 Public records—Free copies.** When a copy of any public record is required by the veterans administration to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record. [1951 c 53 § 16. Formerly RCW 73.04.025.]

**73.36.160 Discharge of guardian—Final account.** In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [1951 c 53 § 17.]

**73.36.165 Commitment to veterans administration or other federal agency.** (1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care,

it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any hospital operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any hospital of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or

other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [1951 c 53 § 18. Formerly RCW 71.02.700 through 71.02.720.]

**73.36.170 Application of chapter to other guardianships of veterans.** The provisions of this chapter relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in RCW 73.36.010 whether the guardian shall have been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to the enactment hereof. [1951 c 53 § 21.]

**73.36.180 Construction of chapter—Uniformity.** This chapter shall be so construed to make uniform the law of those states which enact it. [1951 c 53 § 19.]

**73.36.190 Short title.** This chapter may be cited as the "uniform veterans' guardianship act". [1951 c 53 § 20.]

## Chapter 73.40 RCW VETERANS' MEMORIALS

### Sections

73.40.010	Memorial honoring state residents who died or are missing-in-action in southeast Asia.
73.40.030	Memorial honoring state residents who died or are missing-in-action in southeast Asia—Display of individual names.
73.40.040	Memorial honoring state residents who died or are missing-in-action in the Korean conflict.
73.40.060	National World War II memorial account.

**73.40.010 Memorial honoring state residents who died or are missing-in-action in southeast Asia.** The secretary of state shall coordinate the design, construction, and placement of a memorial within the state capitol building honoring Washington state residents who died or are "missing-in-action" in the southeast Asia theater of operations. [1984 c 81 § 1. Formerly RCW 40.14.200.]

**73.40.030 Memorial honoring state residents who died or are missing-in-action in southeast Asia—Display of individual names.** The memorial authorized by \*RCW 40.14.200 through 40.14.210 shall display the individual names of the Washington state residents who died or are "missing-in-action" in the southeast Asia theater of operations. [1984 c 81 § 3. Formerly RCW 40.14.210.]

*\*Reviser's note:* RCW 40.14.200 through 40.14.210 were recodified as RCW 73.40.010 through 73.40.030.

**73.40.040 Memorial honoring state residents who died or are missing-in-action in the Korean conflict.** The director of the department of veterans affairs shall coordinate

the design, construction, and placement of a memorial within the state capitol grounds honoring Washington state residents who died or are "missing-in-action" in the Korean conflict. [1989 c 235 § 1. Formerly RCW 40.14.220.]

**73.40.060 National World War II memorial account.**

The national World War II memorial account is created in the custody of the state treasurer. All receipts from appropriations and other sources must be deposited into the account. Expenditures from the account may be used only for the national World War II memorial in Washington, D.C. Only the director of the department of veterans' affairs or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2000 c 12 § 2.]

**Intent—2000 c 12:** "It is the intent of the legislature to recognize the dedication of the men and women of Washington state who served or were wounded, killed, or missing in action during World War II by making a contribution towards the construction of a national World War II memorial to be located in Washington, D.C. The national World War II memorial will be the first national memorial dedicated to all who served during World War II. All military veterans of the war, the citizens on the home front, the nation at-large, and the high moral purpose and idealism that motivated the nation's call to arms will be honored with this memorial." [2000 c 12 § 1.]



# Title 74

## PUBLIC ASSISTANCE

### Chapters

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- 74.08** Eligibility generally—Standards of assistance.
- 74.08A** Washington WorkFirst temporary assistance for needy families.
- 74.09** Medical care.
- 74.09A** Medical assistance—Coordination of benefits—Computerized information transfer.
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- 74.13** Child welfare services.
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- 74.98** Construction.

*Assistance and relief by counties: Chapter 36.39 RCW.*

*Assistance for parolees, work release, and discharged prisoners: RCW 9.95.310 through 9.95.370.*

*Child abuse or neglect, reports by practitioners of healing arts: Chapter 26.44 RCW.*

*Displaced homemaker act: Chapter 28B.04 RCW.*

*Domestic violence prevention: Chapter 26.50 RCW.*

*Jurisdiction over Indians as to public assistance: Chapter 37.12 RCW.*

*Low-income patients, malpractice insurance for retired physicians providing health care services: RCW 43.70.460.*

*Missing children clearinghouse and hot line: Chapter 13.60 RCW.*

(2008 Ed.)

### Chapter 74.04 RCW

#### GENERAL PROVISIONS—ADMINISTRATION

##### Sections

- 74.04.005 Definitions—Eligibility.
- 74.04.00511 Limitations on "resource" and "income."
- 74.04.0052 Teen applicants’ living situation—Criteria—Presumption—Protective payee—Adoption referral.
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74.04.630	State supplementation to national program of supplemental security income—Contractual agreements with federal government.
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*Collection agencies to collect public debts: RCW 19.16.500.*

*Identification cards—Issuance to nondrivers and public assistance recipients: RCW 46.20.117.*

**74.04.005 Definitions—Eligibility.** For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps or food stamp benefits transferred electronically and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate

assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(ii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation

of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall have their benefits discontinued unless the recipient demonstrates no material improvement in their medical or mental condition. The department may discontinue benefits when there was specific error in the prior determination that found the recipient eligible by reason of incapacity. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(h) No person may be considered an eligible individual for general assistance with respect to any month if during that month the person:

(i) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(ii) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assistance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars;

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person;

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars;

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2003 1st sp.s. c 10 § 1; 2000 c 218 § 1. Prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1991 sp.s. c 10:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 10 § 2.]

**Effective date—1991 sp.s. c 10:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 10 § 3.]

**Findings—Purpose—1990 c 285:** "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

**Severability—1990 c 285:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 285 § 10.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—1981 1st ex.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 1st ex.s. c 6 § 31.]

**Severability—1981 1st ex.s. c 6:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 6 § 30.]

*Consolidated standards of need: RCW 74.04.770.*

**74.04.00511 Limitations on "resource" and "income."** For purposes of RCW 74.04.005 (10) and (11), "resource" and "income" do not include educational assistance awarded under \*the gaining independence for students with dependents program as defined in chapter 19, Laws of 2003 for recipients of temporary assistance for needy families. [2003 c 19 § 8.]

**\*Reviser's note:** The gaining independence for students with dependents program is codified in chapter 28B.133 RCW.

**Finding—Intent—Short title—Captions not law—2003 c 19:** See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

**74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.** (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and pregnant who are eligible for general assistance as defined in RCW 74.04.005(6)(a)(ii)(A). An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) A pregnant minor residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, provide information about adoption including referral to community-based organizations providing counseling.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 502; 1994 c 299 § 34.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

*Aid to families with dependent children:* RCW 74.12.255.

**74.04.006 Contract of sale of property—Availability as a resource or income—Establishment.** The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

**74.04.011 Secretary's authority—Personnel.** The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: PROVIDED, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his designee to any suitable employee of the department. [1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

*State civil service law: Chapter 41.06 RCW.*

**74.04.012 Establishment of investigation unit.** There is established a unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful in the programs administered by the department. The secretary will employ qualified supervisory, legal, and investigative personnel for the program. Program staff must be qualified by training and experience. [2008 c 74 § 3.]

**Finding—2008 c 74:** See note following RCW 51.04.024.

**74.04.015 Secretary responsible officer to administer federal funds, etc.** The secretary of social and health services shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities and services, which may be received by the state in connection with programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act approved August 14, 1935, or any other federal act or as the same may be amended excepting those specifically required to be administered by other entities.

He shall make such reports and render such accounting as may be required by the federal agency having authority in the premises. [1981 1st ex.s. c 6 § 2; 1981 c 8 § 2; 1979 c 141 § 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

*Children's center for research and training in mental retardation, assistant secretaries as advisory committee members:* RCW 28B.20.412.

**74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials.** (1) The department and the office of administrative hearings shall ensure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with interpreters, local agencies, or other community resources.

(4) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(5) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(6) As used in this section, "primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese. [1998 c 245 § 143; 1983 1st ex.s. c 41 § 33.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.04.033 Notification of availability of basic health plan.** The department shall notify any applicant for public assistance who resides in a local area served by the Washington basic health plan and is under sixty-five years of age of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the department of a closure of enrollment in the area. The department shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate community service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 18.]

**Severability—1987 1st ex.s. c 5:** See RCW 70.47.901.

**74.04.040 Public assistance a joint federal, state, and county function—Notice required.** The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department.

Whenever a city or town establishes a program or policy for the care, support, and relief of needy persons it shall provide notice of the program or policy to the county or counties within which the city or town is located. [1981 c 191 § 1; 1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

**74.04.050 Department to administer public assistance programs.** The department shall serve as the single state agency to administer public assistance. The department is hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds for:

- (1) Medical assistance;
- (2) Aid to dependent children;
- (3) Child welfare services; and
- (4) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made.

The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities and services are extended to the state for the support of programs administered by the department, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

The department shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [1981 1st ex.s. c 6 § 3; 1981 c 8 § 3; 1963 c 228 § 3; 1959 c 26 § 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements.** In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter. [1991 c 126 § 2; 1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

**74.04.057 Promulgation of rules and regulations to qualify for federal funds.** The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

**74.04.060 Records, confidential—Exceptions—Penalty.** (1)(a) For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

(b) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separa-

tion or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(c) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [2006 c 259 § 5; 1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

**Effective date—1987 c 435:** See RCW 26.23.900.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Severability—1973 c 152:** "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 152 § 3.]

*Child support, department may disclose information to internal revenue department: RCW 74.20.160.*

**74.04.062 Disclosure of recipient location to police officer or immigration official.** Upon written request of a person who has been properly identified as an officer of the law or a properly identified United States immigration offi-

cial the department shall disclose to such officer the current address and location of a recipient of public welfare if the officer furnishes the department with such person's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive, that the location or apprehension of such fugitive is within the officer's official duties, and that the request is made in the proper exercise of those duties.

When the department becomes aware that a public assistance recipient is the subject of an outstanding warrant, the department may contact the appropriate law enforcement agency and, if the warrant is valid, provide the law enforcement agency with the location of the recipient. [1997 c 58 § 1006; 1973 c 152 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1973 c 152:** See note following RCW 74.04.060.

**74.04.070 County office—Administrator.** There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the secretary in accordance with the rules and regulations of the state merit system. [1979 c 141 § 299; 1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

**74.04.080 County administrator—Personnel—Bond.** The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

**74.04.120 Basis of state's allocation of federal aid funds—County budget.** Allocations of state and federal funds shall be made upon the basis of need within the respective counties as disclosed by the quarterly budgets, considered in conjunction with revenues available for the satisfaction of that need: PROVIDED, That in preparing his quarterly budget for federal aid assistance, the administrator shall include the aggregate of the individual case load approved by the department to date on the basis of need and the secretary shall approve and allocate an amount sufficient to service the aggregate case load as included in said budget, and in the event any portion of the budgeted case load cannot be ser-

viced with moneys available for the particular category for which an application is made the committee may on the administrator's request authorize the transfer of sufficient general assistance funds to the appropriation for such category to service such case load and secure the benefit of federal matching funds. [1979 c 141 § 301; 1959 c 26 § 74.04.120. Prior: 1939 c 216 § 8, part; RRS § 10007-108a, part.]

**74.04.180 Joint county administration.** Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007-112a.]

**74.04.200 Standards—Established, enforced.** It shall be the duty of the department of social and health services to establish statewide standards which may vary by geographical areas to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1981 1st ex.s. c 6 § 4; 1981 c 8 § 4; 1979 c 141 § 302; 1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007-114a.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.205 Simplified reporting for the food stamp program.** (1) To the maximum extent allowable by federal law, the department shall implement simplified reporting for the food stamp program by October 31, 2004.

(2) For the purposes of this section, "simplified reporting" means the only change in circumstance that a recipient of a benefit program must report between eligibility reviews is an increase of income that would result in ineligibility for the benefit program or a change of address. Every six months the assistance unit must either complete a semiannual report or participate in an eligibility review. [2004 c 54 § 3.]

**Findings—Conflict with federal requirements—2004 c 54:** See notes following RCW 28A.235.160.

**74.04.210 Basis of allocation of moneys to counties.** The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007-115a.]

**74.04.230 General assistance—Mental health services.** Persons eligible for general assistance under RCW 74.04.005 are eligible for mental health services to the extent that they meet the client definitions and priorities established by chapter 71.24 RCW. [1982 c 204 § 16.]

*Clients to be charged for mental health services: RCW 71.24.215.*

**74.04.265 Earnings—Deductions from grants.** The secretary may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the

income of any persons without the deduction in full thereof from the amount of their grants. [1979 c 141 § 303; 1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

**74.04.266 General assistance—Earned income exemption to be established for unemployable persons.** In determining need for general assistance for unemployable persons as defined in RCW 74.04.005(6)(a), the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [1977 ex.s. c 215 § 1.]

**74.04.270 Audit of accounts—Uniform accounting system.** It shall be the duty of the state auditor to audit the accounts, books and records of the department of social and health services. The public assistance committee shall establish and install a uniform accounting system for all categories of public assistance, applicable to all officers, boards, commissions, departments or other agencies having to do with the allowance and disbursement of public funds for assistance purposes, which said uniform accounting system shall conform to the accounting methods required by the federal government in respect to the administration of federal funds for assistance purposes. [1979 c 141 § 304; 1959 c 26 § 74.04.270. Prior: 1939 c 216 § 21; RRS § 10007-121a.]

**74.04.280 Assistance nontransferable and exempt from process.** Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

**74.04.290 Subpoena of witnesses, books, records, etc.** In carrying out any of the provisions of this title, the secretary, county administrators, hearing examiners, or other duly authorized officers of the department shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties. Subpoenas issued under this power shall be under RCW 43.20A.605. [1983 1st ex.s. c 41 § 22; 1979 ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements.** If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred electronically in an amount greater than that for which the recipient is eligible, the portion of the payment to which the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be

the duty of recipients of cash benefits to notify the department of changes to earned income as defined in RCW 74.04.005(11). It shall be the duty of recipients of cash benefits to notify the department of changes to liquid resources as defined in RCW 74.04.005(10) that would result in ineligibility for cash benefits. It shall be the duty of recipients of food benefits to report changes in income that result in ineligibility for food benefits. All recipients shall report changes required in this section by the tenth of the month following the month in which the change occurs. The department shall make a determination of eligibility within ten days from the date it receives the reported change from the recipient. The department shall adopt rules consistent with federal law and regulations for additional reporting requirements. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution. [2003 c 208 § 1; 1998 c 79 § 7; 1987 c 75 § 32; 1982 c 201 § 16; 1980 c 84 § 2; 1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**74.04.310 Authority to accept contributions.** In furthering the purposes of this title, the secretary or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: PROVIDED, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1979 c 141 § 309; 1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

**74.04.330 Annual reports by assistance organizations—Penalty.** Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the secretary of social and health services for the preceding year, which report shall contain:

- (1) A statement of the total amount of contributions, gifts, dues, or other payments received;
- (2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;
- (3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and
- (4) Every such report so filed shall constitute a public record.

(2008 Ed.)

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1979 c 141 § 310; 1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

**74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities.** The state department of social and health services is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1979 c 141 § 311; 1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

*Purchase of federal property: Chapter 39.32 RCW.*

**74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected.** Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal surplus commodities. [1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

**74.04.360 Federal surplus commodities—Certification deemed administrative expense of department.** Expenditures made by the state department of social and health services for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1979 c 141 § 312; 1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

**74.04.370 Federal surplus commodities—County program, expenses, handling of commodities.** See RCW 36.39.040.

**74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program.** The secretary of social and health services, from funds appropriated to the department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp or benefit program. The secretary shall hire personnel, establish

distribution centers and acquire such facilities as may be required to carry out the intent of this section; and the secretary may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1998 c 79 § 8; 1979 c 141 § 313; 1963 c 219 § 1; 1961 c 112 § 1.]

**74.04.385 Unlawful practices relating to surplus commodities—Penalty.** It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter or otherwise dispose of such commodities to any other person. It shall be unlawful for any person to receive, possess or use any surplus commodities received under RCW 74.04.380 unless he has been certified as eligible to receive, possess and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [1979 c 141 § 314; 1963 c 219 § 2.]

**74.04.480 Educational leaves of absence for personnel.** The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his skill, knowledge and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [1979 c 141 § 321; 1963 c 228 § 15.]

**74.04.500 Food stamp program—Authorized.** The department is authorized to establish a food stamp or benefit program under the federal food stamp act of 1977, as amended. [1998 c 79 § 9; 1991 c 126 § 3; 1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

*Overpayment, recovery:* RCW 74.04.300.

*Unlawful use of food stamps:* RCW 9.91.140.

**74.04.510 Food stamp program—Rules.** The department shall adopt rules conforming to federal laws, rules, and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps, coupons, or food stamp or coupon benefits transferred electronically under a food stamp or benefits plan. Such rules shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically; and (2) the periods during which households shall be certified or recertified to be eligible to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically under this plan. [1998 c 79 § 10; 1981 1st ex.s. c 6 § 5; 1981 c 8 § 5; 1969 ex.s. c 172 § 6.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.515 Food stamp program—Discrimination prohibited.** In administering the food stamp or benefits program, there shall be no discrimination against any applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin. [1998 c 79 § 11; 1991 c 126 § 4; 1969 ex.s. c 172 § 7.]

**74.04.520 Food stamp program—Confidentiality.** The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps or food stamp benefits transferred electronically. [1998 c 79 § 12; 1969 ex.s. c 172 § 8.]

**74.04.600 Supplemental security income program—Purpose.** The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

**74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program.** Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, \*74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: PROVIDED, That the agreements between the department of social and health ser-

vices and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by **\*\*RCW 74.04.630**. [1973 2nd ex.s. c 10 § 2.]

**Reviser's note:** \*(1) Chapter 74.10 RCW was repealed by 1981 1st ex.s. c 6 § 28, effective July 1, 1982; chapter 74.16 RCW was repealed by 1983 c 194 § 30, effective June 30, 1983.

\*\* (2) The legislative authorization and/or ratification requirements in RCW 74.04.630 were eliminated by 1986 c 158 § 22.

**74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees.** (1) The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

(2) The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act.

(3) The department is authorized to make payments to applicants for supplemental security income, pursuant to agreements as provided in Public Law 93-368, who are otherwise eligible for general assistance.

(4) Any agreement between the department and a supplemental security income applicant providing for the reimbursement of interim assistance to the department shall provide, if the applicant has been represented by an attorney, that twenty-five percent of the reimbursement received shall be withheld by the department and all or such portion thereof as has been approved as a fee by the United States department of health and human services shall be released directly to the applicant's attorney. The secretary may maintain such records as are deemed appropriate to measure the cost and effectiveness of such agreements and may make recommendations concerning the continued use of such agreements to the legislature. [1983 1st ex.s. c 41 § 37; 1981 1st ex.s. c 6 § 7; 1981 c 8 § 6; 1973 2nd ex.s. c 10 § 3.]

**Retroactive application—1983 1st ex.s. c 41 § 37:** "Section 37, chapter 41, Laws of 1983 1st ex. sess. shall be applied retroactively by the department of social and health services to all reimbursement of interim assistance received on or after August 23, 1983, so long as the attorney of the applicant for whom reimbursement is received began representing the applicant on or after August 23, 1983." [1985 c 100 § 1.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government.** The department may enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the

determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66. These agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives. The department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [2001 2nd sp.s. c 5 § 1; 1986 c 158 § 22; 1973 2nd ex.s. c 10 § 4.]

**74.04.635 State supplement to national program of supplemental security income—World War II Philippine veterans.** (1) Notwithstanding any other provision of law, any person receiving benefits under RCW 74.04.620 on December 14, 1999, and who meets the requirements of subsection (2) of this section is eligible to receive benefits under this section although he or she does not retain a residence in the state and returns to the Republic of the Philippines, if he or she maintains a permanent residence in the Republic of the Philippines without any lapse of his or her presence in the Republic of the Philippines.

(2) A person subject to subsection (1) of this section is eligible to receive benefits pursuant to this section if he or she was receiving benefits pursuant to RCW 74.04.620 on December 14, 1999, and meets both the following requirements:

(a) He or she is a veteran of World War II; and

(b)(i) He or she was a member of the government of the Commonwealth of the Philippines military forces who was in the service of the United States on July 26, 1941, or thereafter; or

(ii) He or she was a Regular Philippine Scout who enlisted in Filipino-manned units of the United States army prior to October 6, 1945; or

(iii) He or she was a member of the Special Philippine Scouts who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947.

(3) Within funds appropriated for this purpose, the department is authorized to make a one-time lump sum payment of one thousand five hundred dollars to each person eligible for benefits under this section.

(a) Benefits paid under this section are in lieu of benefits paid under RCW 74.04.620 for the period for which the benefits are paid.

(b) Benefits are to be paid under this section for any period during which the recipient is receiving benefits under Title 8 of the federal social security act as a result of the application of federal Public Law 106-169, subject to any limitations imposed by this section.

(4) This section applies only to an individual who returns to the Republic of the Philippines for the period during which the individual establishes and maintains a residence in the Republic of the Philippines. [2001 c 111 § 2.]

**Findings—2001 c 111:** "The legislature finds and declares:

(1) That soldiers who were members of the government of the Commonwealth of the Philippines military forces who were in the service of the United States of America on July 31, 1941, including the organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief of the Southwest Pacific Area or other competent authority in the Army of the United States, performed an invaluable function during World War II.

(2) It is in the public interest for the state of Washington to recognize those courageous soldiers who fought and defended American interests during World War II and who are currently receiving supplemental state benefits under RCW 74.04.620 as of December 14, 1999, by permitting them to return to their homeland to spend their last days without a complete forfeiture of benefits." [2001 c 111 § 1.]

**74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement.** Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

**74.04.650 Individuals failing to comply with federal requirements.** Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650, those individuals who have been receiving supplemental security income assistance and failed to comply with any federal requirements, including those relating to drug abuse and alcoholism treatment and rehabilitation, shall be ineligible for state assistance. [1981 1st ex.s. c 6 § 8; 1981 c 8 § 7; 1973 2nd ex.s. c 10 § 6.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.660 Family emergency assistance program—Extension of benefits during state of emergency.** The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall be limited to one period of time, as determined by the department, within any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits may also be provided for family reconciliation services, family preservation services, home-based services, short-term substitute care in a licensed agency as defined in RCW 74.15.020, crisis nurseries, therapeutic child care, or other necessary services as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3)(a) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section.

(b) Eligibility for benefits or services under this section does not automatically entitle a recipient to medical assistance.

(4) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program as long as other departmental programs are not adversely affected by the receipt of federal funds.

(5) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program.

(6) During a state of emergency and pursuant to an order from the governor, benefits under this program may be extended to individuals and families without children. [2008 c 181 § 301; 1994 c 296 § 1; 1993 c 63 § 1; 1989 c 11 § 26; 1985 c 335 § 3; 1981 1st ex.s. c 6 § 6.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.04.670 Long-term care services—Eligibility.** (1) For purposes of RCW 74.04.005(10)(a), an applicant or recipient is not eligible for long-term care services if the applicant or recipient's equity interest in the home exceeds an amount established by the department in rule, which shall not be less than five hundred thousand dollars. This requirement does not apply if any of the following persons related to the applicant or recipient are legally residing in the home:

- (a) A spouse; or
- (b) A dependent child under age twenty-one; or
- (c) A dependent child with a disability; or
- (d) A dependent child who is blind; and
- (e) The dependent child in (c) and (d) of this subsection meets the federal supplemental security income program criteria for disabled and blind.

(2) The dollar amounts specified in this section shall be increased annually, beginning in 2011, from year to year based on the percentage increase in the consumer price index for all urban consumers, all items, United States city average, rounded to the nearest one thousand dollars.

(3) This section applies to individuals who are determined eligible for medical assistance with respect to long-term care services based on an application filed on or after May 1, 2006. [2007 c 161 § 1.]

**74.04.750 Reporting requirements—Food stamp allotments and rent or housing subsidies, consideration as income.** (1) Applicants and recipients under this title must satisfy all reporting requirements imposed by the department.

(2) The secretary shall have the discretion to consider: (a) Food stamp allotments or food stamp benefits transferred electronically and/or (b) rent or housing subsidies as income in determining eligibility for and assistance to be provided by public assistance programs. If the department considers food stamp allotments or food stamp benefits transferred electronically as income in determining eligibility for assistance, applicants or recipients for any grant assistance program must apply for and take all reasonable actions necessary to establish and maintain eligibility for food stamps or food stamp benefits transferred electronically. [1998 c 79 § 13; 1981 2nd ex.s. c 10 § 1.]

**74.04.760 Minimum amount of monthly assistance payments.** Payment of assistance shall not be made for any month if the payment prior to any adjustments would be less than ten dollars. However, if payment is denied solely by reason of this section, the individual with respect to whom such

payment is denied is determined to be a recipient of assistance for purposes of eligibility for other programs of assistance except for a community work experience program. [1981 2nd ex.s. c 10 § 2.]

**74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums.** The department shall establish consolidated standards of need each fiscal year which may vary by geographical areas, program, and family size, for temporary assistance for needy families, refugee assistance, supplemental security income, and general assistance. Standards for temporary assistance for needy families, refugee assistance, and general assistance shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [1997 c 59 § 11; 1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.04.790 Supplementary program—Reimbursement for employees being victims of assault.** (1) For purposes of this section only, "assault" means an unauthorized touching of a child protective, child welfare, or adult protective services worker employed by the department of social and health services resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in child protective, child welfare, and adult protective services, the legislature hereby provides a supplementary program to reimburse employees of the department, for some of their costs attributable to their being the victims of assault while in the course of discharging their assigned duties. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, or the secretary's designee, finds that each of the following has occurred:

(a) A person has assaulted the employee while the employee was in the course of performing his or her official duties and, as a result thereof, the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, or the secretary's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, or the secretary's designee, believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2006 c 95 § 2.]

**Findings—Intent—2006 c 95:** "The legislature finds that employees of the department of social and health services who provide child protective, child welfare, and adult protective services are sometimes faced with highly volatile, hostile, and/or threatening situations during the course of performing their official duties. The legislature finds that the work group convened by the department of social and health services pursuant to chapter 389, Laws of 2005, has made various recommendations regarding policies and protocols to address the safety of workers. The legislature intends to implement the work group's recommendations for statutory changes in recognition of the sometimes hazardous nature of employment in child protective, child welfare, and adult protective services." [2006 c 95 § 1.]

**74.04.800 Incarcerated parents—Policies to encourage family contact and engagement.** (1)(a) The secretary of social and health services shall review current department policies and assess the adequacy and availability of programs targeted at persons who receive services through the department who are the children and families of a person who is incarcerated in a department of corrections facility. Great

attention shall be focused on programs and policies affecting foster youth who have a parent who is incarcerated.

(b) The secretary shall adopt policies that encourage familial contact and engagement between inmates of the department of corrections facilities and their children with the goal of facilitating normal child development, while reducing recidivism and intergenerational incarceration. Programs and policies should take into consideration the children's need to maintain contact with his or her parent, the inmate's ability to develop plans to financially support their children, assist in reunification when appropriate, and encourage the improvement of parenting skills where needed. The programs and policies should also meet the needs of the child while the parent is incarcerated.

(2) The secretary shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the recipients of public assistance, or children in the care of the state under chapter 13.34 RCW, who are the children and families of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2007 c 384 § 3.]

**Intent—Finding—2007 c 384:** See note following RCW 72.09.495.

### Chapter 74.08 RCW

#### ELIGIBILITY GENERALLY— STANDARDS OF ASSISTANCE

##### Sections

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*Public assistance eligibility—Payments exempt: RCW 43.185C.140.*

**74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons.** (1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1) and (2) to ensure eligibility for temporary assistance for needy families benefits and federal food assistance. [2005 c 174 § 2; 2004 c 54 § 5; 1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

**Findings—2005 c 174:** "The legislature finds that:

(1) Too many families with children in Washington are unable to afford shelter, clothing, and other necessities of life; basic necessities that are at the core of economic security and family stability.

(2) Parents who lack resources for shelter, clothing, and transportation are less likely to obtain employment or have the ability to adequately provide for their children's physical and emotional well-being and educational success.

(3) Washington's temporary assistance for needy families helps financially struggling families find jobs, keep their jobs, get better jobs, and build a better life for their children through the WorkFirst program.

(4) Participation in the WorkFirst program through temporary assistance for needy families is an important step towards self-sufficiency and decreased long-term reliance on governmental assistance.

(5) Removing this barrier to participation in temporary assistance for needy families and WorkFirst will serve to strengthen families and communities throughout the state.

(6) Preventing even one percent of these individuals from reoffending by extending economic and employment opportunities will result in law enforcement and correctional savings that substantially exceed the cost of temporary assistance for needy families and WorkFirst services." [2005 c 174 § 1.]

**Effective date—2005 c 174:** "This act takes effect September 1, 2005." [2005 c 174 § 3.]

**Findings—Conflict with federal requirements—2004 c 54:** See notes following RCW 28A.235.160.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

#### **74.08.030 Old age assistance eligibility requirements.**

In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: PROVIDED, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 4; Rem. Supp. 1949 § 9998-33d.]

#### **74.08.043 Need for personal and special care—**

**Authority to consider in determining living requirements.** In determining the living requirements of otherwise eligible applicants and recipients of supplemental security income and general assistance, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [1981 1st ex.s. c 6 § 12; 1981 c 8 § 11; 1969 ex.s. c 172 § 10.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

#### **74.08.044 Need for personal and special care—**

**Licensing—Rules and regulations.** The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, including minimum standards of care, based upon need for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a nursing facility as defined in the federal social security act. [1991 sp.s. c 8 § 5; 1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

#### **74.08.045 Need for personal and special care—Purchase of personal and special care by department.**

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department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing [provided] this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

**74.08.046 Energy assistance allowance.** There is designated to be included in the public assistance payment level a monthly energy assistance allowance. The allowance shall be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp or benefits program recipients to the maximum extent exclusion is authorized by federal law. The allowance shall be calculated on a seasonal basis for the period of November 1st through April 30th. [1998 c 79 § 14; 1982 c 127 § 1.]

**Legislative intent—1982 c 127:** "It is the continuing intention of the legislature that first priority in the use of increased appropriations, expenditures, and payment levels for the 1981-83 biennium to income assistance recipients be for an energy allowance to offset the high and escalating costs of energy. Of the total amount appropriated or transferred for public assistance, an amount not to exceed \$50,000,000 is designated as energy assistance allowance to meet the high cost of energy. This designation is consistent with the legislative intent of section 11, chapter 6, Laws of 1981 1st ex. sess. to assist public assistance recipients in meeting the high costs of energy." [1982 c 127 § 2.]

**Effective date—1982 c 127:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 127 § 4.]

**74.08.050 Applications for grants.** Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998-33f.]

**74.08.055 Verification of applications—Penalty.** (1) Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

(2) Any applicant for or recipient of public assistance who willfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 366; 1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

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

**74.08.060 Action on applications—Contingent eligibility—Employment and training services.** The department shall be required to approve or deny the application within forty-five days after the filing thereof and shall immediately notify the applicant in writing of its decision: PROVIDED, That if the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish his eligibility, the department is charged to continue to secure such information and if such information, when established, makes applicant eligible, the department shall pay his grant from date of authorization or forty-five days after date of application whichever is sooner.

Any person currently ineligible, who will become eligible after the occurrence of a specific event, may apply for assistance within forty-five days of that event.

The department is authorized, in respect to work requirements, to provide employment and training services, including job search, job placement, work orientation, and necessary support services to verify eligibility. [1985 c 335 § 4; 1981 1st ex.s. c 6 § 13; 1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998-33g.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.08.080 Grievances—Departmental and judicial review.** (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps or food stamp benefits transferred electronically, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date

of application for temporary assistance for needy families or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorneys' fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for temporary assistance for needy families or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision. [1998 c 79 § 15; 1997 c 59 § 12; 1989 c 175 § 145; 1988 c 202 § 58; 1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998-33i.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1988 c 202:** See note following RCW 2.24.050.

**74.08.090 Rule-making authority and enforcement.**

The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection in the office of the department and in each county office. [1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

**74.08.100 Age and residency verification—Felony.**

Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: PROVIDED, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he or she may make a statement under oath of his or her age on the date of application or the length of his or her residence in the state, before any judge of

the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: PROVIDED HOWEVER, That any applicant who willfully makes a false statement as to his or her age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 367; 1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

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

**74.08.105 Out-of-state recipients.** No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the secretary there is sound social reason for such out-of-state payments: PROVIDED, That the period for making such payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1979 c 141 § 325; 1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

**74.08.210 Grants not assignable nor subject to execution.** Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

**74.08.260 Federal act to control in event of conflict.** If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

**74.08.278 Central operating fund established.** In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of general assistance in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be

required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

**74.08.280 Payments to persons incapable of self-care—Protective payee services.** If any person receiving public assistance has demonstrated an inability to care for oneself or for money, the department may direct the payment of the installments of public assistance to any responsible person, social service agency, or corporation or to a legally appointed guardian for his benefit. The state may contract with persons, social service agencies, or corporations approved by the department to provide protective payee services for a fixed amount per recipient receiving protective payee services to cover administrative costs. The department may by rule specify a fee to cover administrative costs. Such fee shall not be withheld from a recipient's grant.

If the state requires the appointment of a guardian for this purpose, the department shall pay all costs and reasonable fees as fixed by the court. [1987 c 406 § 10; 1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

*Living situation presumption: RCW 74.12.255, 74.04.0052.*

**74.08.283 Services provided to attain self-care.** The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

**74.08.290 Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331.** The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment.

If a recipient is convicted of unlawful practices under RCW 74.08.331, no payment shall be made for a period to be determined by the court, but in no event less than six months upon the first conviction and no less than twelve months for a second or subsequent violation. This suspension of public assistance shall apply regardless of whether the recipient is subject to complete or partial confinement upon conviction, or incurs some lesser penalty. [1995 c 379 § 2; 1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

**Finding—1995 c 379:** "The legislature finds that welfare fraud damages the state's ability to use its limited resources to help those in need who legitimately qualify for assistance. In addition, it affects the credibility and integrity of the system, promoting disdain for the law.

Persons convicted of committing such fraud should be barred, for a period of time, from receiving additional public assistance." [1995 c 379 § 1.]

**74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties.** (1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [2003 c 53 § 368; 1998 c 79 § 16; 1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

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

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.08.335 Transfers of property to qualify for assistance.** Temporary assistance for needy families and general assistance shall not be granted to any person who has made an assignment or transfer of property for the purpose of rendering himself or herself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself or herself eligible for the assistance. Any person who transfers property for the purpose of rendering himself or herself eligible for assistance, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the

person's needs under normal conditions of living: PROVIDED, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [1997 c 59 § 13; 1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

**74.08.338 Real property transfers for inadequate consideration.** When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state and the department may proceed under RCW 43.20B.660. [1987 c 75 § 40; 1979 c 141 § 331; 1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

**Savings—Severability—1987 c 75:** See RCW 43.20B.900 and 43.20B.901.

**74.08.340 No vested rights conferred.** All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. There is no legal entitlement to public assistance. [1997 c 58 § 102; 1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.08.370 Old age assistance grants charged against general fund.** All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his official representative. [1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

**74.08.380 Acceptance of federal act.** The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998-26.]

**74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements.** The department of social and health services may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance pro-

grams by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a statewide basis by formal order of the secretary. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to statewide uniformity. [1979 c 141 § 332; 1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

**74.08.580 Electronic benefit cards—Prohibited uses—Violations.** (1) Any person receiving public assistance is prohibited from using electronic benefit cards or cash obtained with electronic benefit cards:

(a) For the purpose of participating in any of the activities authorized under chapter 9.46 RCW;

(b) For the purpose of parimutuel wagering authorized under chapter 67.16 RCW; or

(c) To purchase lottery tickets or shares authorized under chapter 67.70 RCW.

(2)(a) The department shall notify, in writing, all recipients of electronic benefit cards that any violation of subsection (1) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department receives notice that a person has violated subsection (1) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(c) The department shall assign a protective payee to the person receiving public assistance who violates subsection (1) of this section. [2002 c 252 § 1.]

**74.08.900 Limited application.** Nothing in this chapter except RCW \*74.08.070 and 74.08.080 applies to chapter 74.50 RCW. [1989 c 3 § 3.]

\*Reviser's note: RCW 74.08.070 was repealed by 1989 c 175 § 185, effective July 1, 1989.

**Chapter 74.08A RCW**

**WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

Sections

74.08A.010	Time limits—Transitional food stamp assistance.
74.08A.020	Electronic benefit transfer.
74.08A.030	Provision of services by religiously affiliated organizations—Rules.
74.08A.040	Indian tribes—Program access—Funding—Rules.
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74.08A.060	Food stamp work requirements.
74.08A.100	Immigrants—Eligibility.
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74.08A.120	Immigrants—Food assistance.
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74.08A.285	Job search instruction and assistance.
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74.08A.300	Placement bonuses.
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74.08A.330	Community service program.
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74.08A.400	Outcome measures—Intent.
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74.08A.900	Short title—1997 c 58.
74.08A.901	Part headings, captions, table of contents not law—1997 c 58.
74.08A.902	Exemptions and waivers from federal law—1997 c 58.
74.08A.903	Conflict with federal requirements—1997 c 58.
74.08A.904	Severability—1997 c 58.

*Interagency task force on unintended pregnancy: RCW 43.41.905.*

**74.08A.010 Time limits—Transitional food stamp assistance.** (1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of community, trade, and economic development, or the crime victims' compensation program of the department of labor and industries.

(4) The department may exempt a recipient and the recipient's family from the application of subsection (1) of this section by reason of hardship or if the recipient meets the family violence options of section 402(A)(7) of Title IVA of the federal social security act as amended by P.L. 104-193. The number of recipients and their families exempted from subsection (1) of this section for a fiscal year shall not exceed twenty percent of the average monthly number of recipients and their families to which assistance is provided under the temporary assistance for needy families program.

(5) The department shall not exempt a recipient and his or her family from the application of subsection (1) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(6) Beginning on October 31, 2005, the department shall provide transitional food stamp assistance for a period of five months to a household that ceases to receive temporary assistance for needy families assistance and is not in sanction status. If necessary, the department shall extend the household's food stamp certification until the end of the transition period. [2004 c 54 § 4; 1997 c 58 § 103.]

**Findings—Conflict with federal requirements—2004 c 54:** See notes following RCW 28A.235.160.

**74.08A.020 Electronic benefit transfer.** By October 2002, the department shall develop and implement an electronic benefit transfer system to be used for the delivery of public assistance benefits, including without limitation, food assistance.

The department shall comply with P.L. 104-193, and shall cooperate with relevant federal agencies in the design and implementation of the electronic benefit transfer system. [1997 c 58 § 104.]

**74.08A.030 Provision of services by religiously affiliated organizations—Rules.** (1) The department shall allow religiously affiliated organizations to provide services to families receiving temporary assistance for needy families on the same basis as any other nongovernmental provider, without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under chapter 74.12 RCW.

(2) The department shall adopt rules implementing this section, and the applicable sections of P.L. 104-193 related to services provided by charitable, religious, or private organizations. [1997 c 58 § 106.]

**74.08A.040 Indian tribes—Program access—Funding—Rules.** The department shall (1) provide eligible Indian tribes ongoing, meaningful opportunities to participate in the development, oversight, and operation of the state temporary assistance for needy families program; (2) certify annually that it is providing equitable access to the state temporary assistance for needy families program to Indian people whose tribe is not administering a tribal temporary assistance for needy families program; (3) coordinate and cooperate with eligible Indian tribes that elect to operate a tribal temporary assistance for needy families program as provided for in P.L. 104-193; (4) upon approval by the secretary of the federal department of health and human services of a tribal temporary assistance for needy families program, transfer a fair and equitable amount of the state maintenance of effort funds to the eligible Indian tribe; and (5) establish rules related to the operation of this section and RCW 74.08A.050, covering, at a minimum, appropriate uses of state maintenance of effort funds and annual reports on program operations. The legislature shall specify the amount of state maintenance of effort funds to be transferred in the biennial appropriations act. [1997 c 58 § 107.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.050 Indian tribes—Tribal program—Fiscal year.** An eligible Indian tribe exercising its authority under

P.L. 104-193 to operate a tribal temporary assistance for needy families program shall operate the program on a state fiscal year basis. If a tribe decides to cancel a tribal temporary assistance for needy families program, it shall notify the department no later than ninety days prior to the start of the state fiscal year. [1997 c 58 § 108.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.060 Food stamp work requirements.** Single adults without dependents between eighteen and fifty years of age shall comply with federal food stamp work requirements as a condition of eligibility. The department may exempt any counties or subcounty areas from the federal food stamp work requirements in P.L. 104-193, unless the department receives written evidence of official action by a county or subcounty governing entity, taken after noticed consideration, that indicates that a county or subcounty area chooses not to use an exemption to the federal food stamp work requirements. [1997 c 58 § 110.]

**Reviser's note:** 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

**74.08A.100 Immigrants—Eligibility.** The state shall exercise its option under P.L. 104-193 to continue services to legal immigrants under temporary assistance for needy families, medicaid to the extent allowed by federal law, the state's basic health plan as provided in chapter 70.47 RCW, and social services block grant programs. Eligibility for these benefits for legal immigrants arriving after August 21, 1996, is limited to those families where the parent, parents, or legal guardians have been in residence in Washington state for a period of twelve consecutive months before making their application for assistance. Legal immigrants who lose benefits under the supplemental security income program as a result of P.L. 104-193 are immediately eligible for benefits under the state's general assistance-unemployable program. The department shall redetermine income and resource eligibility at least annually, in accordance with existing state policy. [2002 c 366 § 1; 1997 c 57 § 1.]

**Effective date—2002 c 366:** "This act takes effect October 1, 2002." [2002 c 366 § 3.]

**Captions not law—1997 c 57:** "Captions used in this act are not any part of the law." [1997 c 57 § 4.]

**74.08A.110 Immigrants—Sponsor deeming.** (1) Except as provided in subsection (4) of this section, qualified aliens and aliens permanently residing under color of law shall have their eligibility for assistance redetermined.

(2) In determining the eligibility and the amount of benefits of a qualified alien or an alien permanently residing under color of law for public assistance under this title, the income and resources of the alien shall be deemed to include the income and resources of any person and his or her spouse who executed an affidavit of support pursuant to section 213A of the federal immigration and naturalization act on behalf of the alien for a period of five years following the execution of that affidavit of support. The deeming provisions of this subsection shall be waived if the sponsor dies or

is permanently incapacitated during the period the affidavit of support is valid.

(3) As used in this section, "qualified alien" has the meaning provided it in P.L. 104-183.

(4)(a) Qualified aliens specified under sections 403, 412, and 552 (e) and (f), subtitle B, Title IV, of P.L. 104-193 and in P.L. 104-208, are exempt from this section.

(b) Qualified aliens who served in the armed forces of an allied country, or were employed by an agency of the federal government, during a military conflict between the United States of America and a military adversary are exempt from the provisions of this section.

(c) Qualified aliens who are victims of domestic violence and petition for legal status under the federal violence against women act are exempt from the provisions of this section. [1997 c 57 § 2.]

**Captions not law—1997 c 57:** See note following RCW 74.08A.100.

**74.08A.120 Immigrants—Food assistance.** (1) The department may establish a food assistance program for legal immigrants who are ineligible for the federal food stamp program.

(2) The rules for the state food assistance program shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status.

(3) The benefit under the state food assistance program shall be established by the legislature in the biennial operating budget.

(4) The department may enter into a contract with the United States department of agriculture to use the existing federal food stamp program coupon system for the purposes of administering the state food assistance program.

(5) In the event the department is unable to enter into a contract with the United States department of agriculture, the department may issue vouchers to eligible households for the purchase of eligible foods at participating retailers. [1999 c 120 § 4; 1997 c 57 § 3.]

**Captions not law—1997 c 57:** See note following RCW 74.08A.100.

**74.08A.130 Immigrants—Naturalization facilitation.** The department shall make an affirmative effort to identify and proactively contact legal immigrants receiving public assistance to facilitate their applications for naturalization. The department shall obtain a complete list of legal immigrants in Washington who are receiving correspondence regarding their eligibility from the social security administration. The department shall inform immigrants regarding how citizenship may be attained. In order to facilitate the citizenship process, the department shall coordinate and contract, to the extent necessary, with existing public and private resources and shall, within available funds, ensure that those immigrants who qualify to apply for naturalization are referred to or otherwise offered classes. The department shall assist eligible immigrants in obtaining appropriate test exemptions, and other exemptions in the naturalization process, to the extent permitted under federal law. The department shall report annually by December 15th to the legislature regarding the progress and barriers of the immigrant naturalization facilitation effort. It is the intent of the legislature that persons receiving naturalization assistance be facilitated

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in obtaining citizenship within two years of their eligibility to apply. [1997 c 58 § 204.]

**74.08A.200 Intent—Washington WorkFirst.** It is the intent of the legislature that all applicants to the Washington WorkFirst program shall be focused on obtaining paid, unsubsidized employment. The focus of the Washington WorkFirst program shall be work for all recipients. [1997 c 58 § 301.]

**74.08A.210 Diversion program—Emergency assistance.** (1) In order to prevent some families from developing dependency on temporary assistance for needy families, the department shall make available to qualifying applicants a diversion program designed to provide brief, emergency assistance for families in crisis whose income and assets would otherwise qualify them for temporary assistance for needy families.

(2) Diversion assistance may include cash or vouchers in payment for the following needs:

- (a) Child care;
- (b) Housing assistance;
- (c) Transportation-related expenses;
- (d) Food;
- (e) Medical costs for the recipient's immediate family;
- (f) Employment-related expenses which are necessary to keep or obtain paid unsubsidized employment.

(3) Diversion assistance is available once in each twelve-month period for each adult applicant. Recipients of diversion assistance are not included in the temporary assistance for needy families program.

(4) Diversion assistance may not exceed one thousand five hundred dollars for each instance.

(5) To be eligible for diversion assistance, a family must otherwise be eligible for temporary assistance for needy families.

(6) Families ineligible for temporary assistance for needy families or general assistance due to sanction, noncompliance, the lump sum income rule, or any other reason are not eligible for diversion assistance.

(7) Families must provide evidence showing that a bona fide need exists according to subsection (2) of this section in order to be eligible for diversion assistance.

An adult applicant may receive diversion assistance of any type no more than once per twelve-month period. If the recipient of diversion assistance is placed on the temporary assistance for needy families program within twelve months of receiving diversion assistance, the prorated dollar value of the assistance shall be treated as a loan from the state, and recovered by deduction from the recipient's cash grant. [1997 c 58 § 302.]

**74.08A.220 Individual development accounts—Microcredit and microenterprise approaches—Rules.** The department shall carry out a program to fund individual development accounts established by recipients eligible for assistance under the temporary assistance for needy families program.

(1) An individual development account may be established by or on behalf of a recipient eligible for assistance

provided under the temporary assistance for needy families program operated under this title for the purpose of enabling the recipient to accumulate funds for a qualified purpose described in subsection (2) of this section.

(2) A qualified purpose as described in this subsection is one or more of the following, as provided by the qualified entity providing assistance to the individual:

(a) Postsecondary expenses paid from an individual development account directly to an eligible educational institution;

(b) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid from an individual development account directly to the persons to whom the amounts are due;

(c) Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(3) A recipient may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the internal revenue code of 1986.

(4) The department shall establish rules to ensure funds held in an individual development account are only withdrawn for a qualified purpose as provided in this section.

(5) An individual development account established under this section shall be a trust created or organized in the United States and funded through periodic contributions by the establishing recipient and matched by or through a qualified entity for a qualified purpose as provided in this section.

(6) For the purpose of determining eligibility for any assistance provided under this title, all funds in an individual development account under this section shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(7) The department shall adopt rules authorizing the use of organizations using microcredit and microenterprise approaches to assisting low-income families to become financially self-sufficient.

(8) The department shall adopt rules implementing the use of individual development accounts by recipients of temporary assistance for needy families.

(9) For the purposes of this section, "eligible educational institution," "postsecondary educational expenses," "qualified acquisition costs," "qualified business," "qualified business capitalization expenses," "qualified expenditures," "qualified first-time home buyer," "date of acquisition," "qualified plan," and "qualified principal residence" include the meanings provided for them in P.L. 104-193. [1997 c 58 § 307.]

**74.08A.230 Earnings disregards and earned income cutoffs.** (1) In addition to their monthly benefit payment, a family may earn and keep one-half of its earnings during every month it is eligible to receive assistance under this section.

(2) In no event may a family be eligible for temporary assistance for needy families if its monthly gross earned income exceeds the maximum earned income level as set by

the department. In calculating a household's gross earnings, the department shall disregard the earnings of a minor child who is:

(a) A full-time student; or

(b) A part-time student carrying at least half the normal school load and working fewer than thirty-five hours per week. [1997 c 58 § 308.]

**74.08A.240 Noncustodial parents in work programs.**

The department may provide Washington WorkFirst activities or make cross-referrals to existing programs to qualifying noncustodial parents of children receiving temporary assistance for needy families who are unable to meet their child support obligations. Services authorized under this section shall be provided within available funds. [1997 c 58 § 310.]

**74.08A.250 "Work activity" defined.** Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

(1) Unsubsidized paid employment in the private or public sector;

(2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;

(3) Work experience, including:

(a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department. No internship or practicum shall exceed twelve months; or

(b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;

(4) On-the-job training;

(5) Job search and job readiness assistance;

(6) Community service programs;

(7) Vocational educational training, not to exceed twelve months with respect to any individual;

(8) Job skills training directly related to employment;

(9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;

(10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;

(11) The provision of child care services to an individual who is participating in a community service program;

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge;

(14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable; and

(15) Financial literacy activities designed to be effective in assisting a recipient in becoming self-sufficient and financially stable. [2006 c 107 § 2; 2000 c 10 § 1; 1997 c 58 § 311.]

**Findings—Intent—2006 c 107:** "The legislature finds that for a variety of reasons, many citizens may lack the basic financial knowledge necessary to spend their money wisely, save for the future, and manage money challenges, such as a job loss, financing a college education, or a catastrophic injury. The legislature also finds that financial literacy is an essential element in achieving financial stability and self-sufficiency. The legislature intends to encourage participation in financial literacy training by WorkFirst participants, in order to promote their ability to make financial decisions that will contribute to their long-term financial well-being." [2006 c 107 § 1.]

**Effective date—2006 c 107:** "This act takes effect January 1, 2007." [2006 c 107 § 4.]

**74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work.** (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for moving the recipient immediately into employment; (b) contains the obligation of the recipient to become and remain employed; (c) moves the recipient into whatever employment the recipient is capable of handling as quickly as possible; and (d) describes the services available to the recipient to enable the recipient to obtain and keep employment.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides.

(7) Assessments conducted under this section shall include a consideration of the potential benefit to the recipient of engaging in financial literacy activities. The department shall consider the options for financial literacy activities available in the community, including information and resources available through the financial literacy public-private

partnership created under RCW 28A.300.450. The department may authorize up to ten hours of financial literacy activities as a core activity or an optional activity under WorkFirst. [2006 c 107 § 3; 2003 c 383 § 1; 1997 c 58 § 313.]

**Findings—Intent—Effective date—2006 c 107:** See notes following RCW 74.08A.250.

**74.08A.270 Good cause.** (1) Good cause reasons for failure to participate in WorkFirst program components include: (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a dependent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (b) the recipient is a parent with a child under the age of one year.

(2) A parent claiming a good cause exemption from WorkFirst participation under subsection (1)(b) of this section may be required to participate in one or more of the following, up to a maximum total of twenty hours per week, if such treatment, services, or training is indicated by the comprehensive evaluation or other assessment:

(a) Mental health treatment;

(b) Alcohol or drug treatment;

(c) Domestic violence services; or

(d) Parenting education or parenting skills training, if available.

(3) The department shall: (a) Work with a parent claiming a good cause exemption under subsection (1)(b) of this section to identify and access programs and services designed to improve parenting skills and promote child well-being, including but not limited to home visitation programs and services; and (b) provide information on the availability of home visitation services to temporary assistance for needy families caseworkers, who shall inform clients of the availability of the services. If desired by the client, the caseworker shall facilitate appropriate referrals to providers of home visitation services.

(4) Nothing in this section shall prevent a recipient from participating in the WorkFirst program on a voluntary basis.

(5) A parent is eligible for a good cause exemption under subsection (1)(b) of this section for a maximum total of twelve months over the parent's lifetime. [2007 c 289 § 1; 2002 c 89 § 1; 1997 c 58 § 314.]

**74.08A.275 Employability screening.** Each recipient approved to receive temporary assistance for needy families shall be subject to an employability screening under RCW 74.08A.260 after determination of program eligibility and before referral to job search. If the employability screening determines the recipient is not employable, or meets the criteria specified in RCW 74.08A.270 for a good cause exemption to work requirements, the department shall defer the job search requirement under RCW 74.08A.285. [2003 c 383 § 2; 1999 c 340 § 1.]

**74.08A.280 Program goal—Collaboration to develop work programs—Contracts—Service areas—Regional plans.** (1) The legislature finds that moving those eligible for assistance to self-sustaining employment is a goal of the WorkFirst program. It is the intent of WorkFirst to aid a participant's progress to self-sufficiency by allowing flexibility within the statewide program to reflect community resources, the local characteristics of the labor market, and the composition of the caseload. Program success will be enhanced through effective coordination at regional and local levels, involving employers, labor representatives, educators, community leaders, local governments, and social service providers.

(2) The department, through its regional offices, shall collaborate with employers, recipients, frontline workers, educational institutions, labor, private industry councils, the workforce training and education coordinating board, community rehabilitation employment programs, employment and training agencies, local governments, the employment security department, and community action agencies to develop work programs that are effective and work in their communities. For planning purposes, the department shall collect and make accessible to regional offices successful work program models from around the United States, including the employment partnership program, apprenticeship programs, microcredit, microenterprise, self-employment, and W-2 Wisconsin works. Work programs shall incorporate local volunteer citizens in their planning and implementation phases to ensure community relevance and success.

(3) To reduce administrative costs and to ensure equal statewide access to services, the department may develop contracts for statewide welfare-to-work services. These statewide contracts shall support regional flexibility and ensure that resources follow local labor market opportunities and recipients' needs.

(4) The secretary shall establish WorkFirst service areas for purposes of planning WorkFirst programs and for distributing WorkFirst resources. Service areas shall reflect department regions.

(5) By July 31st of each odd-numbered year, a plan for the WorkFirst program shall be developed for each region. The plan shall be prepared in consultation with local and regional sources, adapting the statewide WorkFirst program to achieve maximum effect for the participants and the communities within which they reside. Local consultation shall include to the greatest extent possible input from local and regional planning bodies for social services and workforce development. The regional and local administrator shall consult with employers of various sizes, labor representatives, training and education providers, program participants, economic development organizations, community organizations, tribes, and local governments in the preparation of the service area plan.

(6) The secretary has final authority in plan approval or modification. Regional program implementation may deviate from the statewide program if specified in a service area plan, as approved by the secretary. [1997 c 58 § 315.]

**74.08A.285 Job search instruction and assistance.** The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall

contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no more than twelve consecutive weeks. Each recipient shall receive a work skills assessment upon referral to the job search program. The work skills assessment shall include but not be limited to education, employment history, employment strengths, and job skills. The recipient's ability to obtain employment will be reviewed periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to work activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance. [2003 c 383 § 3; 1998 c 89 § 1.]

**74.08A.290 Competitive performance-based contracting—Evaluation of contracting practices—Contracting strategies.** (1) It is the intent of the legislature that the department is authorized to engage in competitive contracting using performance-based contracts to provide all work activities authorized in chapter 58, Laws of 1997, including the job search component authorized in \*section 312 of this act.

(2) The department may use competitive performance-based contracting to select which vendors will participate in the WorkFirst program. Performance-based contracts shall be awarded based on factors that include but are not limited to the criteria listed in RCW 74.08A.410, past performance of the contractor, demonstrated ability to perform the contract effectively, financial strength of the contractor, and merits of the proposal for services submitted by the contractor. Contracts shall be made without regard to whether the contractor is a public or private entity.

(3) The department may contract for an evaluation of the competitive contracting practices and outcomes to be performed by an independent entity with expertise in government privatization and competitive strategies. The evaluation shall include quarterly progress reports to the fiscal committees of the legislature and to the governor, starting at the first quarter after the effective date of the first competitive contract and ending two years after the effective date of the first competitive contract.

(4) The department shall seek independent assistance in developing contracting strategies to implement this section. Assistance may include but is not limited to development of contract language, design of requests for proposal, developing full cost information on government services, evaluation of bids, and providing for equal competition between private and public entities. [1997 c 58 § 316.]

\*Reviser's note: Section 312 of this act was vetoed by the governor.

**74.08A.300 Placement bonuses.** In the case of service providers that are not public agencies, initial placement bonuses of no greater than five hundred dollars may be provided by the department for service entities responsible for

placing recipients in an unsubsidized job for a minimum of twelve weeks, and the following additional bonuses shall also be provided:

- (1) A percent of the initial bonus if the job pays double the minimum wage;
- (2) A percent of the initial bonus if the job provides health care;
- (3) A percent of the initial bonus if the job includes employer-provided child care needed by the recipient; and
- (4) A percent of the initial bonus if the recipient is continuously employed for two years. [1997 c 58 § 317.]

**74.08A.310 Self-employment assistance—Training and placement programs.** The department shall:

- (1) Notify recipients of temporary assistance for needy families that self-employment is one method of leaving state assistance. The department shall provide its regional offices, recipients of temporary assistance for needy families, and any contractors providing job search, training, or placement services notification of programs available in the state for entrepreneurial training, technical assistance, and loans available for start-up businesses;
- (2) Provide recipients of temporary assistance for needy families and service providers assisting such recipients through training and placement programs with information it receives about the skills and training required by firms locating in the state;
- (3) Encourage recipients of temporary assistance for needy families that are in need of basic skills to seek out programs that integrate basic skills training with occupational training and workplace experience. [1997 c 58 § 324.]

**74.08A.320 Wage subsidy program.** The department shall establish a wage subsidy program for recipients of temporary assistance for needy families. The department shall give preference in job placements to private sector employers that have agreed to participate in the wage subsidy program. The department shall identify characteristics of employers who can meet the employment goals stated in RCW 74.08A.410. The department shall use these characteristics in identifying which employers may participate in the program. The department shall adopt rules for the participation of recipients of temporary assistance for needy families in the wage subsidy program. Participants in the program established under this section may not be employed if: (1) The employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. Employers providing positions created under this section shall meet the requirements of chapter 49.46 RCW. This section shall not diminish or result in the infringement of obligations or rights under chapters 41.06, 41.56, and 49.36 RCW and the national labor relations act, 29 U.S.C. Ch. 7. The department shall establish such local and statewide advisory boards, including business and labor representatives, as it deems appropriate to assist in the implementation of the wage subsidy program. Once the recipient is hired, the wage subsidy shall be authorized for up to nine months. [1997 c 58 § 325.]

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**74.08A.330 Community service program.** The department shall establish the community service program to provide the experience of work for recipients of public assistance. The program is intended to promote a strong work ethic for participating public assistance recipients. Under this program, public assistance recipients are required to volunteer to work for charitable nonprofit organizations and public agencies, or engage in another activity designed to benefit the recipient, the recipient's family, or the recipient's community, as determined by the department on a case-by-case basis. Participants in a community service or work experience program established by this chapter are deemed employees for the purpose of chapter 49.17 RCW. The cost of premiums under Title 51 RCW shall be paid for by the department for participants in a community service or work experience program. Participants in a community service or work experience program may not be placed if: (1) An employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its workforce in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. [1997 c 58 § 326.]

**74.08A.340 Funding restrictions.** The department of social and health services shall operate the Washington WorkFirst program authorized under RCW 74.08A.200 through 74.08A.330, 43.330.145, 43.215.545, and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in RCW 74.08A.200 through 74.08A.330, 43.330.145, 43.215.545, and 74.25.040, and chapter 74.12 RCW.

(2)(a) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW 74.08A.410 with the following exception: Beginning with the 2007-2009 biennium, funds that constitute the working connections child care program, child care quality programs, and child care licensing functions.

(b) Beginning in the 2007-2009 fiscal biennium, the legislature shall appropriate and the departments of early learning and social and health services shall expend funds defined in subsection (1) of this section that constitute the working connections child care program, child care quality programs, and child care licensing functions in a manner that is consistent with the outcome measures defined in RCW 74.08A.410.

(c) No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW, except as authorized in the omnibus appropriations act for the 2007-2009 biennium.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in the subsequent biennium. The department may transfer appropriation authority between funding categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [2008 c 329 § 922; 2007 c 522 § 957; 2006 c 265 § 209; 1997 c 58 § 321.]

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**74.08A.350 Questionnaires—Job opportunities for welfare recipients.** The department of social and health services shall create a questionnaire, asking businesses for information regarding available and upcoming job opportunities for welfare recipients. The department of revenue shall include the questionnaire in a regular quarterly mailing. The department of social and health services shall receive responses and use the information to develop work activities in the areas where jobs will be available. [1997 c 58 § 1007.]

**74.08A.380 Teen parents—Education requirements.** All applicants under the age of eighteen years who are approved for assistance and, within one hundred eighty days after the date of federal certification of the Washington temporary assistance for needy families program, all unmarried minor parents or pregnant minor applicants shall, as a condition of receiving benefits, actively progress toward the completion of a high school diploma or a GED. [1997 c 58 § 503.]

**74.08A.400 Outcome measures—Intent.** It is the intent of the legislature that the Washington WorkFirst program focus on work and on personal responsibility for recipients. The program shall be evaluated among other evaluations, through a limited number of outcome measures designed to hold each community service office and economic services region accountable for program success. [1997 c 58 § 701.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.410 Outcome measures—Development—Benchmarks.** (1) The WorkFirst program shall develop outcome measures for use in evaluating the WorkFirst program authorized in chapter 58, Laws of 1997, which may include but are not limited to:

- (a) Caseload reduction;
- (b) Recidivism to caseload after two years;
- (c) Job retention;
- (d) Earnings;
- (e) Reduction in average grant through increased recipient earnings; and
- (f) Placement of recipients into private sector, unsubsidized jobs.

(2) The department shall require that contractors for WorkFirst services collect outcome measure information and report outcome measures to the department regularly. The department shall develop benchmarks that compare outcome measure information from all contractors to provide a clear indication of the most effective contractors. Benchmark information shall be published quarterly and provided to the legislature, the governor, and all contractors for WorkFirst services. [1997 c 58 § 702.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.420 Outcome measures—Evaluations—Awarding contracts—Bonuses.** Every WorkFirst office, region, contract, employee, and contractor shall be evaluated using the criteria in RCW 74.08A.410. The department shall award contracts to the highest performing entities according to the criteria in RCW 74.08A.410. The department may provide for bonuses to offices, regions, and employees with the best outcomes according to measures in RCW 74.08A.410. [1997 c 58 § 703.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.430 Outcome measures—Report to legislature.** The department shall provide a report to the appropriate committees of the legislature on achievement of the outcome measures by region and contract on an annual basis, no later than January 15th of each year, beginning in 1999. The report shall include how the department is using the outcome measure information obtained under RCW 74.08A.410 to manage the WorkFirst program. [1997 c 58 § 704.]

**Effective dates—1997 c 58:** See note following RCW 74.20A.320.

**74.08A.900 Short title—1997 c 58.** This act may be known and cited as the Washington WorkFirst temporary assistance for needy families act. [1997 c 58 § 2.]

**74.08A.901 Part headings, captions, table of contents not law—1997 c 58.** Part headings, captions, and the table of contents used in this act are not any part of the law. [1997 c 58 § 1008.]

**74.08A.902 Exemptions and waivers from federal law—1997 c 58.** The governor and the department of social and health services shall seek all necessary exemptions and waivers from and amendments to federal statutes, rules, and regulations and shall report to the appropriate committees in the house of representatives and senate quarterly on the

efforts to secure the federal changes to permit full implementation of this act at the earliest possible date. [1997 c 58 § 1009.]

**74.08A.903 Conflict with federal requirements—1997 c 58.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. As used in this section, "allocation of federal funds to the state" means the allocation of federal funds that are appropriated by the legislature to the department of social and health services and on which the department depends for carrying out any provision of the operating budget applicable to it. [1997 c 58 § 1011.]

**74.08A.904 Severability—1997 c 58.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 58 § 1012.]

**Chapter 74.09 RCW  
MEDICAL CARE**

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**74.09.010 Definitions.** As used in this chapter:

(1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.

(2) "Committee" means the children's health services committee created in \*section 3 of this act.

(3) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements to fulfill the requirements of \*\*RCW 74.09.415 through 74.09.435.

(4) "Department" means the department of social and health services.

(5) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(6) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.

(7) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to medically indigent persons who are without income or resources sufficient to secure necessary medical services.

(8) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(9) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

(10) "Nursing home" means nursing home as defined in RCW 18.51.010.

(11) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(12) "Secretary" means the secretary of social and health services.

(13) "Full benefit dual eligible beneficiary" means an individual who, for any month: Has coverage for the month under a medicare prescription drug plan or medicare advantage plan with part D coverage; and is determined eligible by the state for full medicaid benefits for the month under any eligibility category in the state's medicaid plan or a section 1115 demonstration waiver that provides pharmacy benefits. [2007 c 3 § 2; 1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

**Reviser's note:** \*(1) "Section 3 of this act" [1990 c 296] which created the committee was vetoed by the governor.

\*\* (2) RCW 74.09.415 through 74.09.435 were repealed by 2007 c 5 § 8.

**Effective date—1990 c 296:** "This act shall take effect July 1, 1990." [1990 c 296 § 9.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.09.015 Nurse hotline, when funded.** To the extent that sufficient funding is provided specifically for this purpose, the department, in collaboration with the health care authority, shall provide all persons receiving services under this chapter with access to a twenty-four hour, seven day a week nurse hotline. The health care authority and the department of social and health services shall determine the most appropriate way to provide the nurse hotline under RCW 41.05.037 and this section, which may include use of the 211 system established in chapter 43.211 RCW. [2007 c 259 § 16.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**74.09.035 Medical care services—Eligibility, standards—Limits.** (1) To the extent of available funds, medical care services may be provided to recipients of general assistance, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(4) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

(5) Payments made by the department under this program shall be the limit of expenditures for medical care services solely from state funds.

(6) Eligibility for medical care services shall commence with the date of certification for general assistance or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW. [1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

**Effective date—1983 1st ex.s. c 43:** See note following RCW 74.09.700.

**Effective date—1982 1st ex.s. c 19:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982 [April 3, 1982]." [1982 1st ex.s. c 19 § 6.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.09.037 Identification card—Social security number restriction.** Any card issued after December 31, 2005, by the department or a managed health care system to a person receiving services under this chapter, that must be presented to providers for purposes of claims processing, may not display an identification number that includes more than a four-digit portion of the person's complete social security number. [2004 c 115 § 3.]

**74.09.050 Secretary's responsibilities and duties—Personnel—Medical screeners—Medical directors.** The secretary shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the secretary or his or her designee. The secretary shall appoint a medical director who is licensed under chapter 18.57 or 18.71 RCW. [2000 c 5 § 15; 1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

**Intent—Purpose—2000 c 5:** See RCW 48.43.500.

**Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5:** See notes following RCW 48.43.500.

**74.09.053 Annual reporting requirement.** (1) The department of social and health services, in coordination with the health care authority, shall by November 15th of each year report to the legislature:

(a) The number of medical assistance recipients who: (i) Upon enrollment or recertification had reported being employed, and beginning with the 2008 report, the month and year they reported being hired; or (ii) upon enrollment or recertification had reported being the dependent of someone who was employed, and beginning with the 2008 report, the month and year they reported the employed person was hired. For recipients identified under (a)(i) and (ii) of this subsection, the department shall report the basis for their medical assistance eligibility, including but not limited to family medical coverage, transitional medical assistance, children's medical or aged or disabled coverage; member months; and the total cost to the state for these recipients, expressed as general fund-state, health services account and general fund-federal dollars. The information shall be reported by employer [size] for employers having more than fifty employees as recipients or with dependents as recipients. This information shall be provided for the preceding January and June of that year.

(b) The following aggregated information: (i) The number of employees who are recipients or with dependents as recipients by private and governmental employers; (ii) the number of employees who are recipients or with dependents as recipients by employer size for employers with fifty or fewer employees, fifty-one to one hundred employees, one hundred one to one thousand employees, one thousand one to five thousand employees and more than five thousand employees; and (iii) the number of employees who are recipients or with dependents as recipients by industry type.

[(2)] For each aggregated classification, the report will include the number of hours worked, the number of department of social and health services covered lives, and the total

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cost to the state for these recipients. This information shall be for each quarter of the preceding year. [2006 c 264 § 2.]

**74.09.055 Copayment, deductible, coinsurance, other cost-sharing requirements authorized.** The department is authorized to establish copayment, deductible, or coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010, except that premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level. [2006 c 24 § 1; 2003 1st sp.s. c 14 § 1; 1993 c 492 § 231; 1982 c 201 § 19.]

**Effective date—2003 1st sp.s. c 14:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 14 § 2.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance.** The department shall provide (a) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (b) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary. [1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

**74.09.080 Methods of performing administrative responsibilities.** In carrying out the administrative responsibility of this chapter, the department may contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found necessary. [1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

**74.09.085 Contracts—Performance measures—Financial incentives.** The secretary shall, in collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers, use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(1) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(2) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors. [2005 c 446 § 3.]

**74.09.110 Administrative personnel—Professional consultants and screeners.** The department shall employ administrative personnel in both state and local offices and employ the services of professional screeners and consultants as found necessary to carry out the proper administration of the program. [1979 c 141 § 339; 1959 c 26 § 74.09.110. Prior: 1955 c 273 § 12.]

**74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for mentally retarded—Institutions for mental diseases.** The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800. No payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

The department may purchase care in institutions for the mentally retarded, also known as intermediate care facilities for the mentally retarded. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for the mentally retarded include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less, and hospital facilities certified as intermediate care facilities for the mentally retarded under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for mentally retarded individuals or persons with related conditions and includes in the program "active treatment" as federally defined.

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

The department may purchase all other services provided under this chapter by contract or at rates established by the department. [1998 c 322 § 45; 1993 sp.s. c 3 § 8; 1992 c 8 § 1; 1989 c 372 § 15; 1983 1st ex.s. c 67 § 44; 1981 2nd ex.s. c 11 § 6; 1981 1st ex.s. c 2 § 11; (1980 c 177 § 84 repealed by 1983 1st ex.s. c 67 § 48); 1975 1st ex.s. c 213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

**Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54:** See RCW 74.46.906.

**Severability—1998 c 322:** See RCW 74.46.907.

**Effective date—1993 sp.s. c 3:** See note following RCW 72.36.140.

**Findings—1993 sp.s. c 3:** See RCW 72.36.1601.

**Severability—Effective dates—1983 1st ex.s. c 67:** See RCW 74.46.905 and 74.46.901.

**Severability—Effective dates—1981 1st ex.s. c 2:** See notes following RCW 18.51.010.

**Effective dates—1980 c 177:** See RCW 74.46.901.

*Conflict with federal requirements and this section: RCW 74.46.840.*

**74.09.150 Personnel to be under existing merit system.** All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the Washington personnel resources board. [1993 c 281 § 66; 1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

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

**74.09.160 Presentment of charges by contractors.** Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group no later than twelve months from the date of service. If the final charges are not presented within the twelve-month period, they shall not be a charge against the state. Said twelve-month period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. For services rendered prior to July 28, 1991, final charges shall not be a charge against the state unless they are presented within one hundred twenty days from the date of service. [1991 c 103 § 1; 1980 c 32 § 11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

**74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights.** (1) The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: PROVIDED, HOWEVER, That the secretary may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department shall thereby be subrogated to the recipient's rights against the recovery had from any tortfeasor or the tortfeasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the department. To secure reimbursement for assistance provided under this section, the department may pursue its remedies under RCW 43.20B.060.

(2) The rights and remedies provided to the department in this section to secure reimbursement for assistance, including the department's lien and subrogation rights, may be delegated to a managed health care system by contract entered into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the department to secure and recover assistance provided under a managed health care system consistent with its agreement with the department. [1997 c 236 § 1; 1990 c 100 § 2; 1987

c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

**Application—1990 c 100 §§ 2, 4, 7(1), 8(2):** See note following RCW 43.20B.060.

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply.** To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the department by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 43.20B.050 and 43.20B.060. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the department as to its assignment, lien, or subrogation rights. [1995 c 34 § 6.]

**74.09.190 Religious beliefs—Construction of chapter.** Nothing in this chapter shall be construed as empowering the secretary to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

**74.09.200 Audits and investigations—Legislative declaration—State authority.** The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services. [1979 ex.s. c 152 § 1.]

**74.09.210 Fraudulent practices—Penalties.** (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or

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payments under this chapter in a greater amount than that to which entitled by means of:

(a) A willful false statement;  
(b) By willful misrepresentation, or by concealment of any material facts; or

(c) By other fraudulent scheme or device, including, but not limited to:

(i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or

(ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the Administrative Procedure Act.

(5) Civil penalties shall be deposited in the general fund upon their receipt. [1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**74.09.220 Liability for receipt of excess payments.** Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest calculated at the rate and in the manner provided in RCW 43.20B.695. Whenever a penalty is due under RCW 74.09.210 or interest is due under RCW 43.20B.695, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter. [1987 c 283 § 8; 1979 ex.s. c 152 § 3.]

**Severability—Savings—1987 c 283:** See notes following RCW 43.20A.020.

**74.09.230 False statements, fraud—Penalties.** Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 ex.s. c 152 § 4.]

**74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties.** (1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

- (i) Clinical laboratory services;
- (ii) Physical therapy services;
- (iii) Occupational therapy services;
- (iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;
- (v) Durable medical equipment and supplies;

(vi) Parenteral and enteral nutrients equipment and supplies;

(vii) Prosthetics, orthotics, and prosthetic devices;

(viii) Home health services;

(ix) Outpatient prescription drugs;

(x) Inpatient and outpatient hospital services;

(xi) Radiation therapy services and supplies.

(b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:

(i) An ownership or investment interest; or

(ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after July 23, 1995.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1995 c 319 § 1; 1979 ex.s. c 152 § 5.]

**74.09.250 False statements regarding institutions, facilities—Penalties.** Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, nursing facility, or home health agency, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1991 sp.s. c 8 § 6; 1979 ex.s. c 152 § 6.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**74.09.260 Excessive charges, payments—Penalties.** Any person, including any corporation, that knowingly:

(1) Charges, for any service provided to a patient under any medical care plan authorized under this chapter, money or other consideration at a rate in excess of the rates established by the department of social and health services; or

(2) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan, any gift, money, donation, or other consideration (other than

a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient):

(a) As a precondition of admitting a patient to a hospital or nursing facility; or

(b) As a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1991 sp.s. c 8 § 7; 1979 ex.s. c 152 § 7.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**74.09.270 Failure to maintain trust funds in separate account—Penalties.** (1) Any person having any patient trust funds in his possession, custody, or control, who, knowing that he is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for not more than one year in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [1979 ex.s. c 152 § 8.]

**74.09.280 False verification of written statements—Penalties.** The secretary of social and health services may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1979 ex.s. c 152 § 9.]

**74.09.290 Department audits and investigations of providers—Patient records—Penalties.** The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical quality assurance commission shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians. Any overpayment discovered as a result of an audit of a provider under this authority shall be offset by any underpayments discovered in that same audit sample. In order to determine the provider's actual, usual, customary, or prevailing charges, the secretary may examine such random representative records as necessary to show accounts billed

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and accounts received except that in the conduct of such examinations, patient names, other than public assistance applicants or recipients, shall not be noted, copied, or otherwise made available to the department. In order to verify costs incurred by the department for treatment of public assistance applicants or recipients, the secretary may examine patient records or portions thereof in connection with services to such applicants or recipients rendered by a health care provider, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and shall be punishable as a class C felony according to chapter 9A.20 RCW, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: PROVIDED FURTHER, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(4) Adopt, promulgate, amend, and repeal administrative rules, in accordance with the Administrative Procedure Act, chapter 34.05 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [1994 sp.s. c 9 § 749; 1990 c 100 § 5; 1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board.** Whenever the secretary of the department of social and health services imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [1979 ex.s. c 152 § 11.]

**74.09.402 Children's health care—Findings—Intent.** (1) The legislature finds that:

(a) Improving the health of children in Washington state is an investment in a productive and successful next generation. The health of children is critical to their success in school and throughout their lives;

(b) Healthy children are ready to learn. In order to provide students with the opportunity to become responsible cit-

izens, to contribute to their own economic well-being and to that of their families and communities, and to enjoy productive and satisfying lives, the state recognizes the importance that access to appropriate health services and improved health brings to the children of Washington state. In addition, fully immunized children are themselves protected, and in turn protect others, from contracting communicable diseases;

(c) Children with health insurance coverage have better health outcomes than those who lack coverage. Children without health insurance coverage are more likely to be in poor health and more likely to delay receiving, or go without, needed health care services;

(d) Health care coverage for children in Washington state is the product of critical efforts in both the private and public sectors to help children succeed. Private health insurance coverage is complemented by public programs that meet needs of low-income children whose parents are not offered health insurance coverage through their employer or who cannot otherwise afford the costs of coverage. In 2006, thirty-five percent of children in Washington state had some form of public health coverage. Washington state is making progress in its efforts to increase the number of children with health care coverage. Yet, even with these efforts of both private and public sectors, many children in Washington state continue to lack health insurance coverage. In 2006, over seventy thousand children were uninsured. Almost two-thirds of these children are in families whose income is under two hundred fifty percent of the federal poverty level; and

(e) Improved health outcomes for the children of Washington state are the expected result of improved access to health care coverage. Linking children with a medical home that provides preventive and well child health services and referral to needed specialty services, linking children with needed behavioral health and dental services, more effectively managing childhood diseases, improving nutrition, and increasing physical activity are key to improving children's health. Care should be provided in appropriate settings by efficient providers, consistent with high quality care and at an appropriate stage, soon enough to avert the need for overly expensive treatment.

(2) It is therefore the intent of the legislature that:

(a) All children in the state of Washington have health care coverage by 2010. This should be accomplished by building upon and strengthening the successes of private health insurance coverage and publicly supported children's health insurance programs in Washington state. Access to coverage should be streamlined and efficient, with reductions in unnecessary administrative costs and mechanisms to expeditiously link children with a medical home;

(b) The state, in collaboration with parents, schools, communities, health plans, and providers, take steps to improve health outcomes for the children of Washington state by linking children with a medical home, identifying health improvement goals for children, and linking innovative purchasing strategies to those goals. [2007 c 5 § 1; 2005 c 279 § 1.]

**74.09.460 Children's affordable health coverage—Findings—Intent.** (1) The legislature finds that parents have a responsibility to:

(a) Enroll their children in affordable health coverage;

(b) Ensure that their children receive appropriate well-child preventive care;

(c) Link their child with a medical home; and

(d) Understand and act upon the health benefits of good nutrition and physical activity.

(2) The legislature intends that the programs and outreach and education efforts established in RCW 74.09.470(6), as well as partnerships with the public and private sectors, provide the support and information needed by parents to meet the responsibilities set forth in this section. [2007 c 5 § 3.]

**74.09.470 Children's affordable health coverage—Department duties.** (1) Consistent with the goals established in RCW 74.09.402, through the program authorized in this section, the department shall provide affordable health care coverage to children under the age of nineteen who reside in Washington state and whose family income at the time of enrollment is not greater than two hundred fifty percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services, and effective January 1, 2009, and only to the extent that funds are specifically appropriated therefor, to children whose family income is not greater than three hundred percent of the federal poverty level. In administering the program, the department shall take such actions as may be necessary to ensure the receipt of federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available in the future. The department and the caseload forecast council shall estimate the anticipated caseload and costs of the program established in this section.

(2) The department shall accept applications for enrollment for children's health care coverage; establish appropriate minimum-enrollment periods, as may be necessary; and determine eligibility based on current family income. The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510. The application and annual renewal processes shall be designed to minimize administrative barriers for applicants and enrolled clients, and to minimize gaps in eligibility for families who are eligible for coverage. If a change in family income results in a change in program eligibility, the department shall transfer the family members to the appropriate programs and notify the family with respect to any change in premium obligation, without a break in eligibility. The department shall use the same eligibility redetermination and appeals procedures as those provided for children on medical assistance programs. The department shall modify its eligibility renewal procedures to lower the percentage of children failing to annually renew. The department shall report to the appropriate committees of the legislature on its progress in this regard by December 2007.

(3) To ensure continuity of care and ease of understanding for families and health care providers, and to maximize the efficiency of the program, the amount, scope, and duration of health care services provided to children under this

section shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(4) The primary mechanism for purchasing health care coverage under this section shall be through contracts with managed health care systems as defined in RCW 74.09.522 except when utilization patterns suggest that fee-for-service purchasing could produce equally effective and cost-efficient care. However, the department shall make every effort within available resources to purchase health care coverage for uninsured children whose families have access to dependent coverage through an employer-sponsored health plan or another source when it is cost-effective for the state to do so, and the purchase is consistent with requirements of Title XIX and Title XXI of the federal social security act. To the extent allowable under federal law, the department shall require families to enroll in available employer-sponsored coverage, as a condition of participating in the program established under chapter 5, Laws of 2007, when it is cost-effective for the state to do so. Families who enroll in available employer-sponsored coverage under chapter 5, Laws of 2007 shall be accounted for separately in the annual report required by RCW 74.09.053.

(5)(a) To reflect appropriate parental responsibility, the department shall develop and implement a schedule of premiums for children's health care coverage due to the department from families with income greater than two hundred percent of the federal poverty level. For families with income greater than two hundred fifty percent of the federal poverty level, the premiums shall be established in consultation with the senate majority and minority leaders and the speaker and minority leader of the house of representatives. Premiums shall be set at a reasonable level that does not pose a barrier to enrollment. The amount of the premium shall be based upon family income and shall not exceed the premium limitations in Title XXI of the federal social security act. Premiums shall not be imposed on children in households at or below two hundred percent of the federal poverty level as articulated in RCW 74.09.055.

(b) Beginning January 1, 2009, the department shall offer families whose income is greater than three hundred percent of the federal poverty level the opportunity to purchase health care coverage for their children through the programs administered under this section without a premium subsidy from the state. The amount paid by the family shall be in an amount equal to the rate paid by the state to the managed health care system for coverage of the child, including any associated and administrative costs to the state of providing coverage for the child.

(6) The department shall undertake a proactive, targeted outreach and education effort with the goal of enrolling children in health coverage and improving the health literacy of youth and parents. The department shall collaborate with the department of health, local public health jurisdictions, the office of [the] superintendent of public instruction, the department of early learning, health educators, health care providers, health carriers, and parents in the design and development of this effort. The outreach and education effort shall include the following components:

(a) Broad dissemination of information about the availability of coverage, including media campaigns;

(b) Assistance with completing applications, and community-based outreach efforts to help people apply for coverage. Community-based outreach efforts should be targeted to the populations least likely to be covered;

(c) Use of existing systems, such as enrollment information from the free and reduced-price lunch program, the department of early learning child care subsidy program, the department of health's women, infants, and children program, and the early childhood education and assistance program, to identify children who may be eligible but not enrolled in coverage;

(d) Contracting with community-based organizations and government entities to support community-based outreach efforts to help families apply for coverage. These efforts should be targeted to the populations least likely to be covered. The department shall provide informational materials for use by government entities and community-based organizations in their outreach activities, and should identify any available federal matching funds to support these efforts;

(e) Development and dissemination of materials to engage and inform parents and families statewide on issues such as: The benefits of health insurance coverage; the appropriate use of health services, including primary care provided by health care practitioners licensed under chapters 18.71, 18.57, 18.36A, and 18.79 RCW, and emergency services; the value of a medical home, well-child services and immunization, and other preventive health services with linkages to department of health child profile efforts; identifying and managing chronic conditions such as asthma and diabetes; and the value of good nutrition and physical activity;

(f) An evaluation of the outreach and education efforts, based upon clear outcome measures that are included in contracts with entities that undertake components of the outreach and education effort;

(g) A feasibility study and implementation plan to develop online application capability that is integrated with the department's automated client eligibility system, and to develop data linkages with the office of [the] superintendent of public instruction for free and reduced-price lunch enrollment information and the department of early learning for child care subsidy program enrollment information. The department shall submit a feasibility study on the implementation of the requirements in this subsection to the governor and legislature by July 2008.

(7) The department shall take action to increase the number of primary care physicians providing dental disease preventive services including oral health screenings, risk assessment, family education, the application of fluoride varnish, and referral to a dentist as needed.

(8) The department shall monitor the rates of substitution between private-sector health care coverage and the coverage provided under this section and shall report to appropriate committees of the legislature by December 2010. [2007 c 5 § 2.]

**74.09.480 Performance measures—Provider rate increases—Report.** (1) The department, in collaboration with the department of health, health carriers, local public health jurisdictions, children's health care providers including pediatricians, family practitioners, and pediatric subspecialists, parents, and other purchasers, shall identify explicit

performance measures that indicate that a child has an established and effective medical home, such as:

- (a) Childhood immunization rates;
- (b) Well child care utilization rates, including the use of validated, structured developmental assessment tools that include behavioral and oral health screening;
- (c) Care management for children with chronic illnesses;
- (d) Emergency room utilization; and
- (e) Preventive oral health service utilization.

Performance measures and targets for each performance measure must be reported to the appropriate committees of the senate and house of representatives by December 1, 2007.

(2) Beginning in calendar year 2009, targeted provider rate increases shall be linked to quality improvement measures established under this section. The department, in conjunction with those groups identified in subsection (1) of this section, shall develop parameters for determining criteria for increased payment or other incentives for those practices and health plans that incorporate evidence-based practice and improve and achieve sustained improvement with respect to the measures in both fee for service and managed care.

(3) The department shall provide an annual report to the governor and the legislature related to provider performance on these measures, beginning in September 2010 and annually thereafter. [2007 c 5 § 4.]

**74.09.490 Children's mental health—Improving medication management and care coordination.** (1)(a) The department, in consultation with the evidence-based practice institute established in RCW 71.24.061, shall develop and implement policies to improve prescribing practices for treatment of emotional or behavioral disturbances in children, improve the quality of children's mental health therapy through increased use of evidence-based and research-based practices and reduced variation in practice, improve communication and care coordination between primary care and mental health providers, and prioritize care in the family home or care which integrates the family where out-of-home placement is required.

(b) The department shall identify those children with emotional or behavioral disturbances who may be at high risk due to off-label use of prescription medication, use of multiple medications, high medication dosage, or lack of coordination among multiple prescribing providers, and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(c) The department shall review the psychotropic medications of all children under five and establish one or more mechanisms to evaluate the appropriateness of the medication these children are using, including but not limited to obtaining second opinions from experts in child psychiatry.

(d) The department shall track prescriptive practices with respect to psychotropic medications with the goal of reducing the use of medication.

(e) The department shall encourage the use of cognitive behavioral therapies and other treatments which are empirically supported or evidence-based, in addition to or in the place of prescription medication where appropriate.

(2) The department shall convene a representative group of regional support networks, community mental health centers, and managed health care systems contracting with the department under RCW 74.09.522 to:

(a) Establish mechanisms and develop contract language that ensures increased coordination of and access to medicaid mental health benefits available to children and their families, including ensuring access to services that are identified as a result of a developmental screen administered through early periodic screening, diagnosis, and treatment;

(b) Define managed health care system and regional support network contractual performance standards that track access to and utilization of services; and

(c) Set standards for reducing the number of children that are prescribed antipsychotic drugs and receive no outpatient mental health services with their medication.

(3) The department shall submit a report on progress and any findings under this section to the legislature by January 1, 2009. [2007 c 359 § 5.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**74.09.500 Medical assistance—Established.** There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the state department of social and health services. The department of social and health services is authorized to comply with the federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law (89-97) in order to secure federal matching funds for such program. [1979 c 141 § 343; 1967 ex.s. c 30 § 3.]

**74.09.510 Medical assistance—Eligibility. (Contingent expiration date.)** Medical assistance may be provided in accordance with eligibility requirements established by the department, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(1) Individuals who would be eligible for cash assistance except for their institutional status;

(2) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for persons who are mentally retarded, or (d) inpatient psychiatric facilities;

(3) Individuals who:

(a) Are under twenty-one years of age;

(b) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(c) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(4) Persons who are aged, blind, or disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized;

(5) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(6) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(7) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(8) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(9) Other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(10) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(11) Women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2007 c 315 § 1. Prior: 2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

**Conflict with federal requirements—2007 c 315:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

**Findings—Intent—2001 2nd sp.s. c 15:** See note following RCW 74.09.540.

**Effective date—2001 1st sp.s. c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 4 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Effective dates—1989 c 87:** See notes following RCW 11.94.050.

**Severability—1981 2nd ex.s. c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 3 § 8.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.09.510 Medical assistance—Eligibility. (Contingent effective date.)** (1) Medical assistance may be provided in accordance with eligibility requirements established by the

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department, as defined in the social security Title XIX state plan for mandatory categorically needy persons and:

(a) Individuals who would be eligible for cash assistance except for their institutional status;

(b) Individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (i) foster care, (ii) subsidized adoption, (iii) a nursing facility or an intermediate care facility for persons who are mentally retarded, or (iv) inpatient psychiatric facilities;

(c) Individuals who:

(i) Are under twenty-one years of age;

(ii) On or after July 22, 2007, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state; and

(iii) On their eighteenth birthday, were in foster care under the legal responsibility of the department or a federally recognized tribe located within the state;

(d) Persons who are aged, blind, or disabled who: (i) Receive only a state supplement, or (ii) would not be eligible for cash assistance if they were not institutionalized;

(e) Categorically eligible individuals who meet the income and resource requirements of the cash assistance programs;

(f) Individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act;

(g) Children and pregnant women allowed by federal statute for whom funding is appropriated;

(h) Working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated;

(i) Other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act;

(j) Persons allowed by section 1931 of the social security act for whom funding is appropriated; and

(k) Women who: (i) Are under sixty-five years of age; (ii) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (iii) are not otherwise covered by health insurance. Medical assistance provided under this subsection (1)(k) is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act.

(2) To the extent permitted under federal law, the department shall set the categorically needy income level for adults who are sixty-five years of age or older, blind, or disabled, at eighty percent of the federal poverty level as adjusted annually beginning July 1, 2009. As used in this section, "federal poverty level" refers to the poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. Sec. 9902(2). [2008 c 317 § 1; 2007 c 315 § 1. Prior:

2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1; prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

**Report—2008 c 317:** "The department of social and health services shall prepare a fiscal analysis of the increases in the medicaid categorically needy income level to eighty percent of the federal poverty level as described in RCW 74.09.510. In developing the fiscal analysis, the department shall present both costs and cost offsets related to continuous access to health services including: Per capita cost reductions that resulted from current medically needy clients having access to continuous coverage through the categorically needy program; any reductions in the number of clients receiving long-term care services; the impact on department staffing needs, including savings associated with reduced medically needy caseloads; shifts in enrollment from the Washington basic health plan to medicaid coverage; and the impact on regional support networks, including additional medicaid revenues, reduced demand for nonmedicaid funded services, and changes in utilization of emergency room and hospital services. The department shall submit the analysis to the governor and the health policy and fiscal committees of the legislature by November 1, 2010." [2008 c 317 § 3.]

**Contingent effective date—2008 c 317:** "This act takes effect July 1, 2009, if specific funding for purposes of this act, referencing this act by bill or chapter number, is provided by June 30, 2009, in the omnibus operating appropriations act. If funding is not so provided, this act is null and void." [2008 c 317 § 5.]

**Conflict with federal requirements—2007 c 315:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2007 c 315 § 3.]

**Findings—Intent—2001 2nd sp.s. c 15:** See note following RCW 74.09.540.

**Effective date—2001 1st sp.s. c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 4 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Effective dates—1989 c 87:** See notes following RCW 11.94.050.

**Severability—1981 2nd ex.s. c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 3 § 8.]

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.09.515 Medical assistance—Coverage for youth released from confinement.** (1) The department shall adopt rules and policies providing that when youth who were enrolled in a medical assistance program immediately prior to confinement are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The department, in collaboration with county juvenile court administrators and regional support networks, shall establish procedures for coordination between department field offices, juvenile rehabilitation administration institu-

tions, and county juvenile courts that result in prompt reinstatement of eligibility and speedy eligibility determinations for youth who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services' applications on behalf of confined youth in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined youth and, to the extent practicable, completion of the review before the youth is released; and

(c) Mechanisms for providing medical assistance services' identity cards to youth eligible for medical assistance services immediately upon their release from confinement.

(3) For purposes of this section, "confined" or "confinement" means detained in a facility operated by or under contract with the department of social and health services, juvenile rehabilitation administration, or detained in a juvenile detention facility operated under chapter 13.04 RCW.

(4) The department shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined youth who is likely to be eligible for a medical assistance program. [2007 c 359 § 8.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

**74.09.520 Medical assistance—Care and services included—Funding limitations.** (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX

personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(8) Subject to the availability of amounts appropriated for this specific purpose, effective July 1, 2007, the department may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries. [2007 c 3 § 1; 2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19

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§ 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Conflict with federal requirements—Effective date—1994 c 21:** See notes following RCW 43.20B.080.

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

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

**Severability—1989 c 427:** See RCW 74.39.900.

**Intent—1989 c 400:** See note following RCW 28A.150.390.

**Effective date—1982 1st ex.s. c 19:** See note following RCW 74.09.035.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

*Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.*

#### **74.09.521 Medical assistance—Program standards for mental health services for children. (Expires July 1, 2010.)**

(1) To the extent that funds are specifically appropriated for this purpose the department shall revise its medicaid healthy options managed care and fee-for-service program standards under medicaid, Title XIX of the federal social security act to improve access to mental health services for children who do not meet the regional support network access to care standards. Effective July 1, 2008, the program standards shall be revised to allow outpatient therapy services to be provided by licensed mental health professionals, as defined in RCW 71.34.020, and up to twenty outpatient therapy hours per calendar year, including family therapy visits integral to a child's treatment.

(2) This section expires July 1, 2010. [2007 c 359 § 11.]

**Captions not law—2007 c 359:** See note following RCW 71.36.005.

#### **74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care.**

(1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW 74.09.520 and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(2) The department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the department by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the department under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e) In negotiating with managed health care systems the department shall adopt a uniform procedure to negotiate and enter into contractual arrangements, including standards regarding the quality of services to be provided; and financial integrity of the responding system;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services; and

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under this chapter.

(3) The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The department shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall

guide the department in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the department to the extent that minimum contracting requirements defined by the department are met, at payment rates that enable the department to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

(i) Demonstrated commitment to or experience in serving low-income populations;

(ii) Quality of services provided to enrollees;

(iii) Accessibility, including appropriate utilization, of services offered to enrollees;

(iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;

(v) Payment rates; and

(vi) The ability to meet other specifically defined contract requirements established by the department, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The department shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the department to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the department and contract bidders or the department and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document. In designing such procedures, the department shall give strong consideration to the negotiation and dispute resolution processes used by the Washington state health care authority in its managed health care contracting activities.

(6) The department may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate. [1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

**Reviser's note:** This section was amended by 1997 c 34 § 1 and by 1997 c 59 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1997 c 34:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 34 § 3.]

**Severability—1987 1st ex.s. c 5:** See note following RCW 70.47.901.

**Legislative findings—Intent—1986 c 303:** "(1) The legislature finds that:

- (a) Good health care for indigent persons is of importance to the state;
- (b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;
- (c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;

(d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.

(2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both inpatient and out-patient services." [1986 c 303 § 1.]

**74.09.5221 Medical assistance—Federal standards—Waivers—Application.** To the extent that federal statutes or regulations, or provisions of waivers granted to the department of social and health services by the federal department of health and human services, include standards that differ from the minimums stated in \*sections 101 through 106, 109, and 111 of this act, those sections do not apply to contracts with health carriers awarded pursuant to RCW 74.09.522. [1997 c 231 § 112.]

**\*Reviser's note:** Sections 101 through 106, 109, and 111 of this act were vetoed by the governor.

**Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231:** See notes following RCW 48.43.005.

**74.09.5225 Medical assistance—Payments for services provided by rural hospitals.** (1) Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the centers for medicare and medicaid services as a critical access hospital. Any additional payments made by the medical assistance administration for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs.

(2) Beginning on July 24, 2005, a moratorium shall be placed on additional hospital participation in critical access hospital payments under this section. However, rural hospitals that applied for certification to the centers for medicare and medicaid services prior to January 1, 2005, but have not yet completed the process or have not yet been approved for certification, remain eligible for medical assistance payments under this section. [2005 c 383 § 1; 2001 2nd sp.s. c 2 § 2.]

**Findings—2001 2nd sp.s. c 2:** "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

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**74.09.5227 Implementation date—Payments for services provided by rural hospitals.** The department shall implement the program created in RCW 74.09.5225 within sixty days of September 20, 2001, regardless of the beneficiary's managed care status. [2001 2nd sp.s. c 2 § 3.]

**Findings—2001 2nd sp.s. c 2:** See note following RCW 74.09.5225.

**74.09.523 PACE program—Definitions—Requirements.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

- (i) One month's total capitation revenue; and
- (ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program. [2001 c 191 § 2.]

**Finding—2001 c 191:** "The legislature finds that PACE programs provide essential care to the frail elderly in the state of Washington. PACE serves to enhance the quality of life and autonomy for frail, older adults, maximize the dignity of and respect for older adults, enable frail and older adults to live in their homes and their community as long as medically possible, and preserve and support the older adult's family unit." [2001 c 191 § 1.]

**Effective date—2001 c 191:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 191 § 4.]

**74.09.5241 Special education programs—Medical services—Finding—Intent.** The legislature finds that there is increasing demand for medical services provided through the state's special education programs and that many of these services qualify for federal financial participation under Title XIX of the federal social security act. The legislature further finds that these services may be covered under private insurance policies. The legislature intends to establish a statewide system of billing medicaid and private insurers for eligible medical services provided through special education programs, in order that federal funding of medical services in special education programs will be maximized and that additional revenue be made available for education programs. It is the further intent of the legislature that the program be administered by a public or private agency in such a fashion as to

ensure that the additional administrative workloads for the districts and the health practitioners in the schools are kept to a minimum. [1993 c 149 § 1.]

**Conflict with federal requirements—1993 c 149:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 149 § 12.]

**Severability—1993 c 149:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 149 § 13.]

**Effective dates—1993 c 149:** "(1) Sections 1 through 10 and 12 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993].

(2) Section 11 of this act takes effect September 1, 1993." [1993 c 149 § 15.]

**74.09.5243 Special education programs—Definitions.** Unless the context clearly requires otherwise, the following definitions apply throughout RCW 74.09.5241 through 74.09.5253 and 74.09.5254 through 74.09.5256.

(1) "District" means a school district, educational service district, or educational cooperatives offering special education services under chapter 28A.155 RCW.

(2) "Medical assistance" and "medicaid" means federal and state-funded programs under which medical services are provided under Title XIX of the federal social security act.

(3) "Medical services" means district services that qualify for medicaid funding. [1994 c 180 § 1; 1993 c 149 § 2.]

**Conflict with federal requirements—1994 c 180:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 180 § 10.]

**Severability—1994 c 180:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 180 § 11.]

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5245 Special education programs—Medical services—Billing agent contract process.** The superintendent of public instruction shall take necessary steps to establish a competitive bidding process for a contract to act as the state's billing agent for medical services provided through its special education programs. The process must be open to private firms and public entities. [1993 c 149 § 3.]

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5247 Special education programs—Medical services—District as billing agent—Administrative fee.** (1) Chapter 149, Laws of 1993 does not apply to contracts between individual districts and private firms entered into for the purpose of billing either medicaid or private insurers, or

both, for medical services and agreed to before April 30, 1993, except as provided in \*RCW 28A.155.150(2).

(2) A district may elect to act as its own billing agent as of the start of any school year. For a district being served by the statewide billing agent, the district shall notify the billing agent in writing, no less than thirty days before the start of the school year, of its intent to terminate the agency relationship. A district that acts as its own billing agent or a district with a preexisting contract under subsection (1) of this section is entitled to an administrative fee equivalent to that of the statewide billing agent. [1994 c 180 § 2; 1993 c 149 § 4.]

\*Reviser's note: RCW 28A.155.150 was repealed by 1994 c 180 § 9.

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5249 Special education programs—Medical services—Billing agent duties.** (1) The agency awarded the contract under RCW 74.09.5245 shall:

(a) Enroll all districts in this state, except those with pre-existing contracts under RCW 74.09.5247, as medicaid providers effective the beginning of the 1993-94 school year;

(b) Develop a statewide system of billing the department and private insurers for medical services provided in special education programs;

(c) Train health care practitioners employed by or contracting with districts in medicaid and insurer billing;

(d) Verify the medicaid eligibility of students enrolled in special education programs in each district;

(e) Provide ongoing technical assistance to practitioners and districts; and

(f) Process and forward all medicaid claims to the department and all other claims to private insurers.

(2) For each student, individual districts may, in consultation with the billing agent, deliver to the student's parent or guardian a letter, prepared by the billing agent, requesting the consent of the parent or guardian to bill the student's health insurance carrier for services provided through the special education program. If a district chooses to do this, the letter must be accompanied by a consent form, on which the parent may identify the student's health insurance carrier so that the billing agent may bill the carrier for medical services provided to the student. The letter must clearly state the following:

(a) That the billing program is designed in part to raise additional funds to improve education services;

(b) That under no circumstances will the parent or guardian be personally charged for any portion of the bill not paid by the insurer, including copayments, deductibles, or uncovered services;

(c) That the amount of the billing will apply to the policy's annual deductible even though the parent will not be billed for the amount of the deductible;

(d) That the amount of the billing, will, however, apply towards annual or lifetime benefit caps if these are included in the policy;

(e) That it is possible that their premiums would be increased as a result of their consent;

(f) That if any of the possible negative consequences of consent were to affect them, they are free to withdraw their consent at any time; and

(g) That their consent is entirely voluntary and that the services the student receives through the district will not be affected by their willingness or refusal to consent to the billing of their private insurer. [1994 c 180 § 3; 1993 c 149 § 5.]

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5251 Special education programs—Medical services—Categories of services—Reimbursement system.** The medical assistance administration in the department of social and health services shall establish categories of medical services and a reimbursement system based on the costs of providing medical services provided in special education programs. [1993 c 149 § 6.]

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5253 Special education programs—Medical services—Student information—Report to legislature.**

(1) Each district shall participate in the program of billing for medical services provided in the district's special education program. Each participating district shall provide the superintendent of public instruction with a list, as of the first school day in October, December, and May of each year, of all students enrolled in special education programs within the area served by the district, for purposes of verifying the medicaid eligibility of the students.

(2) A person employed by or contracting with a district who provides medical services shall provide the billing agent with information necessary to promptly complete monthly billings for each medicaid-eligible student he or she serves as part of the district's special education program.

(3) The superintendent of public instruction shall submit to the legislature at the beginning of each legislative session a report indicating the district-by-district participation and the medicaid and private insurance payment receipts during the preceding fiscal year. The report must further indicate for each district the total number of special education students, and the number eligible for medicaid, as determined by the medical assistance administration. The superintendent may require a letter of explanation from any district whose billings for medical assistance under the program, in the judgment of the superintendent, indicate nonparticipation or underparticipation. [1994 c 180 § 4; 1993 c 149 § 7.]

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**74.09.5254 Special education programs—Medical services—Reports to superintendent of public instruction.**

(1) Each district that has elected to act as its own billing agent under RCW 74.09.5247(2) and each firm that is a party to a preexisting contract under RCW 74.09.5247(1) shall, at times designated by the superintendent of public instruction, provide the office of the superintendent of public instruction

with a report indicating the total amount of medicaid and private insurance moneys billed by the district.

(2) The state billing agent shall, at times designated by the superintendent of public instruction, provide the superintendent of public instruction with a report for each district enrolled by the billing agent, indicating the total amount of medicaid and private insurance moneys billed through medicaid and private insurer billing. [1994 c 180 § 5.]

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**74.09.5255 Special education programs—Medical services—Incentive payments.** Of the projected federal medicaid and private insurance revenue collected under RCW 74.09.5249, one-half of the percent of potential medicaid eligible students billed by the school district as calculated by the superintendent multiplied by the federal portion of medicaid payments, after deduction for billing fees, shall be for incentive payments to districts. Incentive payments shall only be used by districts for children with disabilities. [1999 c 318 § 2; 1999 c 318 § 1; 1994 c 180 § 6.]

**Effective dates—1999 c 318:** "(1) Sections 1 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 14, 1999].

(2) Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999." [1999 c 318 § 5.]

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**74.09.5256 Special education programs—Medical services—Disbursement of revenue.** (1) Districts shall reassign medicaid payments to be received under RCW 74.09.5249 through 74.09.5253, 74.09.5254 and 74.09.5255, and this section to the superintendent of public instruction.

(2) The superintendent of public instruction shall receive medicaid payments from the department of social and health services for all state and federal moneys under Title XIX of the federal social security act due to districts for medical assistance provided in the district's special education program.

(3) The superintendent shall use reports from the department of social and health services, the state billing agent, districts acting as their own billing agent, and firms to calculate the appropriate amounts of incentive payments and state special education program moneys due each district.

(4) Moneys received by the superintendent of public instruction shall be disbursed for the following purposes:

(a) Reimbursement to the department of social and health services for the state-funded portion of medicaid payments;

(b) Reimbursement for billing agent's fees, including those of districts acting as their own agent and billing fees of firms;

(c) Incentive payments to each school district equal to one-half of the percent of potential medicaid eligible students billed by the school district as calculated by the superintendent multiplied by the federal portion of medicaid payments after deduction for billing fees; and

(d) The remainder shall be distributed to districts as part of state allocations for the special education program provided under RCW 28A.150.390.

(5) With respect to private insurer funds received by districts, the superintendent of public instruction shall reduce state special education program allocations to districts by one minus the percent calculated by the superintendent in subsection (4)(c) of this section, after deduction for billing fees. [1999 c 318 § 4; 1999 c 318 § 3; 1994 c 180 § 7.]

**Effective dates—1999 c 318:** See note following RCW 74.09.5255.

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**74.09.530 Medical assistance—Powers and duties of department. (Contingent expiration date.)** (1) The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The department shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act.

(2) Individuals eligible for medical assistance under RCW 74.09.510(3) shall be transitioned into coverage under that subsection immediately upon their termination from coverage under RCW 74.09.510(2)(a). The department shall use income eligibility standards and eligibility determinations applicable to children placed in foster care. The department, in consultation with the health care authority, shall provide information regarding basic health plan enrollment and shall offer assistance with the application and enrollment process to individuals covered under RCW 74.09.510(3) who are approaching their twenty-first birthday. [2007 c 315 § 2; 2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

**Conflict with federal requirements—2007 c 315:** See note following RCW 74.09.510.

**74.09.530 Medical assistance—Powers and duties of department. (Contingent effective date.)** (1) The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The department shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act.

(2) Individuals eligible for medical assistance under RCW 74.09.510(1)(c) shall be transitioned into coverage under that subsection immediately upon their termination

from coverage under RCW 74.09.510(1)(b)(i). The department shall use income eligibility standards and eligibility determinations applicable to children placed in foster care. The department, in consultation with the health care authority, shall provide information regarding basic health plan enrollment and shall offer assistance with the application and enrollment process to individuals covered under RCW 74.09.510(1)(c) who are approaching their twenty-first birthday. [2008 c 317 § 2; 2007 c 315 § 2; 2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

**Report—Contingent effective date—2008 c 317:** See notes following RCW 74.09.510.

**Conflict with federal requirements—2007 c 315:** See note following RCW 74.09.510.

**74.09.540 Medical assistance—Working disabled—Intent.** (1) It is the intent of the legislature to remove barriers to employment for individuals with disabilities by providing medical assistance to the working disabled through a buy-in program in accordance with section 1902(a)(10)(A)(ii) of the social security act and eligibility and cost-sharing requirements established by the department.

(2) The department shall establish income, resource, and cost-sharing requirements for the buy-in program in accordance with federal law and any conditions or limitations specified in the omnibus appropriations act. The department shall establish and modify eligibility and cost-sharing requirements in order to administer the program within available funds. The department shall make every effort to coordinate benefits with employer-sponsored coverage available to the working disabled receiving benefits under this chapter. [2001 2nd sp.s. c 15 § 2.]

**Findings—Intent—2001 2nd sp.s. c 15:** "The legislature finds that individuals with disabilities face many barriers and disincentives to employment. Individuals with disabilities are often unable to obtain health insurance that provides the services and supports necessary to allow them to live independently and enter or rejoin the workforce. The legislature finds that there is a compelling public interest in eliminating barriers to work by continuing needed health care coverage for individuals with disabilities who enter and maintain employment.

The legislature intends to strengthen the state's policy of supporting individuals with disabilities in leading fully productive lives by supporting the implementation of the federal ticket to work and work incentives improvement act of 1999, Public Law 106-170. This shall include improving incentives to work by continuing coverage for health care and support services, by seeking federal funding for innovative programs, and by exploring options which provide individuals with disabilities a choice in receiving services needed to obtain and maintain employment." [2001 2nd sp.s. c 15 § 1.]

**74.09.545 Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income.** (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee; and

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community based waivers as defined in Title XIX

of the Social Security Act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. [1986 c 220 § 1.]

**74.09.555 Medical assistance—Reinstatement upon release from confinement—Expedited eligibility determinations.** (1) The department shall adopt rules and policies providing that when persons with a mental disorder, who were enrolled in medical assistance immediately prior to confinement, are released from confinement, their medical assistance coverage will be fully reinstated on the day of their release, subject to any expedited review of their continued eligibility for medical assistance coverage that is required under federal or state law.

(2) The department, in collaboration with the Washington association of sheriffs and police chiefs, the department of corrections, and the regional support networks, shall establish procedures for coordination between department field offices, institutions for mental disease, and correctional institutions, as defined in RCW 9.94.049, that result in prompt reinstatement of eligibility and speedy eligibility determinations for persons who are likely to be eligible for medical assistance services upon release from confinement. Procedures developed under this subsection must address:

(a) Mechanisms for receiving medical assistance services applications on behalf of confined persons in anticipation of their release from confinement;

(b) Expedient review of applications filed by or on behalf of confined persons and, to the extent practicable, completion of the review before the person is released;

(c) Mechanisms for providing medical assistance services identity cards to persons eligible for medical assistance services immediately upon their release from confinement; and

(d) Coordination with the federal social security administration, through interagency agreements or otherwise, to expedite processing of applications for federal supplemental security income or social security disability benefits, including federal acceptance of applications on behalf of confined persons.

(3) Where medical or psychiatric examinations during a person's confinement indicate that the person is disabled, the correctional institution or institution for mental diseases shall provide the department with that information for purposes of making medical assistance eligibility and enrollment determinations prior to the person's release from confinement. The department shall, to the maximum extent permitted by federal law, use the examination in making its determination whether the person is disabled and eligible for medical assistance.

(4) For purposes of this section, "confined" or "confinement" means incarcerated in a correctional institution, as defined in RCW 9.94.049, or admitted to an institute for mental disease, as defined in 42 C.F.R. part 435, Sec. 1009 on July 24, 2005.

(5) For purposes of this section, "likely to be eligible" means that a person:

(a) Was enrolled in medicaid or supplemental security income or general assistance immediately before he or she

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was confined and his or her enrollment was terminated during his or her confinement; or

(b) Was enrolled in medicaid or supplemental security income or general assistance at any time during the five years before his or her confinement, and medical or psychiatric examinations during the person's confinement indicate that the person continues to be disabled and the disability is likely to last at least twelve months following release.

(6) The economic services administration shall adopt standardized statewide screening and application practices and forms designed to facilitate the application of a confined person who is likely to be eligible for medicaid. [2005 c 503 § 12.]

**Correction of references—Savings—Severability—2005 c 503:** See notes following RCW 71.24.015.

**74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses.** (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act. [1989 c 87 § 4.]

**Captions not law—1989 c 87:** "Section captions, as found in sections 4 through 8 of this act, constitute no part of the law." [1989 c 87 § 10.]

**Effective dates—1989 c 87:** See note following RCW 11.94.050.

**74.09.575 Medical assistance for institutionalized persons—Treatment of resources.** (1) The department shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department shall allow the maximum resource allowance amount permissible under the social security act for the community spouse for persons institutionalized before August 1, 2003.

(3) For persons institutionalized on or after August 1, 2003, the department, in the interest of supporting the community spouse, shall allow up to a maximum of forty thousand dollars in resources for the community spouse. For the fiscal biennium beginning July 1, 2005, and each fiscal biennium thereafter, the maximum resource allowance amount for the community spouse shall be adjusted for economic trends and conditions by increasing the amount allowable by the consumer price index as published by the federal bureau of labor statistics. However, in no case shall the amount allowable exceed the maximum resource allowance permissible under the social security act. [2003 1st sp.s. c 28 § 1; 1989 c 87 § 5.]

**Effective date—2003 1st sp.s. c 28:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 28 § 2.]

**Effective dates—1989 c 87:** See note following RCW 11.94.050.

**Captions not law—1989 c 87:** See note following RCW 74.09.565.

**74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.**

(1) The department shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) There shall be no penalty imposed for the transfer of assets that are excluded in a determination of the individual's eligibility for medicaid to the extent such assets are protected by the long-term care insurance policy or contract pursuant to chapter 48.85 RCW.

(3) The department may waive a period of ineligibility if the department determines that denial of eligibility would work an undue hardship. [1995 1st sp.s. c 18 § 81; 1989 c 87 § 7.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective dates—1989 c 87:** See note following RCW 11.94.050.

**Captions not law—1989 c 87:** See note following RCW 74.09.565.

**74.09.595 Medical assistance for institutionalized persons—Due process procedures.**

The department shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance. [1989 c 87 § 8.]

**Effective dates—1989 c 87:** See note following RCW 11.94.050.

**Captions not law—1989 c 87:** See note following RCW 74.09.565.

**74.09.600 Post audit examinations by state auditor.**

Nothing in this chapter shall preclude the state auditor from conducting post audit examinations of public funds pursuant to RCW 43.09.330 or other applicable law. [1977 ex.s. c 260 § 6.]

**Severability—1977 ex.s. c 260:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 260 § 8.]

**74.09.650 Prescription drug assistance program. (1)**

To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the department shall design a medicaid prescription drug assistance program. Neither the benefits of, nor eligibility for, the program is considered to be an entitlement.

(2) The department shall request any federal waiver necessary to implement this program. Consistent with federal waiver conditions, the department may charge enrollment fees, premiums, or point-of-service cost-sharing to program enrollees.

(3) Eligibility for this program is limited to persons:

(a) Who are eligible for medicare or age sixty-five and older;

(b) Whose family income does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(c) Who lack insurance that provides prescription drug coverage; and

(d) Who are not otherwise eligible under Title XIX of the federal social security act.

(4) The department shall use a cost-effective prescription drug benefit design. Consistent with federal waiver conditions, this benefit design may be different than the benefit design offered under the medical assistance program. The benefit design may include a deductible benefit that provides coverage when enrollees incur higher prescription drug costs as defined by the department. The department also may offer more than one benefit design.

(5) The department shall limit enrollment of persons who qualify for the program so as to prevent an overexpenditure of appropriations for this program or to assure necessary compliance with federal waiver budget neutrality requirements. The department may not reduce existing medical assistance program eligibility or benefits to assure compliance with federal waiver budget neutrality requirements.

(6) Premiums paid by medicaid enrollees not in the medicaid prescription drug assistance program may not be used to finance the medicaid prescription drug assistance program.

(7) This program will be terminated within twelve months after implementation of a prescription drug benefit under Title XVIII of the federal social security act.

(8) The department shall provide recommendations to the appropriate committees of the senate and house of representatives by November 15, 2003, on financing options available to support the medicaid prescription drug assistance program. In recommending financing options, the department shall explore every opportunity to maximize federal funding to support the program. [2003 1st sp.s. c 29 § 2.]

**Finding—Intent—2003 1st sp.s. c 29:** "The legislature finds that prescription drugs are an effective and important part of efforts to maintain and improve the health of Washington state residents. However, their increased cost and utilization is straining the resources of many state health care programs, and is particularly hard on low-income elderly people who lack insurance coverage for such drugs. Furthermore, inappropriate use of prescription

drugs can result in unnecessary expenditures and lead to serious health consequences. It is therefore the intent of the legislature to support the establishment by the state of an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at an affordable price to those in need, and increase public awareness regarding their safe and cost-effective use." [2003 1st sp.s. c 29 § 1.]

**Severability—2003 1st sp.s. c 29:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 29 § 14.]

**Conflict with federal requirements—2003 1st sp.s. c 29:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2003 1st sp.s. c 29 § 15.]

**Effective date—2003 1st sp.s. c 29:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003]." [2003 1st sp.s. c 29 § 16.]

**74.09.655 Smoking cessation assistance.** The department shall provide coverage under this chapter for smoking cessation counseling services, as well as prescription and nonprescription agents when used to promote smoking cessation, so long as such agents otherwise meet the definition of "covered outpatient drug" in 42 U.S.C. Sec. 1396r-8(k). However, the department may initiate an individualized inquiry and determine and implement by rule appropriate coverage limitations as may be required to encourage the use of effective, evidence-based services and prescription and nonprescription agents. The department shall track per-capita expenditures for a cohort of clients that receive smoking cessation benefits, and submit a cost-benefit analysis to the legislature on or before January 1, 2012. [2008 c 245 § 1.]

**74.09.660 Prescription drug education for seniors—Grant qualifications.** Each of the state's area agencies on aging shall implement a program intended to inform and train persons sixty-five years of age and older in the safe and appropriate use of prescription and nonprescription medications. To further this purpose, the department shall award development grants averaging up to twenty-five thousand dollars to each of the agencies upon a showing that:

(1) The agency has the ability to effectively administer such a program, including an understanding of the relevant issues and appropriate outreach and follow-up;

(2) The agency can bring resources to the program in addition to those funded by the grant; and

(3) The program will be a collaborative effort between the agency and other health care programs and providers in the location to be served, including doctors, pharmacists, and long-term care providers. [2003 1st sp.s. c 29 § 8.]

**Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29:** See notes following RCW 74.09.650.

**74.09.700 Medical care—Limited casualty program.**

(1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to

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persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility requirements established by the department. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities, residents of intermediate care facilities for the mentally retarded, and individuals who are otherwise eligible for section 1915(c) of the federal social security act home and community-based waiver services, administered by the department of social and health services aging and adult services administration, who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services, and home and community-based waiver services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the department: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for the mentally retarded; home health services; hospice services; other laboratory and X-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [2001 c 269 § 1; 1993 c 57 § 2. Prior: 1991 sp.s. c 9 § 7; 1991 sp.s. c 8 § 10; 1991 c 233 § 2; 1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

**Effective dates—1991 sp.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991, except sections 1 through 6 and 9 of this act which shall take effect on September 1, 1991." [1991 sp.s. c 9 § 11.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Effective dates—1989 c 87:** See note following RCW 11.94.050.

**Effective date—1983 1st ex.s. c 43:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 1st ex.s. c 43 § 3.]

**Effective date—1982 1st ex.s. c 19:** See note following RCW 74.09.035.

**Severability—1981 2nd ex.s. c 3:** See note following RCW 74.09.510.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.09.710 Chronic care management programs—Medical homes—Definitions.** (1) The department of social and health services, in collaboration with the department of health, shall:

(a) Design and implement medical homes for its aged, blind, and disabled clients in conjunction with chronic care management programs to improve health outcomes, access, and cost-effectiveness. Programs must be evidence based, facilitating the use of information technology to improve quality of care, must acknowledge the role of primary care providers and include financial and other supports to enable these providers to effectively carry out their role in chronic care management, and must improve coordination of primary, acute, and long-term care for those clients with multiple chronic conditions. The department shall consider expansion of existing medical home and chronic care management programs and build on the Washington state collaborative initiative. The department shall use best practices in identifying those clients best served under a chronic care management model using predictive modeling through claims or other health risk information; and

(b) Evaluate the effectiveness of current chronic care management efforts in the health and recovery services administration and the aging and disability services administration, comparison to best practices, and recommendations for future efforts and organizational structure to improve chronic care management.

(2) For purposes of this section:

(a) "Medical home" means a site of care that provides comprehensive preventive and coordinated care centered on the patient needs and assures high quality, accessible, and efficient care.

(b) "Chronic care management" means the department's program that provides care management and coordination activities for medical assistance clients determined to be at risk for high medical costs. "Chronic care management" provides education and training and/or coordination that assist program participants in improving self-management skills to improve health outcomes and reduce medical costs by educating clients to better utilize services. [2007 c 259 § 4.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**74.09.715 Access to dental care.** Within funds appropriated for this purpose, the department shall establish two dental access projects to serve seniors and other adults who are categorically needy blind or disabled. The projects shall provide:

(1) Enhanced reimbursement rates for certified dentists for specific procedures, to begin no sooner than July 1, 2009;

(2) Reimbursement for trained medical providers for preventive oral health services, to begin no sooner than July 1, 2009;

(3) Training, development, and implementation through a partnership with the University of Washington school of dentistry;

(4) Local program coordination including outreach and case management; and

(5) An evaluation that measures the change in utilization rates and cost savings. [2008 c 146 § 13.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**74.09.720 Prevention of blindness program.** (1) A prevention of blindness program is hereby established in the department of social and health services to provide prompt, specialized medical eye care, including assistance with costs when necessary, for conditions in which sight is endangered or sight can be restored or significantly improved. The department of social and health services shall adopt rules concerning program eligibility, levels of assistance, and the scope of services.

(2) The department of social and health services shall employ on a part-time basis an ophthalmological and/or an optometrical consultant to provide liaison with participating eye physicians and to review medical recommendations made by an applicant's eye physician to determine whether the proposed services meet program standards.

(3) The department of social and health services and the department of services for the blind shall formulate a cooperative agreement concerning referral of clients between the two agencies and the coordination of policies and services. [1983 c 194 § 26.]

**Severability—Effective dates—1983 c 194:** See RCW 74.18.902 and 74.18.903.

**74.09.725 Prostate cancer screening.** The department shall provide coverage for prostate cancer screening under this chapter, provided that the screening is delivered upon the recommendation of the patient's physician, advanced registered nurse practitioner, or physician assistant. [2006 c 367 § 8.]

**74.09.730 Disproportionate share hospital adjustment.** In establishing Title XIX payments for inpatient hospital services:

(1) The department of social and health services shall provide a disproportionate share hospital adjustment considering the following components:

(a) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(b) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(c) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (b) of this subsection, based on a hospital's services to persons who are medically indigent;

(2) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation. [1991 sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

**Effective dates—1991 sp.s. c 9:** See note following RCW 74.09.700.

**Severability—1987 1st ex.s. c 5:** See note following RCW 70.47.901.

**74.09.740 Amendments to state plan—Federal approval required.** The department must seek approval from the federal health care financing administration of any amendments to the existing state plan or waivers necessary to ensure federal financial participation in the provision of services to consumers under Title XIX of the federal social security act. [2002 c 3 § 14 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.09.755 AIDS—Community-based care—Federal social security act waiver.** The department shall prepare and request a waiver under section 1915(c) of the federal social security act to provide community based long-term care services to persons with AIDS or AIDS-related conditions who qualify for the medical assistance program under RCW 74.09.510 or the limited casualty program for the medically needy under RCW 74.09.700. Respite services shall be included as a service available under the waiver. [1989 c 427 § 12.]

**Severability—1989 c 427:** See RCW 74.39.900.

#### MATERNITY CARE ACCESS PROGRAM

**74.09.760 Short title—1989 1st ex.s. c 10.** This act may be known and cited as the "maternity care access act of 1989." [1989 1st ex.s. c 10 § 1.]

**74.09.770 Maternity care access system established.** (1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this chapter [subchapter] to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner. [1989 1st ex.s. c 10 § 2.]

**74.09.780 Reservation of legislative power.** The legislature reserves the right to amend or repeal all or any part of this chapter [subchapter] at any time and there shall be no vested private right of any kind against such amendment or repeal. All rights, privileges, or immunities conferred by this chapter [subchapter] or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter [subchapter] at any time. [1989 1st ex.s. c 10 § 3.]

**74.09.790 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

(3) "Department" means the department of social and health services.

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women

who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

(7) "Family planning services" means planning the number of one's children by use of contraceptive techniques. [1993 c 407 § 9; 1990 c 151 § 4; 1989 1st ex.s. c 10 § 4.]

**74.09.800 Maternity care access program established.** The department shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) By January 1, 1990, have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing department staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the department; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section. [1993 c 407 § 10; 1989 1st ex.s. c 10 § 5.]

**74.09.810 Alternative maternity care service delivery system established—Remedial action report.** (1) The

department shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the department, in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The department shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the department determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the department recommending remedial action. The report shall be prepared in consultation with the department and its local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the department within thirty days, and the department shall develop the report for the distressed area.

(3) The department shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The department may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the department is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments. [1989 1st ex.s. c 10 § 6.]

**74.09.820 Maternity care provider's loan repayment program.** To the extent that federal matching funds are available, the department or the \*department of health if one is created shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans. [1989 1st ex.s. c 10 § 7.]

\*Reviser's note: The department of health was created by 1989 1st ex.s. c 9.

*Health professional scholarships: Chapter 28B.115 RCW.*

**74.09.850 Conflict with federal requirements.** If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 3 § 7.]

**Severability—1981 2nd ex.s. c 3:** See note following RCW 74.09.510.

**74.09.900 Other laws applicable.** All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

**74.09.910 Severability—1979 ex.s. c 152.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 152 § 12.]

**Chapter 74.09A RCW**  
**MEDICAL ASSISTANCE—**  
**COORDINATION OF BENEFITS—**  
**COMPUTERIZED INFORMATION TRANSFER**

Sections

- 74.09A.005 Finding.
- 74.09A.010 Definitions.
- 74.09A.020 Computerized information—Provision to health insurers.
- 74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees.

**74.09A.005 Finding.** The legislature finds that:

(1) Simplification in the administration of payment of health benefits is important for the state, providers, and health insurers;

(2) The state, providers, and health insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards;

(3) It is in the best interests of the state, providers, and health insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries; and

(4) Health insurers, as a condition of doing business in Washington, must increase their effort to share information with the department and accept the department's timely claims consistent with 42 U.S.C. 1396a(a)(25).

Therefore, the legislature declares that to improve the coordination of benefits between the department of social and health services and health insurers to ensure that medical insurance benefits are properly utilized, a transfer of information between the department and health insurers should be instituted, and the process for submitting requests for information and claims should be simplified. [2007 c 179 § 1; 1993 c 10 § 1.]

**Effective date—2007 c 179:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 179 § 5.]

(2008 Ed.)

**74.09A.010 Definitions.** For the purposes of this chapter:

(1) "Department" means the department of social and health services.

(2) "Health insurance coverage" includes any policy, contract, or agreement under which health care items or services are provided, arranged, reimbursed, or paid for by a health insurer.

(3) "Health insurer" means any party that is, by statute, policy, contract, or agreement, legally responsible for payment of a claim for a health care item or service, including, but not limited to, a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, an employer or union self-insured plan, any private insurer, a group health plan, a service benefit plan, a managed care organization, a pharmacy benefit manager, and a third party administrator.

(4) "Computerized" means online or batch processing with standardized format via magnetic tape output.

(5) "Joint beneficiary" is an individual who has health insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW. [2007 c 179 § 2; 1993 c 10 § 2.]

**Effective date—2007 c 179:** See note following RCW 74.09A.005.

**74.09A.020 Computerized information—Provision to health insurers.** (1) The department shall provide routine and periodic computerized information to health insurers regarding client eligibility and coverage information. Health insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the department. The department shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible database shall be developed by affected health insurers and the department. The department shall establish a representative group of health insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized database. The database shall include elements essential to the department and its population's health insurance coverage information.

(3) If the state and health insurers enter into other agreements regarding the use of common computer standards, the database identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for department programs.

(5) The frequency of updates will be mutually agreed to by each health insurer and the department based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The health insurers and the department shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48,

74.09, 74.04, 70.02, and 42.56 RCW, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The department shall target implementation of this section to those health insurers with the highest probability of joint beneficiaries. [2007 c 179 § 3; 2005 c 274 § 350; 1993 c 10 § 3.]

**Effective date—2007 c 179:** See note following RCW 74.09A.005.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**74.09A.030 Duties of health insurers—Providing information—Payments—Claims—Costs and fees.** Health insurers, as a condition of doing business in Washington, must:

(1) Provide, with respect to individuals who are eligible for, or are provided, medical assistance under chapter 74.09 RCW, upon the request of the department, information to determine during what period the individual or their spouses or their dependants may be, or may have been, covered by a health insurer and the nature of coverage that is or was provided by the health insurer, including the name, address, and identifying number of the plan, in a manner prescribed by the department;

(2) Accept the department's right to recovery and the assignment to the department of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under chapter 74.09 RCW;

(3) Respond to any inquiry by the department regarding a claim for payment for any health care item or service that is submitted not later than three years after the date of the provision of such health care item or service;

(4) Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if:

(a) The claim is submitted by the department within the three-year period beginning on the date the item or service was furnished; and

(b) Any action by the department to enforce its rights with respect to such claim is commenced within six years of the department's submission of such claim; and

(5) Agree that the prevailing party in any legal action to enforce this section receives reasonable attorneys' fees as well as related collection fees and costs incurred in the enforcement of this section. [2007 c 179 § 4.]

**Effective date—2007 c 179:** See note following RCW 74.09A.005.

### Chapter 74.12 RCW

## TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

(Formerly: Aid to families with dependent children)

### Sections

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74.12.900	Welfare reform implementation—1994 c 299.
74.12.901	Federal waivers and legislation—1994 c 299.

*Agencies for care of children, expectant mothers, individuals with developmental disabilities: Chapter 74.15 RCW.*

*Children and youth services: Chapter 72.05 RCW.*

*Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.*

*Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.*

*State schools for blind and deaf: Chapter 72.40 RCW.*

**74.12.010 Definitions.** For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who is living with a relative as specified under federal temporary assistance for needy families program requirements, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act.

"Temporary assistance for needy families" means money payments, services, and remedial care with respect to a

dependent child or dependent children and the needy parent or relative with whom the child lives. [1999 c 120 § 1; 1997 c 59 § 16; 1992 c 136 § 2; 1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.12.030 Eligibility.** In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for temporary assistance for needy families must be a needy child who is a resident of the state of Washington. [1997 c 59 § 17; 1971 ex.s. c 169 § 6; 1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

**74.12.035 Additional eligibility requirements—Students—Exceptions.** (1) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: PROVIDED HOWEVER, That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state.

(2) Children with disabilities who are eighteen years of age and under twenty-one years of age and who are full-time students whose education is being provided in accordance with RCW 28A.155.020 are eligible to receive temporary assistance for needy families benefits.

(3) The department is authorized to grant exceptions to the eligibility restrictions for children eighteen years of age and under twenty-one years of age under subsections (1) and (2) of this section only when it determines by reasonable, objective criteria that such exceptions are likely to enable the children to complete their high school education, general equivalency diploma or vocational education. [1999 c 120 § 2; 1997 c 59 § 18; 1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

*State consolidated standards of need: RCW 74.04.770.*

**74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives.** The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

(2008 Ed.)

**74.12.250 Payment of grant to another—Limited guardianship.** If the department, after investigation, finds that any applicant for assistance under this chapter or any recipient of funds under this chapter would not use, or is not utilizing, the grant adequately for the needs of his or her child or children or would dissipate the grant or is dissipating such grant, or would be or is unable to manage adequately the funds paid on behalf of said child and that to provide or continue payments to the applicant or recipient would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: PROVIDED, That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [1997 c 58 § 506; 1963 c 228 § 21; 1961 c 206 § 1.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.12.255 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.** (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and either pregnant or having a dependent child or children in the applicant's care. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assis-

tance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) An unmarried minor parent or pregnant minor applicant residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor and his or her children, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, make an affirmative effort to provide current and positive information about adoption including referral to community-based organizations for counseling and provide information about the manner in which adoption works, its benefits for unmarried, unemployed minor parents and their children, and the meaning and availability of open adoption.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 501; 1994 c 299 § 33.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

*General assistance: RCW 74.04.0052.*

**74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children.** Temporary assistance for needy families grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each temporary assistance for needy families grant shall be and hereby is required to present reasonable proof to the department of social and health services as often as may be required by the department that all funds received

in the form of a temporary assistance for needy families grant for the children represented in the grant are being spent for the benefit of the children. [1997 c 59 § 21; 1979 c 141 § 351; 1963 c 228 § 22.]

**74.12.280 Rules for coordination of services.** The department is hereby authorized to adopt rules that will provide for coordination between the services provided pursuant to chapter 74.13 RCW and the services provided under the temporary assistance for needy families program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1997 c 59 § 22; 1983 c 3 § 191; 1963 c 228 § 24.]

**74.12.290 Suitability of home—Evaluation.** The department of social and health services shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1979 c 141 § 352; 1963 c 228 § 25.]

**74.12.300 Grant during period required to eliminate undesirable conditions.** If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state department of social and health services and the family require to remedy the conditions. [1979 c 141 § 353; 1963 c 228 § 26.]

**74.12.310 Placement of child with other relatives.** When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

**74.12.320 Placement of child pursuant to chapter 13.04 RCW.** If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

**74.12.330 Assistance not to be denied for want of relative or court order.** Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

**74.12.340 Day care.** (1) The department is authorized to adopt rules governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: PROVIDED, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family.

(2) This section does not affect the authority of the department of early learning to adopt rules governing child day care and early learning programs. [2006 c 265 § 208; 1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030. *Child welfare services: Chapter 74.13 RCW.*

**74.12.350 Child's income set aside for future needs—Irrevocable trusts—Educational accounts.** The department of social and health services is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen.

The transfer into, or accumulation of, a child's income or resources in an irrevocable trust account is hereby allowed. The amount allowable is four thousand dollars. The department will provide income assistance recipients with clear and simple information on how to set up educational accounts, including how to assure that the accounts comply with federal law by being adequately earmarked for future educational use, and are irrevocable. [1994 c 299 § 31; 1979 c 141 § 354; 1963 c 226 § 1.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.12.361 Supplemental security income program—Enrollment of disabled persons.** The department shall actively develop mechanisms for the income assistance program, the medical assistance program, and the community services administration to facilitate the enrollment in the federal supplemental security income program of disabled persons currently part of assistance units receiving temporary assistance for needy families benefits. [1997 c 59 § 23; 1994 c 299 § 35.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

(2008 Ed.)

**74.12.400 Reduce reliance on aid—Work and job training—Family planning—Staff training.** The department shall train financial services and social work staff who provide direct service to recipients of temporary assistance for needy families to:

(1) Effectively communicate the transitional nature of temporary assistance for needy families and the expectation that recipients will enter employment;

(2) Actively refer clients to the job opportunities and basic skills program;

(3) Provide social services needed to overcome obstacles to employability; and

(4) Provide family planning information and assistance, including alternatives to abortion, which shall be conducted in consultation with the department of health. [1997 c 59 § 24; 1994 c 299 § 2.]

**Intent—1994 c 299:** "The legislature finds that lengthy stays on welfare, lack of access to vocational education and training, the inadequate emphasis on employment by the social welfare system, and teen pregnancy are obstacles to achieving economic independence. Therefore, the legislature intends that:

(1) Income and employment assistance programs emphasize the temporary nature of welfare and set goals of responsibility, work, and independence;

(2) State institutions take an active role in preventing pregnancy in young teens;

(3) Family planning assistance be readily available to welfare recipients;

(4) Support enforcement be more effective and the level of responsibility of noncustodial parents be significantly increased; and

(5) Job search, job skills training, and vocational education resources are to be used in the most cost-effective manner possible." [1994 c 299 § 1.]

**Finding—1994 c 299:** "The legislature finds that the reliable receipt of child support payments by custodial parents is essential to maintaining economic self-sufficiency. It is the intent of the legislature to ensure that child support payments received by custodial parents when such support is owed are retained by those parents regardless of future claims made against such payments." [1994 c 299 § 17.]

**Severability—1994 c 299:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 299 § 40.]

**Conflict with federal requirements—1994 c 299:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 299 § 41.]

**74.12.410 Family planning information—Cooperation with the superintendent of public instruction—Abstinence education and motivation programs, contracts—Legislative review and oversight of programs and contracts.** (1) At time of application or reassessment under this chapter the department shall offer or contract for family planning information and assistance, including alternatives to abortion, and any other available locally based teen pregnancy prevention programs, to prospective and current recipients of aid to families with dependent children.

(2) The department shall work in cooperation with the superintendent of public instruction to reduce the rate of illegitimate births and abortions in Washington state.

(3) The department of health shall maximize federal funding by timely application for federal funds available

under P.L. 104-193 and Title V of the federal social security act, 42 U.S.C. 701 et seq., as amended, for the establishment of qualifying abstinence education and motivation programs. The department of health shall contract, by competitive bid, with entities qualified to provide abstinence education and motivation programs in the state.

(4) The department of health shall seek and accept local matching funds to the maximum extent allowable from qualified abstinence education and motivation programs.

(5)(a) For purposes of this section, "qualifying abstinence education and motivation programs" are those bidders with experience in the conduct of the types of abstinence education and motivation programs set forth in Title V of the federal social security act, 42 U.S.C. Sec. 701 et seq., as amended.

(b) The application for federal funds, contracting for abstinence education and motivation programs and performance of contracts under this section are subject to review and oversight by a joint committee of the legislature, composed of four legislative members, appointed by each of the two caucuses in each house. [1997 c 58 § 601; 1994 c 299 § 3.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

#### **74.12.420 Long-term recipients—Benefit reduction—Limitation—Food stamp benefit computation.**

**Reviser's note:** RCW 74.12.420 was amended by 1997 c 59 § 26 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

#### **74.12.425 Long-term recipients—Benefit reduction—Computation.**

**Reviser's note:** RCW 74.12.425 was amended by 1997 c 59 § 27 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

**74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act.** (1) Whenever the department receives an application for assistance on behalf of a child under this chapter and an employee of the department has reason to believe that the child has suffered abuse or neglect, the employee shall cause a report to be made as provided under chapter 26.44 RCW.

(2) Whenever the department approves an application for assistance on behalf of a child under this chapter, the department shall make a reasonable effort to determine whether the child is living with a parent of the child. Whenever the child is living in the home of a relative other than a parent of the child, the department shall make reasonable efforts to notify the parent with whom the child has most recently resided that an application for assistance on behalf of the child has been approved by the department and shall advise the parent of his or her rights under this section, RCW 74.12.460, and \*sections 4 and 5 of this act, unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(3) Upon written request of the parent, the department shall notify the parent of the address and location of the child, unless there is a current investigation or pending case involving abuse or neglect by the parent under chapter 13.34 RCW.

(4) The department shall notify and advise the parent of the provisions of the family reconciliation act under chapter 13.32A RCW. [1995 c 401 § 2.]

**\*Reviser's note:** Sections 4 and 5 of this act were vetoed by the governor.

**Severability—1995 c 401:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 401 § 7.]

**74.12.460 Notice to parent—Required within seven days of approval of application.** The department shall make reasonable efforts to notify the parent under RCW 74.12.450(2) as soon as reasonably possible, but no later than seven days after approval of the application by the department. [1995 c 401 § 3.]

**Severability—1995 c 401:** See note following RCW 74.12.450.

**74.12.900 Welfare reform implementation—1994 c 299.** The revisions to the temporary assistance for needy families program and job opportunities and basic skills training program shall be implemented by the department of social and health services on a statewide basis. [1997 c 59 § 28; 1994 c 299 § 12.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.12.901 Federal waivers and legislation—1994 c 299.** By October 1, 1994, the department shall request the governor to seek congressional action on any federal legislation that may be necessary to implement any sections of chapter 299, Laws of 1994. By October 1, 1994, the department shall request the governor to seek federal agency action on any federal regulation that may require a federal waiver. [1994 c 299 § 39.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

### **Chapter 74.12A RCW**

#### **INCENTIVE TO WORK— ECONOMIC INDEPENDENCE**

##### Sections

74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations.

74.12A.030 Federal waiver—Governor to seek.

**74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations.** The department shall provide grants to community action agencies or other local nonprofit organizations to provide job opportunities and basic skills training program participants with transitional support services, one-to-one assistance, case management, and job retention services. [1997 c 58 § 327; 1993 c 312 § 8.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal**

**requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Findings—Intent—1993 c 312:** "The legislature finds that:

(1) Public assistance is intended to be a temporary financial relief program, recognizing that families can be confronted with a financial crisis at any time in life. Successful public assistance programs depend on the availability of adequate resources to assist individuals deemed eligible for the benefits of such a program. In this way, eligible families are given sufficient assistance to reenter productive employment in a minimal time period.

(2) The current public assistance system requires a reduction in grant standards when income is received. In most cases, family income is limited to levels substantially below the standard of need. This is a strong disincentive to work. To remove this disincentive, the legislature intends to allow families to retain a greater percentage of income before it results in the reduction or termination of benefits;

(3) Employment, training, and education services provided to employable recipients of public assistance are effective tools in achieving economic self-sufficiency. Support services that are targeted to the specific needs of the individual offer the best hope of achieving economic self-sufficiency in a cost-effective manner;

(4) State welfare-to-work programs, which move individuals from dependence to economic independence, must be operated cooperatively and collaboratively between state agencies and programs. They also must include public assistance recipients as active partners in self-sufficiency planning activities. Participants in economic independence programs and services will benefit from the concepts of personal empowerment, self-motivation, and self-esteem;

(5) Many barriers to economic independence are found in federal statutes and rules, and provide states with limited options for restructuring existing programs in order to create incentives for employment over continued dependence;

(6) The legislature finds that the personal and societal costs of teenage childbearing are substantial. Teen parents are less likely to finish high school and more likely to depend upon public assistance than women who delay childbearing until adulthood; and

(7) The legislature intends that an effort be made to ensure that each teenage parent who is a public assistance recipient live in a setting that increases the likelihood that the teen parent will complete high school and achieve economic independence." [1993 c 312 § 1.]

**Emergency—1993 c 312:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions." [1993 c 312 § 19.]

**Implementation program design—1993 c 312:** "The department of social and health services shall design a program for implementation involving recipients of aid to families with dependent children. A goal of this program is to develop a system that segments the aid to families with dependent children recipient population and identifies subgroups, matches services to the needs of the subgroup, and prioritizes available services. The department shall specify the services to be offered in each population segment. The general focus of the services offered shall be on job training, workforce preparedness, and job retention.

The program shall be designed for statewide implementation on July 1, 1994. A proposal for implementation may include phasing certain components over time or geographic area. The department shall submit this program to the appropriate committees of the senate and house of representatives by December 1, 1993." [1993 c 312 § 9.]

**74.12A.030 Federal waiver—Governor to seek.** By October 1, 1993, the department shall request the governor to seek congressional and federal agency action on any federal legislation or federal regulation that may be necessary to implement chapter 74.12A RCW and \*sections 3 and 4, chapter 312, Laws of 1993, and any other section of chapter 312, Laws of 1993 that may require a federal waiver. [1993 c 312 § 12.]

**\*Reviser's note:** Sections 3 and 4, chapter 312, Laws of 1993 failed to become law due to lack of specific funding.

**Findings—Intent—Emergency—1993 c 312:** See notes following RCW 74.12A.020.

(2008 Ed.)

Chapter 74.13 RCW

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*Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.*

*Education of children in short-term foster care: RCW 28A.300.800 and 28A.630.005.*

*Shaken baby syndrome: RCW 43.121.140.*

**74.13.010 Declaration of purpose.** The purpose of this chapter is to safeguard, protect and contribute to the welfare of the children of the state, through a comprehensive and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development and well-being of their children. [1965 c 30 § 2.]

**74.13.013 Finding—Accreditation of children's services.** The legislature finds that accreditation of children's services by an independent entity can significantly improve the quality of services provided to children and families. Accreditation involves an ongoing commitment to meeting nationally recognized standards of practice in child welfare and holds organizations accountable for achieving improved outcomes for children.

Accreditation is a structured process designed to facilitate organizational change and improvement within individual local offices. Standards require improved case management, documentation, internal case management practices, and accountability. Accreditation requires the establishment of clear communication with biological parents, foster and adoptive parents, providers, the courts, and members of the community. [2001 c 265 § 1.]

**74.13.017 Accreditation—Completion date.** The department shall undertake the process of accreditation with the goal of completion by July 2006. [2003 c 207 § 8; 2001 c 265 § 2.]

**74.13.020 Definitions—"Child," "child welfare services"—Duty to provide services to homeless families with children.** As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(2) Protecting and caring for dependent or neglected children;

(3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;

(4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age.

The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementation of the plan. [1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**Severability—1971 ex.s. c 292:** See note following RCW 26.28.010.

#### **74.13.021 Developmentally disabled child—Defined.**

As used in this chapter, "developmentally disabled child" is a child who has a developmental disability as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian and with the department mutually agree that services appropriate to the child's needs can not be provided in the home. [1998 c 229 § 3; 1997 c 386 § 15.]

**74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required.** Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department to administer and provide the services established under RCW 13.32A.197. Any such application must include a plan or plans for providing such services to at-risk youth. [1998 c 296 § 1.]

**Findings—Intent—1998 c 296:** "The legislature finds it is often necessary for parents to obtain mental health or chemical dependency treatment for their minor children prior to the time the child's condition presents a likelihood of serious harm or the child becomes gravely disabled. The legislature finds that treatment of such conditions is not the equivalent of incarceration or detention, but is a legitimate act of parental discretion, when supported by decisions of credentialed professionals. The legislature finds that, consistent with *Parham v. J.R.*, 442 U.S. 584 (1979), state action is not involved in the determination of a parent and professional person to admit a minor child to treatment and finds this act provides sufficient independent review by the department of social and health services, as a neutral fact finder, to protect the interests of all parties. The legislature intends and recognizes that children affected by the provisions of this act are not children whose mental or substance abuse problems are adequately addressed by chapters 70.96A and 71.34 RCW. Therefore, the legislature finds it is necessary to provide parents a statutory process, other than the petition process provided in chapters 70.96A and 71.34 RCW, to obtain treatment for their minor children without the consent of the children.

The legislature finds that differing standards of admission and review in parent-initiated mental health and chemical dependency treatment for their minor children are necessary and the admission standards and procedures under state involuntary treatment procedures are not adequate to provide safeguards for the safety and well-being of all children. The legislature finds the timeline for admission and reviews under existing law do not provide sufficient opportunities for assessment of the mental health and chemically dependent status of every minor child and that additional time and different standards will facilitate the likelihood of successful treatment of children who are in need of assistance but unwilling to obtain it voluntarily. The legislature finds there are children whose behavior presents a clear need of medical treatment but is not so extreme as to require immediate state intervention under the state involuntary treatment procedures." [1998 c 296 § 6.]

**Part headings not law—1998 c 296:** "Part headings used in this act do not constitute any part of the law." [1998 c 296 § 43.]

**Short title—1998 c 296:** "This act may be known and cited as "the Becca act of 1998."" [1998 c 296 § 44.]

(2008 Ed.)

**74.13.031 Duties of department—Child welfare services—Children's services advisory committee. (Effective until December 31, 2008.)** The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Construction—2006 c 266:** "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

**Adoption of rules—2006 c 266:** "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

**Study and report—2006 c 266:** "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

**Finding—2006 c 221:** See note following RCW 13.34.315.

**Effective date—2004 c 183:** See note following RCW 13.34.160.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Effective date—1997 c 272:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

**Effective date—1987 c 170 §§ 10 and 11:** "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**Severability—1967 c 172:** See note following RCW 74.15.010.

**Declaration of purpose—1967 c 172:** See RCW 74.15.010.

*Abuse of child: Chapter 26.44 RCW.*

*Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.*

**74.13.031 Duties of department—Child welfare services—Children’s services advisory committee.** (*Effective December 31, 2008.*) The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department’s success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency. An investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child’s parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor placements of children in out-of-home care and in-home dependencies to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010. The policy for monitoring placements under this section shall require that children in out-of-home care and in-home dependencies and their caregivers receive a private and individual face-to-face visit each month.

(a) The department shall conduct the monthly visits with children and caregivers required under this section unless the child’s placement is being supervised under a contract between the department and a private agency accredited by a national child welfare accrediting entity, in which case the private agency shall, within existing resources, conduct the monthly visits with the child and with the child’s caregiver according to the standards described in this subsection and shall provide the department with a written report of the visits within fifteen days of completing the visits.

(b) In cases where the monthly visits required under this subsection are being conducted by a private agency, the

department shall conduct a face-to-face health and safety visit with the child at least once every ninety days.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, to provide for the routine and necessary medical, dental, and mental health care, or necessary emergency care of the children, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children’s services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10)(a) Have authority to provide continued foster care or group care as needed to participate in or complete a high school or vocational school program.

(b)(i) Beginning in 2006, the department has the authority to allow up to fifty youth reaching age eighteen to continue in foster care or group care as needed to participate in or complete a posthigh school academic or vocational program, and to receive necessary support and transition services.

(ii) In 2007 and 2008, the department has the authority to allow up to fifty additional youth per year reaching age eighteen to remain in foster care or group care as provided in (b)(i) of this subsection.

(iii) A youth who remains eligible for such placement and services pursuant to department rules may continue in foster care or group care until the youth reaches his or her twenty-first birthday. Eligibility requirements shall include active enrollment in a posthigh school academic or vocational program and maintenance of a 2.0 grade point average.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child. Cases involving individuals age eighteen through twenty shall not be referred to the division of child support unless required by federal law.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally

licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals who have attained eighteen years of age, and have not attained twenty-one years of age who are or have been in foster care.

(15) Consult at least quarterly with foster parents, including members of the foster parent association of Washington state, for the purpose of receiving information and comment regarding how the department is performing the duties and meeting the obligations specified in this section and RCW 74.13.250 and 74.13.320 regarding the recruitment of foster homes, reducing foster parent turnover rates, providing effective training for foster parents, and administering a coordinated and comprehensive plan that strengthens services for the protection of children. Consultation shall occur at the regional and statewide levels. [2008 c 267 § 6; 2007 c 413 § 10. Prior: 2006 c 266 § 1; 2006 c 221 § 3; 2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10; prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

**Effective date—2008 c 267 § 6:** "Section 6 of this act takes effect December 31, 2008." [2008 c 267 § 14.]

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Construction—2006 c 266:** "Nothing in this act shall be construed to create:

- (1) An entitlement to services;
- (2) Judicial authority to extend the jurisdiction of juvenile court in a proceeding under chapter 13.34 RCW to a youth who has attained eighteen years of age or to order the provision of services to the youth; or
- (3) A private right of action or claim on the part of any individual, entity, or agency against the department of social and health services or any contractor of the department." [2006 c 266 § 2.]

**Adoption of rules—2006 c 266:** "The department of social and health services is authorized to adopt rules establishing eligibility for independent living services and placement for youths under this act." [2006 c 266 § 3.]

**Study and report—2006 c 266:** "(1) Beginning in July 2008 and subject to the approval of its governing board, the Washington state institute for public policy shall conduct a study measuring the outcomes for foster youth who have received continued support pursuant to RCW 74.13.031(10). The study should include measurements of any savings to the state and local government. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2008, and a final report by December 1, 2009.

(2) The institute is authorized to accept nonstate funds to conduct the study required in subsection (1) of this section." [2006 c 266 § 4.]

**Finding—2006 c 221:** See note following RCW 13.34.315.

**Effective date—2004 c 183:** See note following RCW 13.34.160.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Effective date—1997 c 272:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

**Effective date—1987 c 170 §§ 10 and 11:** "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**Severability—1967 c 172:** See note following RCW 74.15.010.

**Declaration of purpose—1967 c 172:** See RCW 74.15.010.

*Abuse of child: Chapter 26.44 RCW.*

*Licensing of agencies caring for or placing children, expectant mothers, and individuals with developmental disabilities: Chapter 74.15 RCW.*

**74.13.0311 Provided under deferred prosecution order.** The department or its contractors may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2002 c 219 § 13.]

**Intent—Finding—2002 c 219:** See note following RCW 9A.42.037.

**74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.** (1) The department shall establish, by contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to contract with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

(6) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [1998 c 296 § 4; 1995 c 312 § 60; 1979 c 155 § 78.]

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**74.13.0321 Crisis residential centers—Limit on reimbursement or compensation.** No contract may provide reimbursement or compensation to a crisis residential center's secure facility for any service delivered or provided to a resident child after five consecutive days of residence. [1995 c 312 § 61.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave.** (1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed five consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the facility staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter

71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed five consecutive days on the premises. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed five consecutive days. [2000 c 162 § 16; 2000 c 162 § 7; 1995 c 312 § 62; 1992 c 205 § 213; 1979 c 155 § 79.]

**Effective date—2000 c 162 §§ 11-17:** See note following RCW 13.32A.060.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility.** (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers

plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense. [2000 c 162 § 17; 2000 c 162 § 8; 1995 c 312 § 63; 1992 c 205 § 214; 1991 c 364 § 5; 1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

**Effective date—2000 c 162 §§ 11-17:** See note following RCW 13.32A.060.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Conflict with federal requirements—1991 c 364:** See note following RCW 70.96A.020.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

*Child admitted to secure facility—Maximum hours of custody—Reconciliation effort—Information to parent and child—Written statement of services and rights: RCW 13.32A.130.*

**74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing.** Crisis residential centers shall compile yearly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

- (1) The number, age, and sex of children admitted to custody;
- (2) Who brought the children to the center;
- (3) Services provided to children admitted to the center;
- (4) The circumstances which necessitated the children being brought to the center;
- (5) The ultimate disposition of cases;
- (6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;
- (7) Length of stay.

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

A center may, in addition to being licensed as such, also be licensed as a family foster home or group care facility and may house on the premises juveniles assigned for foster or group care. [1979 c 155 § 81.]

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to legislature.** (1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effec-

tively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

(a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;

(b) Procedures for designating department staff responsible for family reconciliation services;

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The department shall provide an annual report to the legislature not later than December 1 of each year only when it has declined to accept custody of a child from a law enforcement agency or it has received a report of a child being released without placement. The report shall indicate the number of times it has declined to accept custody of a child from a law enforcement agency under chapter 13.32A RCW and the number of times it has received a report of a child being released without placement under RCW 13.32A.060(1)(c). The report shall include the dates, places, and reasons the department declined to accept custody and the dates and places children are released without placement [2003 c 207 § 2; 1996 c 133 § 37; 1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1985 c 257:** See note following RCW 13.34.165.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**74.13.037 Transitional living programs for youth in the process of being emancipated—Rules.** Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, transitional living programs for youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department. [1997 c 146 § 9; 1996 c 133 § 39.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**74.13.039 Runaway hot line.** The department of social and health services shall maintain a toll-free hot line to assist parents of runaway children. The hot line shall provide parents with a complete description of their rights when dealing with their runaway child. [1994 sp.s. c 7 § 501.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**74.13.040 Rules and regulations for coordination of services.** See RCW 74.12.280.

**74.13.042 Petition by the department for order compelling disclosure of record or information.** If the department is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services. [1995 c 311 § 14.]

**74.13.045 Complaint resolution process.** The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, or the application of such a policy or procedure, related

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to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. [1998 c 245 § 146; 1991 c 340 § 2.]

**Intent—1991 c 340:** "It is the intent of the legislature to provide timely, thorough, and fair procedures for resolution of grievances of clients, foster parents, and the community resulting from decisions made by the department of social and health services related to programs administered pursuant to this chapter. Grievances should be resolved at the lowest level possible. However, all levels of the department should be accountable and responsible to individuals who are experiencing difficulties with agency services or decisions. It is the intent of the legislature that grievance procedures be made available to individuals who do not have other remedies available through judicial review or adjudicative proceedings." [1991 c 340 § 1.]

**74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services.** See RCW 74.12.340.

**74.13.055 Foster care—Length of stay—Cooperation with private sector.** The department shall adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. The department shall also work cooperatively with the major private child care providers to assure that a partnership plan for utilizing the resources of the public and private sector in all matters pertaining to child welfare is developed and implemented. [1998 c 245 § 147; 1982 c 118 § 1.]

**74.13.060 Secretary as custodian of funds of person placed with department—Authority—Limitations—Termination.** The secretary or his designees or delegates shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [1971 ex.s. c 169 § 7.]

#### **74.13.065 Out-of-home care—Social study required.**

(1) The department, or agency responsible for supervising a child in out-of-home care, shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or other agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) Emotional bonds with siblings and the need to maintain regular sibling contacts;

(c) The proximity of the child's placement to the child's family to aid reunification;

(d) The possibility of placement with the child's relatives or extended family;

(e) The racial, ethnic, cultural, and religious background of the child;

(f) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

(g) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children. [2002 c 52 § 8; 1995 c 311 § 26.]

**Intent—2002 c 52:** See note following RCW 13.34.025.

**74.13.070 Moneys in possession of secretary not subject to certain proceedings.** None of the moneys or other funds which come into the possession of the secretary under chapter 169, Laws of 1971 ex. sess. shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

**74.13.075 Sexually aggressive youth—Defined—Expenditure of treatment funds—Tribal jurisdiction.** (1) For the purposes of funds appropriated for the treatment of sexually aggressive youth, the term "sexually aggressive youth" means those juveniles who:

(a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and

(i) Are in the care and custody of the state or a federally recognized Indian tribe located within the state; or

(ii) Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a tribal court located within the state; or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

(b) The extent and type of abuse to which the juvenile has been subjected;

(c) The juvenile's past conduct;

(d) The benefits that can be expected from the treatment;

(e) The cost of the treatment; and

(f) The ability of the juvenile's parent or guardian to pay for the treatment.

(3) The department may provide funds, under this section, for youth in the care and custody of a tribe or through a tribal court, for the treatment of sexually aggressive youth only if: (a) The tribe uses the same or equivalent definitions and standards for determining which youth are sexually aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth. [1994 c 169 § 1. Prior: 1993 c 402 § 3; 1993 c 146 § 1; 1990 c 3 § 305.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment.** The secretary of the department of social and health services is authorized to transfer surplus, unused treatment funds from the civil commitment center operated under chapter 71.09 RCW to the division of children and family services to provide treatment services for sexually aggressive youth. [1993 c 402 § 4.]

**74.13.080 Group care placement—Prerequisites for payment.** The department shall not make payment for any child in group care placement unless the group home is licensed and the department has the custody of the child and

the authority to remove the child in a cooperative manner after at least seventy-two hours notice to the child care provider; such notice may be waived in emergency situations. However, this requirement shall not be construed to prohibit the department from making or mandate the department to make payment for Indian children placed in facilities licensed by federally recognized Indian tribes pursuant to chapter 74.15 RCW. [1987 c 170 § 11; 1982 c 118 § 2.]

**Effective date—1987 c 170 §§ 10 and 11:** See note following RCW 74.13.031.

**Severability—1987 c 170:** See note following RCW 13.04.030.

#### **74.13.085 Child care services—Declaration of policy.**

It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. The availability of quality, affordable child care is a concern for working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to work places and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry through the department of early learning. [2006 c 265 § 202; 1989 c 381 § 2; 1988 c 213 § 1.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Findings—1989 c 381:** "The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to increase the supply, affordability, and quality of child care in the state." [1989 c 381 § 1.]

**Severability—1989 c 381:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

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the application of the provision to other persons or circumstances is not affected." [1989 c 381 § 7.]

**Severability—1988 c 213:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 213 § 5.]

#### **74.13.0902 Child care partnership employer liaison.**

An employer liaison position is established in the department of early learning to be collocated with the department of community, trade, and economic development. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties;

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community. [2006 c 265 § 203; 1989 c 381 § 6.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Findings—Severability—1989 c 381:** See notes following RCW 74.13.085.

**74.13.095 Child care expansion grant fund.** (1) The legislature recognizes that a severe shortage of child care exists to the detriment of all families and employers throughout the state. Many workers are unable to enter or remain in the workforce due to a shortage of child care resources. The high costs of starting a child care business create a barrier to the creation of new slots, especially for children with special needs.

(2) A child care expansion grant fund is created in the custody of the secretary of the department of social and health services. Grants shall be awarded on a one-time only basis to persons, organizations, or schools needing assistance to start a child care center or mini-center as defined by the department by rule, or to existing licensed child care providers, including family home providers, for the purpose of making capital improvements in order to accommodate handicapped children as defined under chapter 72.40 RCW, sick children, or infant care, or children needing night time care. No grant may exceed ten thousand dollars. Start-up costs shall not include operational costs after the first three months of business.

(3) Child care expansion grants shall be awarded on the basis of need for the proposed services in the community, within appropriated funds.

(4) The department shall adopt rules under chapter 34.05 RCW setting forth criteria, application procedures, and methods to assure compliance with the purposes described in this section. [1988 c 213 § 3.]

**Severability—1988 c 213:** See note following RCW 74.13.085.

**74.13.096 Representation of children of color—Advisory committee. (Expires June 30, 2014.)** (1) The secretary of the department of social and health services shall convene an advisory committee to analyze and make recommendations on the disproportionate representation of children of color in Washington's child welfare system. The department shall collaborate with the Washington institute for public policy and private sector entities to develop a methodology for the advisory committee to follow in conducting a baseline analysis of data from the child welfare system to determine whether racial disproportionality and racial disparity exist in this system. The Washington institute for public policy shall serve as technical staff for the advisory committee. In determining whether racial disproportionality or racial disparity exists, the committee shall utilize existing research and evaluations conducted within Washington state, nationally, and in other states and localities that have similarly analyzed the prevalence of racial disproportionality and disparity in child welfare.

(2) At a minimum, the advisory committee shall examine and analyze: (a) The level of involvement of children of color at each stage in the state's child welfare system, including the points of entry and exit, and each point at which a treatment decision is made; (b) the number of children of color in low-income or single-parent families involved in the state's child welfare system; (c) the family structures of families involved in the state's child welfare system; and (d) the outcomes for children in the existing child welfare system. This analysis shall be disaggregated by racial and ethnic group, and by geographic region.

(3) The committee of not more than fifteen individuals shall consist of experts in social work, law, child welfare, psychology, or related fields, at least two tribal representatives, a representative of the governor's juvenile justice advisory committee, a representative of a community-based organization involved with child welfare issues, a representative of the department of social and health services, a current or former foster care youth, a current or former foster care parent, and a parent previously involved with Washington's child welfare system. Committee members shall be selected as follows: (a) Five members selected by the senate majority leader; (b) five members selected by the speaker of the house of representatives; and (c) five members selected by the secretary of the department of social and health services. The secretary, the senate majority leader, and the speaker of the house of representatives shall coordinate appointments to ensure the representation specified in this subsection is achieved. After the advisory committee appointments are finalized, the committee shall select two individuals to serve as cochairs of the committee, one of whom shall be a representative from a nongovernmental entity.

(4) The secretary shall make reasonable efforts to seek public and private funding for the advisory committee.

(5) Not later than June 1, 2008, the advisory committee created in subsection (1) of this section shall report to the secretary of the department of social and health services on the results of the analysis. If the results of the analysis indicate disproportionality or disparity exists for any racial or ethnic group in any region of the state, the committee, in conjunction with the secretary of the department of social and health services, shall develop a plan for remedying the disproportionality or disparity. The remediation plan shall include: (a) Recommendations for administrative and legislative actions related to appropriate programs and services to reduce and eliminate disparities in the system and improve the long-term outcomes for children of color who are served by the system; and (b) performance measures for implementing the remediation plan. To the extent possible and appropriate, the remediation plan shall be developed to integrate the recommendations required in this subsection with the department's existing compliance plans, training efforts, and other practice improvement and reform initiatives in progress. The advisory committee shall be responsible for ongoing evaluation of current and prospective policies and procedures for their contribution to or effect on racial disproportionality and disparity.

(6) Not later than December 1, 2008, the secretary shall report the results of the analysis conducted under subsection (2) of this section and shall describe the remediation plan required under subsection (5) of this section to the appropriate committees of the legislature with jurisdiction over policy and fiscal matters relating to children, families, and human services. Beginning January 1, 2010, the secretary shall report annually to the appropriate committees of the legislature on the implementation of the remediation plan, including any measurable progress made in reducing and eliminating racial disproportionality and disparity in the state's child welfare system. [2007 c 465 § 2.]

**Findings—2007 c 465:** "The legislature finds that one in five of Washington's one and one-half million children are children of color. Broken out by racial groups, approximately six percent of children are Asian/Pacific Islander, six percent are multiracial, four and one-half percent are African American, and two percent are Native American. Thirteen percent of Washington children are of Hispanic origin, but representation of this group increases in the lower age ranges. For example, seventeen percent of children birth to four years of age are Hispanic.

The legislature also finds that in counties such as Adams, Franklin, Yakima, and Grant, more than half of the births are of Hispanic origin. Three-quarters of the state's African American children and two-thirds of Asian/Pacific Islander children live in King and Pierce counties. The legislature finds further that despite some progress closing the achievement gap in recent years, children of color continue to lag behind their classmates on the Washington assessment of student learning. In 2005 children of color trailed in every category of the fourth-grade reading, writing, and math assessments. On the reading test alone, sixty-nine percent of African American students, sixty-four percent of Native American students, and sixty-one percent of Hispanic students met the standards, compared with eighty-five percent of caucasian students. And, since 1993, the number of Washington students for which English is not their first language has doubled to more than seven percent of students statewide.

The legislature finds further that according to national research, African American children enter the child welfare system at far higher rates than caucasian children, despite no greater incidence of maltreatment in African American families compared to caucasian families. This trend holds true for Washington state, where African American children represent approximately nine and one-half percent of the children in out-of-home care even though they represent slightly more than four percent of the state's total child population. Native American children represent slightly over ten percent of the children in out-of-home care although they represent only two percent of the children in the state. In King county, African American and Native

American children are over represented at nearly every decision point in the child welfare system. Although these two groups of children represent only eight percent of the child population in King county, they account for one-third of all children removed from their homes and one-half of children in foster care for more than four years.

The legislature finds also that children of immigrants are the fastest growing component of the United States' child population. While immigrants are eleven percent of the nation's total population, the children of immigrants make up twenty-two percent of the nation's children under six years of age. These immigrant children are twice as likely as native-born children to be poor." [2007 c 465 § 1.]

**Expiration date—2007 c 465:** "This act expires June 30, 2014." [2007 c 465 § 3.]

#### ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

**74.13.100 Adoption support—State policy enunciated.** It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.33.320 and 74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1985 c 7 § 133; 1971 ex.s. c 63 § 1.]

**74.13.103 Prospective adoptive parent's fee for cost of adoption services.** When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption

results from independent placement or placement by a licensed child-placing agency. [1971 ex.s. c 63 § 2.]

**74.13.106 Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants.** All fees paid for adoption services pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 shall be credited to the general fund. Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or licensed child placing agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145. [1985 c 7 § 134; 1979 ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3.]

**Severability—1979 ex.s. c 67:** See note following RCW 19.28.351.

**74.13.109 Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria.** The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

Such agreements shall meet the following criteria:

(1) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(2) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(3) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches eighteen years of age warrants the contin-

uation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

(4) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment, sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child. [1990 c 285 § 7; 1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4.]

**Findings—Purpose—Severability—1990 c 285:** See notes following RCW 74.04.005.

**Severability—1979 ex.s. c 67:** See note following RCW 19.28.351.

**74.13.112 Factors determining payments or adjustment in standards.** The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5.]

**74.13.115 Both continuing payments and lump sum payments authorized.** To carry out the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other per-

sons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier to adoption as determined by the secretary under RCW 74.13.112.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by the secretary subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13.100 through 74.13.145. [1996 c 130 § 2; 1985 c 7 § 137; 1971 ex.s. c 63 § 6.]

**74.13.116 Application—1996 c 130.** Chapter 130, Laws of 1996 applies to adoption support payments for eligible children whose eligibility is determined on or after July 1, 1996. Chapter 130, Laws of 1996 does not apply retroactively to current recipients of adoption support payments. [1996 c 130 § 3.]

**74.13.118 Review of support payments.** At least once every five years, the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart.

At the time of such review and at other times when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7.]

**Finding—1995 c 270:** "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

**74.13.121 Adoptive parent's financial information.**

So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 he or she shall, upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential", shall be used by the secretary solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commission before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending. [1995 c 270 § 3; 1985 c 7 § 139; 1971 ex.s. c 63 § 8.]

**Finding—1995 c 270:** See note following RCW 74.13.118.

**74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation.** An agreement for adoption support made pursuant to \*RCW 26.32.115 before January 1, 1985, or RCW 26.33.320 and 74.13.100 through 74.13.145, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitutes a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.33.320 and 74.13.100 through 74.13.145 or a decision by the state or federal government to discontinue or

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reduce general appropriations made available for the purposes to be served by RCW 26.33.320 and 74.13.100 through 74.13.145, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his rights, including all rights of appeal under the fair hearing provisions, available to him under RCW 74.13.127. [1985 c 7 § 140; 1971 ex.s. c 63 § 9.]

**\*Reviser's note:** RCW 26.32.115 was repealed by 1984 c 155 § 38, effective January 1, 1985.

**74.13.127 Voluntary amendments to agreements—Procedure when adoptive parties disagree.** Voluntary amendments of any support agreement entered into pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 148; 1985 c 7 § 141; 1971 ex.s. c 63 § 10.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**74.13.130 Nonrecurring adoption expenses.** The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses" means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department.

This section shall have retroactive application to January 1, 1987. For purposes of retroactive application, the secretary

may provide reimbursement to any parent who adopted a difficult to place child between January 1, 1987, and one year following June 7, 1990, regardless of whether the parent had previously entered into an adoption support agreement with the department. [1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11.]

**Findings—Purpose—Severability—1990 c 285:** See notes following RCW 74.04.005.

**Severability—1979 ex.s. c 67:** See note following RCW 19.28.351.

**74.13.133 Records—Confidentiality.** The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1985 c 7 § 143; 1971 ex.s. c 63 § 13.]

**74.13.136 Recommendations for support of the adoption of certain children.** Any child-caring agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.33.320 and 74.13.100 through 74.13.145 may do so, and may include in its or his recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.33.320 and 74.13.100 through 74.13.145. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [1985 c 7 § 144; 1971 ex.s. c 63 § 14.]

**74.13.139 "Secretary" and "department" defined.** As used in RCW 26.33.320 and 74.13.100 through 74.13.145 the following definitions shall apply:

(1) "Secretary" means the secretary of the department of social and health services or his designee.

(2) "Department" means the department of social and health services. [1985 c 7 § 145; 1971 ex.s. c 63 § 15.]

**74.13.145 Short title—1971 act.** RCW 26.33.320 and 74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1985 c 7 § 146; 1971 ex.s. c 63 § 17.]

**74.13.150 Adoption support reconsideration program.** (1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

(a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;

(b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [1997 c 131 § 1; 1990 c 285 § 5.]

**Findings—Purpose—Severability—1990 c 285:** See notes following RCW 74.04.005.

**74.13.152 Interstate agreements for adoption of children with special needs—Findings.** The legislature finds that:

(1) Finding adoptive families for children for whom state assistance under RCW 74.13.100 through 74.13.145 is desirable and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states. [1997 c 31 § 1.]

**74.13.153 Interstate agreements for adoption of children with special needs—Purpose.** The purposes of RCW 74.13.152 through 74.13.159 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments. [1997 c 31 § 2.]

**74.13.154 Interstate agreements for adoption of children with special needs—Definitions.** The definitions in this section apply throughout RCW 74.13.152 through 74.13.159 unless the context clearly indicates otherwise.

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Residence state" means the state where the child is living.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. [1997 c 31 § 3.]

**74.13.155 Interstate agreements for adoption of children with special needs—Authorization.** The department is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in RCW 74.13.152 through 74.13.159. When entered into, and for so long as it remains in force, such a compact has the force and effect of law. [1997 c 31 § 4.]

**74.13.156 Interstate agreements for adoption of children with special needs—Required provisions.** A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 must have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement that is (a) in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, and (b) expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as are appropriate to implement the proper administration of the compact. [1997 c 31 § 5.]

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**74.13.157 Interstate agreements for adoption of children with special needs—Additional provisions.** A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 may contain provisions in addition to those required under RCW 74.13.156, as follows:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) Such other provisions as are appropriate or incidental to the proper administration of the compact. [1997 c 31 § 6.]

**74.13.158 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims.** (1) A child with special needs who resides in this state and is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification card from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the medical assistance administration, the adoptive parents are required at least annually to show that the agreement is still in force or has been renewed.

(2) The medical assistance administration shall consider the holder of a medical assistance identification under this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(3) The medical assistance administration shall provide coverage and benefits for a child who is in another state and is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. Adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state for reimbursement. No reimbursement may be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection must be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The rules must include procedures to be followed in obtaining prior approval for services if required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits under this section or the making of any statement that the person knows or should know to be false, misleading, or fraudulent is punishable as perjury under chapter 9A.72 RCW.

(5) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance

under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7.]

**74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan.** Consistent with federal law, the department, in connection with the administration of RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8.]

**74.13.165 Home studies for adoption—Purchase of services from nonprofit agencies.** The secretary or the secretary's designee may purchase services from nonprofit agencies for the purpose of conducting home studies for legally free children who have been awaiting adoption finalization for more than ninety days. The home studies selected to be done under this section shall be for the children who have been legally free and awaiting adoption finalization the longest period of time. [1997 c 272 § 4.]

**Reviser's note:** 1997 c 272 directed that this section be added to chapter 43.20A RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.13 RCW.

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW.** The department of social and health services may implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [1991 c 326 § 2.]

**Part headings not law—Severability—1991 c 326:** See RCW 71.36.900 and 71.36.901.

**74.13.200 Demonstration project for protection, care, and treatment of children at-risk of abuse or neglect.** The department of social and health services shall conduct a two-year demonstration project for the purpose of contracting with an existing day care center to provide for the protection, care, and treatment of children who are at risk of being abused or neglected. The children who shall be served by this project shall range in age from birth to twenty-four months. The client population served shall not exceed thirty children at any one time. [1979 ex.s. c 248 § 1.]

**74.13.210 Project day care center—Definition.** For the purposes of RCW 74.13.200 through 74.13.230 "day care center" means an agency, other than a residence, which regularly provides care for children for any part of the twenty-four hour day. No day care center shall be located in a private family residence unless that portion of the residence to which the children have access is used exclusively for the children dur-

ing the hours the center is in operation or is separate from the usual living quarters of the family. [1979 ex.s. c 248 § 2.]

**74.13.220 Project services.** The services provided through this project shall include:

- (1) Transportation to and from the child's home;
- (2) Daily monitoring of the child's physical and emotional condition;
- (3) Developmentally oriented programs designed to meet the unique needs of each child in order to overcome the effects of parental abuse or neglect;
- (4) Family counseling and treatment; and
- (5) Evaluation by the department of social and health services assessing the efficiency and effectiveness of day care centers operated under the project. [1979 ex.s. c 248 § 3.]

**74.13.230 Project shall utilize community services.** The department of social and health services shall utilize existing community services and promote cooperation between the services in implementing the intent of RCW 74.13.200 through 74.13.230. [1979 ex.s. c 248 § 4.]

## FOSTER CARE

**74.13.250 Preservice training.** (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Preservice training shall be completed prior to the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure. [1990 c 284 § 2.]

**Finding—1990 c 284:** "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nur-

turing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

**Effective date—1990 c 284:** "This act shall take effect July 1, 1990, however the secretary may immediately take any steps necessary to ensure implementation of section 17 of this act on July 1, 1990." [1990 c 284 § 27.]

**74.13.260 On-site monitoring program.** Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. Monitoring shall be done by the department on a random sample basis of no less than ten percent of the total licensed family foster homes licensed by the department on July 1 of each year. [1998 c 245 § 148; 1990 c 284 § 4.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.270 Respite care.** The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical handicaps. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available. [1990 c 284 § 8.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.280 Client information.** (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency shall share information known to the department or agency about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Information about the child and the child's family shall include information known to the department or agency as to whether the child is a sexually reactive child, has exhibited high-risk behaviors, or is physically assaultive or physically aggressive, as defined in this section.

(3) Information about the child shall also include information known to the department or agency that the child:

(a) Has received a medical diagnosis of fetal alcohol syndrome or fetal alcohol effect;

(b) Has been diagnosed by a qualified mental health professional as having a mental health disorder;

(c) Has witnessed a death or substantial physical violence in the past or recent past; or

(d) Was a victim of sexual or severe physical abuse in the recent past.

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(4) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law. Care providers shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law.

(5) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law.

(6) As used in this section:

(a) "Sexually reactive child" means a child who exhibits sexual behavior problems including, but not limited to, sexual behaviors that are developmentally inappropriate for their age or are harmful to the child or others.

(b) "High-risk behavior" means an observed or reported and documented history of one or more of the following:

(i) Suicide attempts or suicidal behavior or ideation;

(ii) Self-mutilation or similar self-destructive behavior;

(iii) Fire-setting or a developmentally inappropriate fascination with fire;

(iv) Animal torture;

(v) Property destruction; or

(vi) Substance or alcohol abuse.

(c) "Physically assaultive or physically aggressive" means a child who exhibits one or more of the following behaviors that are developmentally inappropriate and harmful to the child or to others:

(i) Observed assaultive behavior;

(ii) Reported and documented history of the child willfully assaulting or inflicting bodily harm; or

(iii) Attempting to assault or inflict bodily harm on other children or adults under circumstances where the child has the apparent ability or capability to carry out the attempted assaults including threats to use a weapon. [2007 c 409 § 6; 2007 c 220 § 4; 2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

**Reviser's note:** This section was amended by 2007 c 220 § 4 and by 2007 c 409 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2007 c 409:** See note following RCW 13.34.096.

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.283 Washington state identicards—Foster youth.** (1) For the purpose of assisting foster youth in obtaining a Washington state identicard, submission of the information and materials listed in this subsection from the department to the department of licensing is sufficient proof of identity and residency and shall serve as the necessary authorization for the youth to apply for and obtain a Washington state identicard:

(a) A written signed statement prepared on department letterhead, verifying the following:

(i) The youth is a minor who resides in Washington;

(ii) Pursuant to a court order, the youth is dependent and the department or other supervising agency is the legal custo-

dian of the youth under chapter 13.34 RCW or under the interstate compact on the placement of children;

- (iii) The youth's full name and date of birth;
- (iv) The youth's social security number, if available;
- (v) A brief physical description of the youth;
- (vi) The appropriate address to be listed on the youth's identicard; and
- (vii) Contact information for the appropriate person at the department.

(b) A photograph of the youth, which may be digitized and integrated into the statement.

(2) The department may provide the statement and the photograph via any of the following methods, whichever is most efficient or convenient:

- (a) Delivered via first-class mail or electronically to the headquarters office of the department of licensing; or
- (b) Hand-delivered to a local office of the department of licensing by a department case worker.

(3) A copy of the statement shall be provided to the youth who shall provide the copy to the department of licensing when making an in-person application for a Washington state identicard.

(4) To the extent other identifying information is readily available, the department shall include the additional information with the submission of information required under subsection (1) of this section. [2008 c 267 § 7.]

**74.13.285 Passports—Information to be provided to foster parents.** (1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section. The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department.

(4) Any foster parent who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information, except as authorized by law. Such individuals shall agree in writing to keep the information that they receive confidential and shall affirm that the information will not be further disclosed or disseminated, except as authorized by law. [2007 c 409 § 7; 2000 c 88 § 2; 1997 c 272 § 5.]

**Effective date—2007 c 409:** See note following RCW 13.34.096.

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.287 Intent—Infant, foster family health.** The legislature intends to establish a policy with the goal of ensuring that the health and well-being of both infants in foster care and the families providing for their care are protected. [2004 c 40 § 1.]

**74.13.288 Blood-borne pathogens—Testing—Report.** (1) The department of health shall develop recommendations concerning evidence-based practices for testing for blood-borne pathogens of children under one year of age who have been placed in out-of-home care and shall identify the specific pathogens for which testing is recommended.

(2) The department shall report to the appropriate committees of the legislature on the recommendations developed in accordance with subsection (1) of this section by January 1, 2005. [2004 c 40 § 2.]

**74.13.289 Blood-borne pathogens—Client information—Training.** (1) Upon any placement, the department of social and health services shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.24.105.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section. [2004 c 40 § 3.]

**74.13.290 Fewest possible placements for children.** To provide stability to children in out-of-home care, placement selection shall be made with a view toward the fewest possible placements for each child. If possible, the initial placement shall be viewed as the only placement for the child. The use of short-term interim placements of thirty days or less to protect the child's health or safety while the placement of choice is being arranged is not a violation of this principle. [1990 c 284 § 11.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.300 Notification of proposed placement changes.** (1) Whenever a child has been placed in a foster family home by the department or a child-placing agency and the child has thereafter resided in the home for at least ninety consecutive days, the department or child-placing agency shall notify the foster family at least five days prior to moving the child to another placement, unless:

- (a) A court order has been entered requiring an immediate change in placement;
- (b) The child is being returned home;
- (c) The child's safety is in jeopardy; or

(d) The child is residing in a receiving home or a group home.

(2) If the child has resided in a foster family home for less than ninety days or if, due to one or more of the circumstances in subsection (1) of this section, it is not possible to give five days' notification, the department or child-placing agency shall notify the foster family of proposed placement changes as soon as reasonably possible.

(3) This section is intended solely to assist in minimizing disruption to the child in changing foster care placements. Nothing in this section shall be construed to require that a court hearing be held prior to changing a child's foster care placement nor to create any substantive custody rights in the foster parents. [1990 c 284 § 12.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.310 Foster parent training.** Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children. Placement disruptions can be harmful to children by denying them consistent and nurturing support. Foster parents have expressed the desire to receive training in addition to the foster parent SCOPE training currently offered. Foster parents who care for more demanding children, such as children with severe emotional, mental, or physical handicaps, would especially benefit from additional training. The department shall develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children. [1990 c 284 § 13.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.315 Child care for foster parents attending meetings or training.** The department may provide child care for all foster parents who are required to attend department-sponsored meetings or training sessions. If the department does not provide such child care, the department, where feasible, shall conduct the activities covered by this section in the foster parent's home or other location acceptable to the foster parent. [1997 c 272 § 6.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.320 Recruitment of foster homes and adoptive homes for special needs children.** The legislature finds that during the fiscal years 1987 to 1989 the number of children in foster care has risen by 14.3 percent. At the same time there has been a 31 percent turnover rate in foster homes because many foster parents have declined to continue to care for foster children. This situation has caused a dangerously critical shortage of foster homes.

The department of social and health services shall develop and implement a project to recruit more foster homes and adoptive homes for special needs children by developing a request for proposal to licensed private foster care, licensed adoption agencies, and other organizations qualified to provide this service.

The project shall consist of one statewide administrator of recruitment programs, and one or more licensed foster care (2008 Ed.)

or adoption agency contracts in each of the six departmental regions. These contracts shall enhance currently provided services and may not replace services currently funded by the agencies. No more than sixty thousand dollars may be spent annually to fund the administrator position.

The agencies shall recruit foster care homes and adoptive homes for children classified as special needs children under chapter 74.08 RCW. The agencies shall utilize their own network of contacts and shall also develop programs similar to those used effectively in other states. The department shall expand the foster-adopt program statewide to encourage stable placements for foster children for whom permanent out-of-home placement is a likelihood. The department shall carefully consider existing programs to eliminate duplication of services.

The department shall assist the private contractors by providing printing services for informational brochures and other necessary recruitment materials. No more than fifty thousand dollars of the funds provided for this section may be expended annually for recruitment materials. [1990 c 284 § 15.]

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.325 Foster care and adoptive home recruitment program.** Within available resources, the department shall increase the number of adoptive and foster families available to accept children through an intensive recruitment and retention program. The department shall contract with a private agency to coordinate foster care and adoptive home recruitment activities for the department and private agencies. [1997 c 272 § 3.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.330 Responsibilities of foster parents.** Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; model effective parenting behavior for the natural family; and be available to help with the child's transition back to the natural family. [2007 c 410 § 7; 1990 c 284 § 23.]

**Short title—2007 c 410:** See note following RCW 13.34.138.

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**74.13.332 Rights of foster parents.** Foster parents have the right to be free of coercion, discrimination, and reprisal in serving foster children, including the right to voice grievances about treatment furnished or not furnished to the foster child. [2001 c 318 § 1.]

**74.13.333 Rights of foster parents—Complaints—Report.** A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(1) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general,

law enforcement agencies, or the department, provided information, or otherwise cooperated with the investigation of such a complaint;

(2) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(3) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(4) The foster parent has advocated for services on behalf of the foster child;

(5) The foster parent has sought to adopt a foster child in the foster parent's care; or

(6) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW,

may file a complaint with the office of the family and children's ombudsman. The office of the family and children's ombudsman shall include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department and foster parents. [2004 c 181 § 1.]

**74.13.334 Department to respond to foster parents' complaints.** The department shall develop procedures for responding to recommendations of the office of the family and children's ombudsman as a result of any and all complaints filed by foster parents under RCW 74.13.333. [2004 c 181 § 2.]

**74.13.335 Foster care—Reimbursement—Property damage.** Within available funds and subject to such conditions and limitations as may be established by the department or by the legislature in the omnibus appropriations act, the department of social and health services shall reimburse foster parents for property damaged or destroyed by foster children placed in their care. The department shall establish by rule a maximum amount that may be reimbursed for each occurrence. The department shall reimburse the foster parent for the replacement value of any property covered by this section. If the damaged or destroyed property is covered and reimbursed under an insurance policy, the department shall reimburse foster parents for the amount of the deductible associated with the insurance claim, up to the limit per occurrence as established by the department. [1999 c 338 § 2.]

**Intent—1999 c 338:** "The legislature recognizes that Washington state is experiencing a significant shortage of quality foster homes and that the majority of children entering the system are difficult to place due to their complex needs. The legislature intends to provide additional assistance to those families willing to serve as foster parents." [1999 c 338 § 1.]

**74.13.340 Foster parent liaison.** Within available resources, the department shall provide a foster parent liaison position in each department region. The department shall contract with a private nonprofit organization to provide the foster parent liaison function. The foster parent liaison shall enhance the working relationship between department case workers and foster parents. The foster parent liaison shall provide expedited assistance for the unique needs and requirements posed by special needs foster children in out-of-home care. Any contract entered into under this section for a

foster parent liaison shall include a requirement that the contractor substantially reduce the turnover rate of foster parents in the region by an agreed upon percentage. The department shall evaluate whether an organization that has a contract under this section has reduced the turnover rate by the agreed upon amount or more when determining whether to extend or renew a contract under this section. [1997 c 272 § 2.]

**Effective date—1997 c 272:** See note following RCW 74.13.031.

**74.13.350 Developmentally disabled children—Out-of-home placement—Voluntary placement agreement.** It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning

hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents. [2004 c 183 § 4; 1998 c 229 § 1; 1997 c 386 § 16.]

**Effective date—2004 c 183:** See note following RCW 13.34.160.

**74.13.500 Disclosure of child welfare records—Factors—Exception.** (1) Consistent with the provisions of chapter 42.56 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or

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neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section. [2005 c 274 § 351; 1999 c 339 § 1; 1997 c 305 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 339:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 339 § 2.]

**Conflict with federal requirements—1997 c 305:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 305 § 8.]

**74.13.505 Disclosure of child welfare records—Information to be disclosed.** For purposes of RCW 74.13.500, the following information shall be disclosable:

(1) The name of the abused or neglected child;

(2) The determination made by the department of the referrals, if any, for abuse or neglect;

(3) Identification of child protective or other services provided or actions, if any, taken regarding the child named in the report and his or her family as a result of any such report or reports. These records include but are not limited to administrative reports of fatality, fatality review reports, case files, inspection reports, and reports relating to social work practice issues; and

(4) Any actions taken by the department in response to reports of abuse or neglect of the child. [1997 c 305 § 3.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.510 Disclosure of child welfare records—Consideration of effects.** In determining under RCW 74.13.500 whether disclosure will be contrary to the best interests of the child, the secretary, or the secretary's designee, must consider the effects which disclosure may have on efforts to reunite and provide services to the family. [1997 c 305 § 4.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.515 Disclosure of child welfare records—Fatalities.** For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter 42.56 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [2005 c 274 § 352; 1997 c 305 § 5.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.520 Disclosure of child welfare records—Information not to be disclosed.** Except as it applies directly to the cause of the abuse or neglect of the child and any actions taken by the department in response to reports of abuse or neglect of the child, nothing in RCW 74.13.500 through 74.13.515 is deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's family. [1997 c 305 § 6.]

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.525 Disclosure of child welfare records—Immunity from liability.** The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.56.550, for any action taken under RCW 74.13.500 through 74.13.520. [2005 c 274 § 353; 1997 c 305 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Conflict with federal requirements—1997 c 305:** See note following RCW 74.13.500.

**74.13.530 Child placement—Conflict of interest.** (1) No child may be placed or remain in a specific out-of-home placement under this chapter or chapter 13.34 RCW when there is a conflict of interest on the part of any adult residing in the home in which the child is to be or has been placed. A conflict of interest exists when:

(a) There is an adult in the home who, as a result of: (i) His or her employment; and (ii) an allegation of abuse or neglect of the child, conducts or has conducted an investigation of the allegation; or

(b) The child has been, is, or is likely to be a witness in any pending cause of action against any adult in the home when the cause includes: (i) An allegation of abuse or neglect against the child or any sibling of the child; or (ii) a claim of damages resulting from wrongful interference with the parent-child relationship of the child and his or her biological or adoptive parent.

(2) For purposes of this section, "investigation" means the exercise of professional judgment in the review of allegations of abuse or neglect by: (a) Law enforcement personnel; (b) persons employed by, or under contract with, the state; (c) persons licensed to practice law and their employees; and (d) mental health professionals as defined in chapter 71.05 RCW.

(3) The prohibition set forth in subsection (1) of this section may not be waived or deferred by the department under any circumstance or at the request of any person, regardless of who has made the request or the length of time of the requested placement. [2001 c 318 § 4.]

**74.13.540 Independent living services.** Independent living services include assistance in achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, and obtaining and maintaining employment; and accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A recipient who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be declared ineligible to receive services. [2001 c 192 § 2.]

**74.13.550 Child placement—Policy of educational continuity.** It is the policy of the state of Washington that, whenever practical and in the best interest of the child, children placed into foster care shall remain enrolled in the schools they were attending at the time they entered foster care. [2003 c 112 § 2.]

**Findings—Intent—2003 c 112:** "The legislature finds that the educational attainment of children in foster care is significantly lower than that of children not in foster care. The legislature finds that many factors influence educational outcomes for children in foster care, including the disruption of the educational process because of repeatedly changing schools.

The legislature recognizes the importance of educational stability for foster children, and encourages the ongoing efforts of the department of social and health services and the office of the superintendent of public instruction to improve educational attainment of children in foster care. It is the intent of the legislature that efforts continue such as the recruitment of foster homes in school districts with high rates of foster care placements, the development and dissemination of informational materials regarding the challenges faced by children in foster care, and the expansion to other school districts of best practices identified in pilot projects." [2003 c 112 § 1.]

**74.13.560 Educational continuity—Protocol development.** The administrative regions of the department shall develop protocols with the respective school districts in their regions specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children placed in the region, in order to maximize the educational continuity and achievement for foster children. The protocols shall include methods to assure effective sharing of information consistent with RCW 28A.225.330. [2003 c 112 § 3.]

**Findings—Intent—2003 c 112:** See note following RCW 74.13.550.

**74.13.570 Oversight committee—Duties.** (1) The department shall establish an oversight committee composed of staff from the children's administration of the department, the office of the superintendent of public instruction, the higher education coordinating board, foster youth, former foster youth, foster parents, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care and to promote opportunities for foster youth to participate in postsecondary education or training.

(2) The duties of the oversight committee shall include, but are not limited to:

(a) Developing strategies for school-based recruitment of foster homes;

(b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;

(c) Overseeing the expansion of the number of pilot projects;

(d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care;

(e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care;

(f) Assessing the scope and nature of statewide need among current and former foster youth for assistance to pursue and participate in postsecondary education or training opportunities;

(g) Identifying available sources of funding available in the state for services to former foster youth to pursue and participate in postsecondary education or training opportunities;

(h) Reviewing the effectiveness of activities in the state to support former foster youth to pursue and participate in postsecondary education or training opportunities;

(i) Identifying new activities, or existing activities that should be modified or expanded, to best meet statewide needs; and

(j) Reviewing on an ongoing basis the progress toward improving educational and vocational outcomes for foster youth. [2005 c 93 § 2; 2003 c 112 § 4.]

**Findings—Intent—2005 c 93:** "(1) The legislature finds that:

(a) The majority of foster youth fail to thrive in our educational system and, relative to nonfoster youth, disproportionately few enroll in college or other postsecondary training programs. As a result, former foster youth generally have poor employment and life satisfaction outcomes; and

(b) Low expectations, lack of information, fragmented support services, and financial hardship are the most frequently cited reasons for failure of foster youth to pursue postsecondary education or training. Initiatives

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have been undertaken at both the state and community levels in Washington to improve outcomes for foster youth in transition to independence; however, these initiatives are often not coordinated to complement one another.

(2) The legislature intends to encourage and support foster youth to pursue postsecondary education or training opportunities. A coordination committee that provides statewide planning and oversight of related efforts will improve the effectiveness of both current and future initiatives to improve postsecondary educational outcomes for foster youth. In addition, the state can provide financial support to former foster youth pursuing higher education or training by setting aside portions of the state need grant and the state work study programs specifically for foster youth." [2005 c 93 § 1.]

**Findings—Intent—2003 c 112:** See note following RCW 74.13.550.

**74.13.580 Educational stability during shelter care hearing—Protocol development.** The department shall work with the administrative office of the courts to develop protocols to ensure that educational stability is addressed during the shelter care hearing. [2003 c 112 § 5.]

**Findings—Intent—2003 c 112:** See note following RCW 74.13.550.

**74.13.590 Tasks to be performed based on available resources.** The department shall perform the tasks provided in RCW 74.13.550 through 74.13.580 based on available resources. [2003 c 112 § 6.]

**Findings—Intent—2003 c 112:** See note following RCW 74.13.550.

**74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies.** (1) For the purposes of this section, "kin" means persons eighteen years of age or older to whom the child is related by blood, adoption, or marriage, including marriages that have been dissolved, and means: (a) Any person denoted by the prefix "grand" or "great"; (b) sibling, whether full, half, or step; (c) uncle or aunt; (d) nephew or niece; or (e) first cousin.

(2) The department shall plan, design, and implement strategies to prioritize the placement of children with willing and able kin when out-of-home placement is required.

These strategies must include at least the following:

(a) Development of standardized, statewide procedures to be used when searching for kin of children prior to out-of-home placement. The procedures must include a requirement that documentation be maintained in the child's case record that identifies kin, and documentation that identifies the assessment criteria and procedures that were followed during all kin searches. The procedures must be used when a child is placed in out-of-home care under authority of chapter 13.34 RCW, when a petition is filed under RCW 13.32A.140, or when a child is placed under a voluntary placement agreement. To assist with implementation of the procedures, the department shall request that the juvenile court require parents to disclose to the department all contact information for available and appropriate kin within two weeks of an entered order. For placements under signed voluntary agreements, the department shall encourage the parents to disclose to the department all contact information for available and appropriate kin within two weeks of the date the parent signs the voluntary placement agreement.

(b) Development of procedures for conducting active outreach efforts to identify and locate kin during all searches. The procedures must include at least the following elements:

(i) Reasonable efforts to interview known kin, friends, teachers, and other identified community members who may

have knowledge of the child's kin, within sixty days of the child entering out-of-home care;

(ii) Increased use of those procedures determined by research to be the most effective methods of promoting reunification efforts, permanency planning, and placement decisions;

(iii) Contacts with kin identified through outreach efforts and interviews under this subsection as part of permanency planning activities and change of placement discussions;

(iv) Establishment of a process for ongoing contact with kin who express interest in being considered as a placement resource for the child; and

(v) A requirement that when the decision is made to not place the child with any kin, the department provides documentation as part of the child's individual service and safety plan that clearly identifies the rationale for the decision and corrective action or actions the kin must take to be considered as a viable placement option.

(3) Nothing in this section shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or the child or family is not eligible for such services. [2003 c 284 § 1.]

**74.13.621 Kinship care oversight committee. (Expires January 1, 2010.)** (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood, marriage, or adoption, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more programs or services would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor and provide consultation on the implementation of recommendations contained in the 2002 kinship care report, including but not limited to the recommendations relating to legal and respite care services and resources;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The department shall consult with the oversight committee on its efforts to better collaborate and coordinate services to benefit kinship care families.

(3) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, rep-

resentatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(4) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(5) The kinship care oversight committee shall update the legislature and governor annually on committee activities, with the first update due by January 1, 2006.

(6) This section expires January 1, 2010. [2005 c 439 § 1.]

**74.13.630 Family decision meetings.** (1) By January 1, 2005, the department shall:

(a) Consider options for the use of family decision meetings in cases in which a child is involved in the child welfare system;

(b) Develop strategies for implementing a policy of meaningful family involvement throughout the state within existing resources; and

(c) Present implementation recommendations to the appropriate committees of the legislature regarding (a) and (b) of this subsection.

(2) For the purposes of this section, "family decision meeting" means a family-focused intervention facilitated by dedicated professional staff that is designed to build and strengthen the natural caregiving system for the child. Family decision meetings may include, but are not limited to, family group conferences, family mediation, family support meetings, or other professionally recognized interventions that include extended family and rely upon the family to make shared decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that provides for the safety and permanency needs of the child. [2004 c 182 § 2.]

**Finding—Intent—2004 c 182:** "(1) The legislature finds that engaging families in decision making when their children are involved in the child welfare system generally improves the outcomes for children. By involving families in the decision-making process, it is anticipated that the number of out-of-home placements can be reduced, as well as the incidence of behavioral, physical, and mental health problems for individual children. For those children in out-of-home placements, the number of placements for individual children, the likelihood of placing individual children with siblings, and successful reunifications are expected to improve as a result of family engagement. Based on the experience in the state where families have been engaged in decision making, these improved outcomes will result in cost savings to the state as fewer and less costly services and supports for children and families are needed.

(2) It is the intent of the legislature to encourage and support meaningful family involvement in the decision making related to planning for children involved in the child welfare system, in those instances where family is available and family involvement is in the best interest of the child." [2004 c 182 § 1.]

**74.13.640 Child fatality review—Report—Notice to the office of the family and children's ombudsman.** (1) The department of social and health services shall conduct a child fatality review in the event of an unexpected death of a minor in the state who is in the care of or receiving services

described in chapter 74.13 RCW from the department or who has been in the care of or received services described in chapter 74.13 RCW from the department within one year preceding the minor's death.

(2) Upon conclusion of a child fatality review required pursuant to subsection (1) of this section, the department shall within one hundred eighty days following the fatality issue a report on the results of the review, unless an extension has been granted by the governor. Reports shall be distributed to the appropriate committees of the legislature, and the department shall create a public web site where all child fatality review reports required under this section shall be posted and maintained.

(3) The department shall develop and implement procedures to carry out the requirements of subsections (1) and (2) of this section.

(4) In the event a child fatality is the result of apparent abuse or neglect by the child's parent or caregiver, the department shall ensure that the fatality review team is comprised of individuals who had no previous involvement in the case and whose professional expertise is pertinent to the dynamics of the case.

(5) In the event of a near-fatality of a child who is in the care of or receiving services described in this chapter from the department or who has been in the care of or received services described in this chapter from the department within one year preceding the near-fatality, the department shall promptly notify the office of the family and children's ombudsman. [2008 c 211 § 1; 2004 c 36 § 1.]

**74.13.650 Foster parent critical support and retention program.** A foster parent critical support and retention program is established to retain foster parents who care for sexually reactive children, physically assaultive children, or children with other high-risk behaviors, as defined in RCW 74.13.280. Services shall consist of short-term therapeutic and educational interventions to support the stability of the placement. The foster parent critical support and retention program is to be implemented under the division of children and family services' contract and supervision. A contractor must demonstrate experience providing in-home case management, as well as experience working with caregivers of children with significant behavioral issues that pose a threat to others or themselves or the stability of the placement. [2007 c 220 § 7; 2006 c 353 § 2.]

**Findings—2006 c 353:** "The legislature finds that:

(1) Foster parents are able to successfully maintain placements of sexually reactive children, physically assaultive children, or children with other high-risk behaviors when they are provided with proper training and support. Lack of support contributes to placement disruptions and multiple moves between foster homes.

(2) Young children who have experienced repeated early abuse and trauma are at high risk for behavior later in life that is sexually deviant, if left untreated. Placement with a well-trained, prepared, and supported foster family can break this cycle." [2006 c 353 § 1.]

**74.13.660 Foster parent critical support and retention program—Availability, assessment, training, referral.** Under the foster parent critical support and retention program, foster parents who care for sexually reactive children, physically assaultive children, or children with other

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high-risk behaviors, as defined in RCW 74.13.280, shall receive:

(1) Availability at any time of the day or night to address specific concerns related to the identified child;

(2) Assessment of risk and development of a safety and supervision plan;

(3) Home-based foster parent training utilizing evidence-based models; and

(4) Referral to relevant community services and training provided by the local children's administration office or community agencies. [2007 c 220 § 8; 2006 c 353 § 3.]

**Findings—2006 c 353:** See note following RCW 74.13.650.

**74.13.670 Care provider immunity for allegation of failure to supervise a sexually reactive, physically assaultive, or physically aggressive youth—Conditions.** (1) A care provider may not be found to have abused or neglected a child under chapter 26.44 RCW or be denied a license pursuant to chapter 74.15 RCW and RCW 74.13.031 for any allegations of failure to supervise wherein:

(a) The allegations arise from the child's conduct that is substantially similar to prior behavior of the child, and:

(i) The child is a sexually reactive youth, exhibits high-risk behaviors, or is physically assaultive or physically aggressive as defined in RCW 74.13.280, and this information and the child's prior behavior was not disclosed to the care provider as required by RCW 74.13.280; and

(ii) The care provider did not know or have reason to know that the child needed supervision as a sexually reactive or physically assaultive or physically aggressive youth, or because of a documented history of high-risk behaviors, as a result of the care provider's involvement with or independent knowledge of the child or training and experience; or

(b) The child was not within the reasonable control of the care provider at the time of the incident that is the subject of the allegation, and the care provider was acting in good faith and did not know or have reason to know that reasonable control or supervision of the child was necessary to prevent harm or risk of harm to the child or other persons.

(2) Allegations of child abuse or neglect that meet the provisions of this section shall be designated as "unfounded" as defined in RCW 26.44.020. [2007 c 220 § 5.]

**74.13.800 Intensive resource home pilot.** (1) The department shall select two geographic areas with high concentrations of children with significant needs in out-of-home care for implementing an intensive resource home pilot. In choosing the pilot sites, the department shall: (a) Examine areas where there are concentrations of children with significant behavioral challenges and intensive developmental or medical needs who are being served in family foster homes; (b) consider sites of appropriate size that will allow for careful analysis of the impact of the intensive resource home pilot on the array of out-of-home care providers, including providers of behavioral rehabilitation services; and (c) determine the number of children to be served in these selected sites. Implementation of the program at the pilot sites also shall be structured to support the long-term goal of eventual expansion of the pilot statewide.

(2) Based on the information gathered by the work group convened under chapter 413, Laws of 2007, and the additional information gathered pursuant to this section, the department shall work collaboratively in:

(a) Seeking recommendations from foster parents and other out-of-home service providers, including child placing agencies, regarding the qualifications and requirements of intensive resource home providers, the needs of the children to be served, and the desired outcomes to be measured or monitored at the respective pilot sites; and

(b) Consulting with experts in child welfare, children's mental health, and children's health care to identify the evidence-based or promising practice models to be employed in the pilot and the appropriate supports to ensure program fidelity, including, but not limited to, the necessary training and clinical consultation and oversight to be provided to intensive resource homes.

(3) Using the recommendations from foster parents, the consultations with professionals as required in subsection (2)(a) and (b) of this section, and the information provided in the report to the legislature under chapter 413, Laws of 2007, including the information presented to the work group convened to prepare and present the report, the department shall implement the pilot by entering into contracts with no more than seventy-five providers who are determined by the department to meet the eligibility criteria for the intensive resource home pilot. The department shall:

(a) Define the criteria for intensive resource home providers, which shall include a requirement that the provider be licensed by the department as a foster parent, as well as meet additional requirements relating to relevant experience, education, training, and professional expertise necessary to meet the high needs of children identified as eligible for this pilot;

(b) Define criteria for identifying children with high needs who may be eligible for placement with an intensive resource home provider. Such criteria shall be based on the best interests of the child and include an assessment of the child's past and current level of functioning as well as a determination that the child's treatment plan and developmental needs are consistent with the placement plan;

(c) Establish a policy for placement of children with high needs in intensive resource homes, including a process for matching the child's needs with the provider's skills and expertise;

(d) Establish a limit on the number and ages of children with high needs that may be placed in an intensive resource home pursuant to the pilot contract. Such limitation shall recognize that children with externalizing behaviors are most likely to experience long-term improvements in their behavior when care is provided in settings that minimize exposure to peers with challenging behaviors;

(e) Identify one or more approved models of skill building for use by intensive resource home providers, with the assistance of other child welfare experts;

(f) Specify the training and consultation requirements that support the models of service;

(g) Establish a system of supports, including clinical consultation and oversight for intensive resource homes;

(h) Develop a tiered payment system, by September 30, 2008, which may include a stipend to the provider, which takes into account the additional responsibilities intensive

resource home providers have with regard to the children placed in their care. Until such time as the department has developed the tiered payment system, money for exceptional cost plans shall be used only for special services or supplies provided to the child and shall not be used to reimburse the provider for services he or she provides to the child. A stipend of not more than five hundred dollars per month may be used to reimburse the provider for services he or she provides directly to the child;

(i) Establish clearly defined responsibilities of intensive resource home providers, who have an intensive resource home contract including responsibilities to promote permanency and connections with birth parents; and

(j) Develop a process for annual performance reviews of intensive resource home providers.

(4) Contracts between the department and an intensive resource home provider shall include a statement of work focusing on achieving stability in placement and measuring improved permanency outcomes and shall specify at least the following elements:

(a) The model of treatment and care to be provided;

(b) The training and ongoing professional consultation to be provided;

(c) The method for determining any additional supports to be provided to an eligible child or the intensive resource home provider;

(d) The desired outcomes to be measured;

(e) A reasonable and efficient process for seeking a modification of the contract;

(f) The rate and terms of payment under the contract; and

(g) The term of the contract and the processes for an annual performance review of the intensive resource home provider and an annual assessment of the child.

(5) Beginning on or before October 1, 2008, the department shall begin the selection of, and negotiation of contracts with, intensive resource home providers in the selected pilot sites.

(6) Nothing in chapter 281, Laws of 2008 gives a provider eligible under this section the right to a contract under the intensive resource home pilot, and nothing in chapter 281, Laws of 2008 gives a provider that has a contract under the pilot a right to have a child or children placed in the home pursuant to the contract.

(7) "Intensive resource home provider" means a provider who meets the eligibility criteria developed by the department under this section and who has an intensive resource home pilot contract with the department.

(8) The department shall report to the governor and the legislature by January 30, 2009, on the implementation of the pilot, including how the pilot fits within the continuum of out-of-home care options. Based on the experiences and lessons learned from implementation of the pilot, the department shall recommend a process and timeline for expanding the pilot and implementing it statewide. The department shall report to the governor and the appropriate members of the legislature by September 1, 2009, on the expansion, and shall identify the essential elements of the intensive resource home pilot that should be addressed or replicated if the pilot is expanded.

(9) The department shall operate this pilot using only funds appropriated specifically for the operation of this pilot.

The term "specifically for the operation of this pilot" includes only those costs associated with the following: The administration of the pilot, the stipend to eligible intensive resource home providers, training for the providers, consultation for the providers, and program review consultation. [2008 c 281 § 2.]

**Findings—Intent—2008 c 281:** "The legislature finds that out-of-home care providers are an essential partner in the child welfare system, with responsibility for the care of vulnerable children whose families are unable to meet their needs. Because children who enter the out-of-home care system have experienced varying degrees of stress and trauma before placement, providers sometimes are called upon to provide care for children with significant behavioral challenges and intensive developmental needs. Other children who enter out-of-home care may require extraordinary care due to health care needs or medical fragility. The legislature also finds that providers with specialized skills and experience, or professional training and expertise, can contribute significantly to a child's well-being by promoting placement stability and supporting the child's developmental growth while in out-of-home care. The legislature intends to implement an intensive resource home pilot to enhance the continuum of care options and to promote permanency and positive outcomes for children served in the child welfare system by authorizing the department to contract for intensive resource home services on a pilot basis." [2008 c 281 § 1.]

**Conflict with federal requirements—2008 c 281:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition of federal funds which support the operations and services provided by the department of social and health services, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2008 c 281 § 3.]

**74.13.900 Severability—1965 c 30.** If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 30 § 6.]

**Chapter 74.14A RCW**

**CHILDREN AND FAMILY SERVICES**

Sections

- 74.14A.010 Legislative declaration.
- 74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict.
- 74.14A.025 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated.
- 74.14A.030 Treatment of juvenile offenders—Nonresidential community-based programs.
- 74.14A.040 Treatment of juvenile offenders—Involvement of family unit.
- 74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study.
- 74.14A.060 Blended funding projects—Department to make annual reports.
- 74.14A.900 Short title—1983 c 192.
- 74.14A.901 Severability—1983 c 192.

*Shaken baby syndrome: RCW 43.121.140.*

**74.14A.010 Legislative declaration.** The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving emotionally disturbed and mentally ill children, potentially dependent

children, and families-in-conflict in their own homes to avoid out-of-home placement of the child, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state. [1983 c 192 § 1.]

**74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict.** State efforts shall address the needs of children and their families, including emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict by:

- (1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;
- (2) Ensuring that appropriate social and health services are provided to the family unit both prior to and during the removal of a child from the home and after family reunification;
- (3) Ensuring that the safety and best interests of the child are the paramount considerations when making placement and service delivery decisions;
- (4) Recognizing the interdependent and changing nature of families and communities, building upon their inherent strengths, maintaining their dignity and respect, and tailoring programs to their specific circumstances;
- (5) Developing and implementing comprehensive, preventive, and early intervention social and health services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic or severe;
- (6) Authorizing and facilitating blended funding for children who require services and residential treatment from multiple services systems; including child welfare services, mental health, alcohol and drug, and juvenile rehabilitation;
- (7) Being sensitive to the family and community culture, norms, values, and expectations, ensuring that all services are provided in a culturally appropriate and relevant manner, and ensuring participation of racial and ethnic minorities at all levels of planning, delivery, and evaluation efforts;
- (8)(a) Developing coordinated social and health services which:
  - (i) Identify problems experienced by children and their families early and provide services which are adequate in availability, appropriate to the situation, and effective;
  - (ii) Seek to bring about meaningful change before family situations become irreversibly destructive and before disturbed psychological behavioral patterns and health problems become severe or permanent;
  - (iii) Serve children and families in their own homes thus preventing unnecessary out-of-home placement or institutionalization;
  - (iv) Focus resources on social and health problems as they begin to manifest themselves rather than waiting for chronic and severe patterns of illness, criminality, and dependency to develop which require long-term treatment, maintenance, or custody;
  - (v) Reduce duplication of and gaps in service delivery;
  - (vi) Improve planning, budgeting, and communication among all units of the department and among all agencies that serve children and families; and

(vii) Utilize outcome standards for measuring the effectiveness of social and health services for children and families.

(b) In developing services under this subsection, local communities must be involved in planning and developing community networks that are tailored to their unique needs. [2000 c 219 § 1; 1994 sp.s. c 7 § 102; 1983 c 192 § 2.]

**Severability—2000 c 219:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 219 § 3.]

**Effective date—2000 c 219:** "This act takes effect July 1, 2000." [2000 c 219 § 4.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1983 c 192:** "Sections 2 through 4 of this act shall take effect January 1, 1984." [1983 c 192 § 8.]

**74.14A.025 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated.** To update, specify, and expand the policy stated in RCW 74.14A.020, the following is declared:

It is the policy of the state of Washington to promote:

(1) Family-oriented services and supports that:

(a) Respond to the changing nature of families; and

(b) Respond to what individuals and families say they need, and meet those needs in a way that maintains their dignity and respects their choices;

(2) Culturally relevant services and supports that:

(a) Explicitly recognize the culture and beliefs of each family and use these as resources on behalf of the family;

(b) Provide equal access to culturally unique communities in planning and programs, and day-to-day work, and actively address instances where clearly disproportionate needs exist; and

(c) Enhance every culture's ability to achieve self-sufficiency and contribute in a productive way to the larger community;

(3) Coordinated services that:

(a) Develop strategies and skills for collaborative planning, problem solving, and service delivery;

(b) Encourage coordination and innovation by providing both formal and informal ways for people to communicate and collaborate in planning and programs;

(c) Allow clients, vendors, community people, and other agencies to creatively provide the most effective, responsive, and flexible services; and

(d) Commit to an open exchange of skills and information; and expect people throughout the system to treat each other with respect, dignity, and understanding;

(4) Locally planned services and supports that:

(a) Operate on the belief that each community has special characteristics, needs, and strengths;

(b) Include a cross-section of local community partners from the public and private sectors, in the planning and delivery of services and supports; and

(c) Support these partners in addressing the needs of their communities through both short-range and long-range planning and in establishing priorities within state and federal standards;

(5) Community-based prevention that encourages and supports state residents to create positive conditions in their communities to promote the well-being of families and reduce crises and the need for future services;

(6) Outcome-based services and supports that:

(a) Include a fair and realistic system for measuring both short-range and long-range progress and determining whether efforts make a difference;

(b) Use outcomes and indicators that reflect the goals that communities establish for themselves and their children;

(c) Work towards these goals and outcomes at all staff levels and in every agency; and

(d) Provide a mechanism for informing the development of program policies;

(7) Customer service that:

(a) Provides a climate that empowers staff to deliver quality programs and services;

(b) Is provided by courteous, sensitive, and competent professionals; and

(c) Upholds the dignity and respect of individuals and families by providing appropriate staff recognition, information, training, skills, and support;

(8) Creativity that:

(a) Increases the flexibility of funding and programs to promote innovation in planning, development, and provision of quality services; and

(b) Simplifies and reduces or eliminates rules that are barriers to coordination and quality services. [1992 c 198 § 2.]

**Severability—Effective date—1992 c 198:** See RCW 70.190.910 and 70.190.920.

*Family policy council: Chapter 70.190 RCW.*

**74.14A.030 Treatment of juvenile offenders—Non-residential community-based programs.** The department shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [1983 c 192 § 3.]

**Effective date—1983 c 192:** See note following RCW 74.14A.020.

**74.14A.040 Treatment of juvenile offenders—Involvement of family unit.** The department shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [1983 c 192 § 4.]

**Effective date—1983 c 192:** See note following RCW 74.14A.020.

**74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study.** The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need

long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

(6) Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

(7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

(8) The department is to accomplish the tasks listed in subsections (4) through (7) of this section within existing resources;

(9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordination of services between the department's divisions and between other state agencies who are involved with the child or youth;

(11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(12) Study and develop a statutory proposal for the emancipation of minors. [2003 c 207 § 9; 2001 c 255 § 1; 2000 c 232 § 1; 1998 c 245 § 149; 1993 c 508 § 7; 1993 c 505 § 5.]

**Section captions—Severability—Effective date—1993 c 508:** See RCW 74.39A.900 through 74.39A.903.

*Emancipation of minors: Chapter 13.64 RCW.*

**74.14A.060 Blended funding projects—Department to make annual reports.** The secretary of the department of social and health services shall charge appropriated funds to support blended funding projects for youth subject to any current or future waiver the department receives to the requirements of IV-E funding. To be eligible for blended funding a child must be eligible for services designed to address a behavioral, mental, emotional, or substance abuse issue from the department of social and health services and require services from more than one categorical service delivery system. Before any blended funding project is established by the secretary, any entity or person proposing the project shall seek input from the public health and safety network or networks established in the catchment area of the project. The network or networks shall submit recommendations on the blended funding project to the family policy council. The family policy council shall advise the secretary whether to approve the proposed blended funding project. The network shall review the proposed blended funding project pursuant to its authority to examine the decategorization of program funds under RCW 70.190.110, within the current appropriation level. The department shall document the number of children who participate in blended funding projects, the total blended funding amounts per child, the amount charged to each appropriation by program, and services provided to each child through each blended funding project and report this information to the appropriate committees of the legislature by December 1st of each year, beginning in December 1, 2000. [2000 c 219 § 2.]

**Severability—Effective date—2000 c 219:** See notes following RCW 74.14A.020.

**74.14A.900 Short title—1983 c 192.** This act may be known and cited as the "children and family services act." [1983 c 192 § 6.]

**74.14A.901 Severability—1983 c 192.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 192 § 7.]

## Chapter 74.14B RCW CHILDREN'S SERVICES

### Sections

- 74.14B.010 Children's services workers—Hiring and training.
- 74.14B.020 Foster parent training.
- 74.14B.030 Child abuse and neglect—Multidisciplinary teams.
- 74.14B.040 Child abuse and neglect—Therapeutic day care and treatment.
- 74.14B.050 Child abuse and neglect—Counseling referrals.
- 74.14B.060 Sexually abused children—Treatment services.
- 74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment.
- 74.14B.080 Liability insurance for foster parents.
- 74.14B.900 Captions.
- 74.14B.901 Severability—1987 c 503.
- 74.14B.902 Effective date—1987 c 503.

*Shaken baby syndrome: RCW 43.121.140.*

**74.14B.010 Children's services workers—Hiring and training.** (1) Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) On-going specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews. [1999 c 389 § 5; 1987 c 503 § 8.]

**74.14B.020 Foster parent training.** The department shall, within funds appropriated for this purpose, provide foster parent training as an ongoing part of the foster care program. The department shall contract for a variety of support services to foster parents to reduce isolation and stress, and to increase skills and confidence. [1987 c 503 § 11.]

**74.14B.030 Child abuse and neglect—Multidisciplinary teams.** The department shall establish and maintain one or more multidisciplinary teams in each state region of the division of children and family services. The team shall consist of at least four persons, selected by the department, from professions which provide services to abused and neglected children and/or the parents of such children. The teams shall be available for consultation on all cases where a risk exists of serious harm to the child and where there is dispute over whether out-of-home placement is appropriate. [1987 c 503 § 12.]

**74.14B.040 Child abuse and neglect—Therapeutic day care and treatment.** The department shall, within funds appropriated for this purpose, provide therapeutic day care and day treatment to children who have been abused or neglected and meet program eligibility criteria. [1987 c 503 § 13.]

**74.14B.050 Child abuse and neglect—Counseling referrals.** The department of social and health services shall inform victims of child abuse and neglect and their families of the availability of state-supported counseling through the crime victims' compensation program, community mental health centers, domestic violence and sexual assault programs, and other related programs. The department shall assist victims with referrals to these services. [1987 c 503 § 14.]

**74.14B.060 Sexually abused children—Treatment services.** (1) Treatment services for children who have been sexually assaulted must be designed and delivered in a manner that accommodates their unique developmental needs and also considers the impact of family dynamics on treatment issues. In addition, the complexity of the civil and criminal justice systems requires that children who are involved receive appropriate consideration and attention that recognizes their unique vulnerability in a system designed primarily for adults.

(2) The department of community, trade, and economic development shall provide, subject to available funds, comprehensive sexual assault services to sexually abused children and their families. The department shall provide treatment services by qualified, registered, certified, or licensed professionals on a one-to-one or group basis as may be deemed appropriate.

(3) Funds appropriated under this section shall be provided solely for contracts or direct purchase of specific treatment services from community organizations and private service providers for child victims of sexual assault and sexual abuse. Funds shall be disbursed through the request for proposal or request for qualifications process.

(4) As part of the request for proposal or request for qualifications process the department of community, trade, and economic development shall ensure that there be no duplication of services with existing programs including the crime victims' compensation program as provided in chapter 7.68 RCW. The department shall also ensure that victims exhaust private insurance benefits available to the child victim before providing services to the child victim under this section. [1996 c 123 § 8; 1990 c 3 § 1402.]

**Transfer of powers and duties—1996 c 123:** "The powers and duties of the department of social and health services to provide services and funding for services to sexually abused children under RCW 74.14B.060 shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 10.]

**Effective date—1996 c 123:** See note following RCW 43.280.010.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment.** The department of social and health services through its division of children and family services shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide. [1990 c 3 § 1403.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**74.14B.080 Liability insurance for foster parents.** (1) Subject to subsection (2) of this section, the secretary of social and health services shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary of social and health services may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [1991 c 283 § 2.]

(2008 Ed.)

**Findings—1991 c 283:** "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

**Effective date—1991 c 283:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 283 § 5.]

**74.14B.900 Captions.** Section headings as used in this chapter do not constitute any part of the law. [1987 c 503 § 19.]

**74.14B.901 Severability—1987 c 503.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 503 § 21.]

**74.14B.902 Effective date—1987 c 503.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 503 § 22.]

## Chapter 74.14C RCW

### FAMILY PRESERVATION SERVICES

#### Sections

74.14C.005	Findings and intent.
74.14C.010	Definitions.
74.14C.020	Preservation services.
74.14C.030	Department duties.
74.14C.032	Preservation services contracts.
74.14C.040	Intensive family preservation services—Eligibility criteria.
74.14C.042	Family preservation services—Eligibility criteria.
74.14C.050	Implementation and evaluation plan.
74.14C.060	Funds, volunteer services.
74.14C.065	Federal funds.
74.14C.070	Appropriations—Transfer of funds from foster care services to family preservation services—Annual report.
74.14C.080	Data collection—Reports to the legislature.
74.14C.090	Reports on referrals and services.
74.14C.100	Training and consultation for department personnel—Training for judges and service providers.
74.14C.900	Severability—1992 c 214.

**74.14C.005 Findings and intent.** (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing upfront services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon

the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

- (a) Safety of the child is always the first concern;
- (b) Children need their families and should be raised by their own families whenever possible;
- (c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;
- (d) Participation should be voluntary; and
- (e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the department of social and health services shall have the authority and discretion to implement and expand these services as provided in this chapter. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with this chapter.

(4) Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 311 § 1; 1992 c 214 § 1.]

**74.14C.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of social and health services.

(2) "Community support systems" means the support that may be organized through extended family members, friends, neighbors, religious organizations, community programs, cultural and ethnic organizations, or other support groups or organizations.

(3) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

- (a) Respite care of children to provide temporary relief for parents and other caregivers;
- (b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(4) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(5) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(6) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(7) "Paraprofessional worker" means any individual who is trained and qualified to provide assistance and community support systems development to families and who acts under the supervision of a preservation services therapist. The paraprofessional worker is not intended to replace the role and responsibilities of the preservation services therapist.

(8) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs. [1996 c 240 § 2; 1995 c 311 § 2; 1992 c 214 § 2.]

**74.14C.020 Preservation services.** (1) Intensive family preservation services shall have all of the following characteristics:

(a) Services are provided by specially trained service providers who have received at least forty hours of training from recognized intensive in-home services experts. Service providers deliver the services in the family's home, and other environments of the family, such as their neighborhood or schools;

(b) Caseload size averages two families per service provider unless paraprofessional services are utilized, in which case a provider may, but is not required to, handle an average caseload of five families;

(c) The services to the family are provided by a single service provider who may be assisted by paraprofessional workers, with backup providers identified to provide assistance as necessary;

(d) Services are available to the family within twenty-four hours following receipt of a referral to the program; and

(e) Duration of service is limited to a maximum of forty days, unless paraprofessional workers are used, in which case the duration of services is limited to a maximum of ninety days. The department may authorize an additional provision

of service through an exception to policy when the department and provider agree that additional services are needed.

(2) Family preservation services shall have all of the following characteristics:

(a) Services are delivered primarily in the family home or community;

(b) Services are committed to reinforcing the strengths of the family and its members and empowering the family to solve problems and become self-sufficient;

(c) Services are committed to providing support to families through community organizations including but not limited to school, church, cultural, ethnic, neighborhood, and business;

(d) Services are available to the family within forty-eight hours of referral unless an exception is noted in the file;

(e) Duration of service is limited to a maximum of six months, unless the department requires additional follow-up on an individual case basis; and

(f) Caseload size no more than ten families per service provider, which can be adjusted when paraprofessional workers are used or required by the department.

(3) Preservation services shall include the following characteristics:

(a) Services protect the child and strengthen the family;

(b) Service providers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(c) Services are available to the family twenty-four hours a day and seven days a week;

(d) Services enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and

(e) Services help families locate and use additional assistance including, but not limited to, the development and maintenance of community support systems, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services. [1996 c 240 § 3; 1995 c 311 § 3; 1992 c 214 § 3.]

**74.14C.030 Department duties.** (1) The department shall be the lead administrative agency for preservation services and may receive funding from any source for the implementation or expansion of such services. The department shall:

(a) Provide coordination and planning with the advice of the community networks for the implementation and expansion of preservation services; and

(b) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this chapter and the department.

(2) The department may: (a) Allow its contractors for preservation services to use paraprofessional workers when the department and provider determine the use appropriate. The department may also use paraprofessional workers, as appropriate, when the department provides preservation services; and (b) allow follow-up to be provided, on an individual case basis, when the department and provider determine the use appropriate.

(2008 Ed.)

(3) In carrying out the requirements of this section, the department shall consult with qualified agencies that have demonstrated expertise and experience in preservation services.

(4) The department may provide preservation services directly and shall, within available funds, enter into outcome-based, competitive contracts with social service agencies to provide preservation services, provided that such agencies meet measurable standards specified by this chapter and by the department. The standards shall include, but not be limited to, satisfactory performance in the following areas:

(a) The number of families appropriately connected to community resources;

(b) Avoidance of new referrals accepted by the department for child protective services or family reconciliation services within one year of the most recent case closure by the department;

(c) Consumer satisfaction;

(d) For reunification cases, reduction in the length of stay in out-of-home placement; and

(e) Reduction in the level of risk factors specified by the department.

(5)(a) The department shall not provide intensive family preservation services unless it is demonstrated that provision of such services prevent out-of-home placement in at least seventy percent of the cases served for a period of at least six months following termination of services. The department's caseworkers may only provide preservation services if there is no other qualified entity willing or able to do so.

(b) Contractors shall demonstrate that provision of intensive family preservation services prevent out-of-home placement in at least seventy percent of the cases served for a period of no less than six months following termination of services. The department may increase the period of time based on additional research and data. If the contractor fails to meet the seventy percent requirement the department may:

(i) Review the conditions that may have contributed to the failure to meet the standard and renew the contract if the department determines: (A) The contractor is making progress to meet the standard; or (B) conditions unrelated to the provision of services, including case mix and severity of cases, contributed to the failure; or (ii) reopen the contract for other bids.

(c) The department shall cooperate with any person who has a contract under this section in providing data necessary to determine the amount of reduction in foster care. For the purposes of this subsection "prevent out-of-home placement" means that a child who has been a recipient of intensive family preservation services has not been placed outside of the home, other than for a single, temporary period of time not exceeding fourteen days.

(6) The department shall adopt rules to implement this chapter. [1996 c 240 § 4; 1995 c 311 § 4; 1992 c 214 § 4.]

**74.14C.032 Preservation services contracts.** The initial contracts under \*RCW 74.14C.030(3) shall be executed not later than July 1996 and shall expire June 30, 1997. Subsequent contracts shall be for periods not to exceed twenty-four months. [1995 c 311 § 13.]

\*Reviser's note: RCW 74.14C.030 was amended by 1996 c 240 § 4, changing subsection (3) to subsection (4).

**74.14C.040 Intensive family preservation services—Eligibility criteria.** (1) Intensive family preservation services may be provided to children and their families only when the department has determined that:

(a) The child has been placed out-of-home or is at imminent risk of an out-of-home placement due to:

- (i) Child abuse or neglect;
  - (ii) A serious threat of substantial harm to the child's health, safety, or welfare; or
  - (iii) Family conflict; and
- (b) There are no other reasonably available services including family preservation services that will prevent out-of-home placement of the child or make it possible to immediately return the child home.

(2) The department shall refer eligible families to intensive family preservation services on a twenty-four hour intake basis. The department need not refer otherwise eligible families, and intensive family preservation services need not be provided, if:

- (a) The services are not available in the community in which the family resides;
- (b) The services cannot be provided because the program is filled to capacity and there are no current service openings;
- (c) The family refuses the services;
- (d) The department, or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or
- (e) The department or the service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of intensive family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or child. [1995 c 311 § 6; 1992 c 214 § 5.]

**74.14C.042 Family preservation services—Eligibility criteria.** (1) Family preservation services may be provided to children and their families only when the department has determined that without intervention, the child faces a substantial likelihood of out-of-home placement due to:

- (a) Child abuse or neglect;
- (b) A serious threat of substantial harm to the child's health, safety, or welfare; or
- (c) Family conflict.

(2) The department need not refer otherwise eligible families and family preservation services need not be provided, if:

- (a) The services are not available in the community in which the family resides;
- (b) The services cannot be provided because the program is filled to capacity;
- (c) The family refuses the services; or
- (d) The department or the service provider determines that the safety of a child, a family member, or persons providing the services would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or the child. [1995 c 311 § 7.]

**74.14C.050 Implementation and evaluation plan.** By December 1, 1995, the department, with the assistance of the family policy council, two urban and two rural public health and safety networks to be chosen by the family policy council, and two private, nonprofit agencies with expertise and experience in preservation services shall submit to the legislature an implementation and evaluation plan that identifies:

(1) A valid and reliable process that can be used by case-workers for accurately identifying clients who are eligible for intensive family preservation services and family preservation services. The plan shall recognize the due process rights of families that receive preservation services and recognize that family preservation services are not intended to be investigative for purposes of chapter 13.34 RCW;

(2) Necessary data by which program success will be measured, projections of service needs, budget requests, and long-range planning;

(3) Regional and statewide projections of service needs;

(4) A cost estimate for statewide implementation and expansion of preservation services on a phased-in basis beginning no later than July 1, 1996;

(5) A plan and time frame for phased-in implementation of preservation services on a statewide basis to be accomplished as soon as possible but no later than July 1, 1997;

(6) Data regarding the number of children in foster care, group care, institutional placements, and other out-of-home placements due to medical needs, mental health needs, developmental disabilities, and juvenile offenses, and an assessment of the feasibility of providing preservation services to include all of these children;

(7) Standards and outcome measures for the department when the department provides preservation services directly; and

(8) A process to assess outcome measures identified in RCW 74.14C.030 for contractors providing preservation services. [1995 c 311 § 9; 1992 c 214 § 6.]

**74.14C.060 Funds, volunteer services.** For the purpose of providing preservation services the department may:

(1) Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and

(2) Use any available state resources, which may include in-kind resources or volunteer services. [1995 c 311 § 10; 1992 c 214 § 7.]

**74.14C.065 Federal funds.** Any federal funds made available under RCW 74.14C.060 shall be used to supplement and shall not supplant state funds to carry out the purposes of this chapter. However, during the 1995-97 fiscal biennium, federal funds made available under RCW 74.14C.060 may be used to supplant state funds to carry out the purposes of this chapter. [1995 2nd sp.s. c 18 § 922; 1992 c 214 § 11.]

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report.** The secretary of social and health services, or the secretary's regional designee, may transfer funds

appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and with the approval of the office of financial management. The department shall present an annual report to the legislature regarding any transfers under this section only if transfers occur. The department shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The department shall also include in the report information regarding:

- (1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services;
- (2) The average length of time before the child is placed out-of-home;
- (3) The average length of time the child is placed out-of-home; and
- (4) The number of families that refused the offer of either family preservation services or intensive family preservation services. [2003 c 207 § 3; 1995 c 311 § 11; 1994 c 288 § 3; 1992 c 214 § 9.]

**Funds transfer review:** "The juvenile issues task force established under chapter 234, Laws of 1991, shall review the advisability of transferring appropriated funds from foster care to purchase family preservation services for children at imminent risk of foster care placement and include findings and recommendations on the transfer of funds to the appropriate committees of the senate and house of representatives by December 15, 1992. The task force shall identify ways to improve the foster care system and expand family preservation services with the savings generated by avoiding the placement of children at imminent risk of foster care placement through the provision of family preservation services." [1992 c 214 § 10.]

**74.14C.080 Data collection—Reports to the legislature.** The department shall collect data regarding the rates at which intensive family preservation services prevent out-of-home placements over varying periods of time. The department shall make an initial report to the appropriate committees of the legislature of the data, and the proposed rules to implement this section, by December 1, 1995. The department shall present a report to the appropriate committees of the legislature on September 1st of each odd-numbered year, commencing on September 1, 1997. [1995 c 311 § 5.]

**74.14C.090 Reports on referrals and services.** Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the assistant secretary quarterly on the provision of these services for the entire region. The assistant secretary shall make a

semiannual report to the secretary on the provision of these services on a statewide basis. [1995 c 311 § 8.]

**74.14C.100 Training and consultation for department personnel—Training for judges and service providers.** (1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

- (a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;
- (b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;
- (c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;
- (d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and
- (e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the administrative office of the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [2005 c 282 § 48; 1995 c 311 § 12.]

**74.14C.900 Severability—1992 c 214.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 214 § 13.]

## Chapter 74.15 RCW

### CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

#### Sections

74.15.010	Declaration of purpose.
74.15.020	Definitions.
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- 74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules.
- 74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance.
- 74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts.
- 74.15.280 Emergency respite centers—Licensing—Rules.
- 74.15.300 Enforcement action—Definition.
- 74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26.
- 74.15.901 Federal waivers—1999 c 267 §§ 10-26.

*Adoption: Chapter 26.33 RCW.*

*Age of majority: Chapter 26.28 RCW.*

*Birthing centers: Chapter 18.46 RCW.*

*Child abuse: Chapter 26.44 RCW.*

*Immunization program, applicability to day care centers: RCW 28A.210.060 through 28A.210.170.*

*Liability insurance for foster parents: RCW 74.14B.080.*

*Liability of foster parents: RCW 4.24.590.*

*Out-of-home placement—Court action upon filing of child in need of services petition—Child placement: RCW 13.32A.160.*

*Uniform Parentage Act: Chapter 26.26 RCW.*

**74.15.010 Declaration of purpose.** The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

(1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;

(2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;

(3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;

(4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies car-

ing for children, expectant mothers and developmentally disabled persons. [1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

**Intent—1995 c 302:** "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**Severability—1967 c 172:** "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.]

**74.15.020 Definitions.** For the purpose of this chapter and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(b) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(c) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(d) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen

through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(e) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(f) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(g) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(h) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(i) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(j) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, second cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated;

(v) Relatives, as named in (i), (ii), (iii), or (iv) of this subsection (2)(a), of any half sibling of the child; or

(vi) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(f) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(g) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(h) Licensed physicians or lawyers;

(i) Facilities approved and certified under chapter 71A.22 RCW;

(j) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(k) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(l) An agency operated by any unit of local, state, or federal government or an agency licensed by an Indian tribe pursuant to RCW 74.15.190;

(m) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(n) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

(3) "Department" means the state department of social and health services.

(4) "Family child care licensee" means a person who: (a) Provides regularly scheduled care for a child or children in

the home of the provider for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours; (b) does not receive child care subsidies; and (c) is licensed by the state under RCW 74.15.030.

(5) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(6) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(7) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(8) "Secretary" means the secretary of social and health services.

(9) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(10) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2007 c 412 § 1. Prior: 2006 c 265 § 401; 2006 c 90 § 1; 2006 c 54 § 7; prior: 2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3; 1997 c 245 § 7; prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54:** See RCW 41.56.911 through 41.56.914.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Alphabetization—1998 c 269:** See note following RCW 13.50.010.

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Severability—Effective date—1991 c 128:** See RCW 19.166.900 and 19.166.901.

**Severability—1988 c 176:** See RCW 71A.10.900.

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**74.15.030 Powers and duties of secretary.** The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and

competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

(i) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(j) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(k) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(l) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(m) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [2007 c 387 § 5; 2007 c 17 § 14. Prior: 2006 c 265 § 402; 2006 c 54 § 8; 2005 c 490 § 11; prior: 2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c

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189 § 3; prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

**Reviser's note:** This section was amended by 2007 c 17 § 14 and by 2007 c 387 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Part headings not law—Severability—Conflict with federal requirements—Short title—2006 c 54:** See RCW 41.56.911 through 41.56.914.

**Effective date—2005 c 490:** See note following RCW 43.215.540.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**74.15.031 County regulation of family day-care centers—Twelve-month pilot projects.** (1) Notwithstanding RCW 74.15.030, counties with a population of three thousand or less may adopt and enforce ordinances and regulations as provided in this section for family day-care providers as defined in \*RCW 74.15.020(1)(f) as a twelve-month pilot project. Before a county may regulate family day-care providers in accordance with this section, it shall adopt ordinances and regulations that address, at a minimum, the following: (a) The size, safety, cleanliness, and general adequacy of the premises; (b) the plan of operation; (c) the character, suitability, and competence of a family day-care provider and other persons associated with a family day-care provider directly responsible for the care of children served; (d) the number of qualified persons required to render care; (e) the provision of necessary care, including food, clothing, supervision, and discipline; (f) the physical, mental, and social well-being of children served; (g) educational and recreational opportunities for children served; and (h) the maintenance of records pertaining to children served.

(2) The county shall notify the department of social and health services in writing sixty days prior to adoption of the family day-care regulations required pursuant to this section. The transfer of jurisdiction shall occur when the county has notified the department in writing of the effective date of the regulations, and shall be limited to a period of twelve months from the effective date of the regulations. Regulation by counties of family day-care providers as provided in this section shall be administered and enforced by those counties. The department shall not regulate these activities nor shall the department bear any civil liability under chapter 74.15 RCW for the twelve-month pilot period. Upon request, the department shall provide technical assistance to any county that is in the process of adopting the regulations required by this section, and after the regulations become effective.

(3) Any county regulating family day-care providers pursuant to this section shall report to the governor and the appropriate committees of the legislature concerning the outcome of the pilot project upon expiration of the twelve-month pilot period. The report shall include the ordinances and regulations adopted pursuant to subsection (1) of this section and a description of how those ordinances and regulations

address the specific areas of regulation identified in subsection (1) of this section. [2005 c 509 § 1.]

**\*Reviser's note:** Chapter 265, Laws of 2006, deleted the definition of "family day-care provider" in RCW 74.15.020 and created it in RCW 43.215.010.

**Effective date—2005 c 509:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 509 § 2.]

**74.15.040 Licenses for foster-family homes required—Inspections.** An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. The department shall inquire whether an applicant has previously resided in any other state or foreign country and shall check databases available to it through the Washington state patrol and federal bureau of investigation to ascertain whether the applicant has ever been the subject of a conviction or civil finding outside of the state of Washington that bears upon the fitness of the applicant to serve as a foster-family home. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031. [2008 c 232 § 3; 1982 c 118 § 7; 1979 c 141 § 356; 1967 c 172 § 4.]

**Finding—2008 c 232:** See note following RCW 26.44.240.

**74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol.** The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a \*provisional license may be issued as provided in RCW

74.15.120. [1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

**\*Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**74.15.060 Health protection—Powers and duties of secretary of health.** The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a \*provisional license may be issued as provided in RCW 74.15.120. [1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

**\*Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**74.15.070 Articles of incorporation and amendments—Copies to be furnished to department.** A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of social and health services at the time such articles or amendments are filed. [1979 c 141 § 358; 1967 c 172 § 7.]

**74.15.080 Access to agencies, records.** All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**74.15.090 Licenses required for agencies.** Except as provided in RCW 74.15.190, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW. [1987 c 170 § 14; 1982 c 118 § 10; 1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

**Severability—1987 c 170:** See note following RCW 13.04.030.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**74.15.100 License application, issuance, duration—Reclassification.** Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family homes having an acceptable history of child care, the license may remain in effect for two weeks after a move, except that this will apply only if the family remains intact. [2006 c 265 § 403; 1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**74.15.110 Renewal of licenses.** If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license except that a request for renewal of a foster family home license shall be filed prior to the expiration of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1991 c 14 § 1; 1967 c 172 § 11.]

**74.15.120 Initial licenses.** The secretary of social and health services may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as spec-

ified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

**74.15.125 Probationary licenses.** (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [1995 c 302 § 7.]

**Intent—1995 c 302:** See note following RCW 74.15.010.

**74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.** (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revoca-

tion, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded, inconclusive, or screened-out report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed two hundred fifty dollars per violation for group homes and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties. [2007 c 220 § 6; 2006 c 265 § 404; 2005 c 473 § 6; 1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Purpose—2005 c 473:** See note following RCW 74.15.300.

**Intent—1995 c 302:** See note following RCW 74.15.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**74.15.132 Adjudicative proceedings—Training for administrative law judges.** (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

- (a) Child abuse, neglect, and maltreatment;
- (b) Child protective services investigations and standards;
- (c) Licensing activities and standards;
- (d) Child development; and
- (e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [1995 c 302 § 6.]

**Intent—1995 c 302:** See note following RCW 74.15.010.

**74.15.134 License or certificate suspension—Non-compliance with support order—Reissuance.** The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a \*residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the secretary's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 858.]

**\*Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**74.15.140 Action against licensed or unlicensed agencies authorized.** Notwithstanding the existence or pursuit of any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 363; 1967 c 172 § 14.]

**74.15.150 Penalty for operating without license.** Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 13; 1967 c 172 § 15.]

**74.15.160 Continuation of existing licensing rules.** Existing rules for licensing adopted pursuant to \*chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15 RCW and RCW 74.13.031, but not thereafter. [1982 c 118 § 14; 1967 c 172 § 16.]

\*Reviser's note: Chapter 74.14 RCW was repealed by 1967 c 172 § 23.

**74.15.170 Agencies, homes conducted by religious organizations—Application of chapter.** Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

**74.15.180 Designating home or facility as semi-secure facility.** The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

**74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children.** (1)(a) The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption.

(b) The state of Washington recognizes the ability of the Indian tribes within the state to enter into agreements with the state to license agencies located on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care.

(c) The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of \*RCW 74.15.030 (2)(b) and (3) and sup-

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porting rules are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency.

(2) The department may enter into written agreements with Indian tribes within the state to define the terms under which the tribe may license agencies pursuant to subsection (1) of this section. The agreements shall include a definition of what are the geographic boundaries of the tribe for the purposes of licensing and may include locations on or near the federally recognized Indian reservation or, for those federally recognized tribes that do not have a reservation, then on or near the federally designated service delivery area.

(3) The department and its employees are immune from civil liability for damages arising from the conduct of agencies licensed by a tribe. [2006 c 90 § 2; 1987 c 170 § 13.]

\*Reviser's note: RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

Severability—1987 c 170: See note following RCW 13.04.030.

**74.15.200 Child abuse and neglect prevention training to parents and day care providers.** The department of social and health services shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [1987 c 489 § 5.]

Intent—1987 c 489: See note following RCW 28A.300.150.

**74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules.** (1) Whenever the secretary contracts with a service provider to operate a community facility, the contract shall include a requirement that each service provider must report to the department any known infraction or violation of conditions committed by any juvenile under its supervision. The report must be made immediately upon learning of serious infractions or violations and within twenty-four hours for other infractions or violations.

(2) The secretary shall adopt rules to implement and enforce the provisions of this section. The rules shall contain a schedule of monetary penalties not to exceed the total compensation set forth in the contract, and include provisions that allow the secretary to terminate all contracts with a service provider that has violations of this section and the rules adopted under this section.

(3) The secretary shall document in writing all violations of this section and the rules adopted under this section, penalties, actions by the department to remove juveniles from a community facility, and contract terminations. The department shall give great weight to a service provider's record of violations, penalties, actions by the department to remove juveniles from a community facility, and contract terminations in determining to execute, renew, or renegotiate a contract with a service provider. [1998 c 269 § 7.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

**74.15.220 HOPE centers—Establishment—Requirements.** The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

- (1) A license issued by the secretary;
- (2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:
  - (a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;
  - (b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;
  - (c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;
  - (d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;
  - (e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(4) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall only award contracts for the operation of HOPE center beds and responsible living skills programs in departmental regions: (a) With operating secure crisis residential centers; or (b) in which the secretary finds significant progress is made toward opening a secure crisis residential center. [1999 c 267 § 12.]

**Phase in of beds—1999 c 267 §§ 12 and 13:** "Within funds specifically appropriated by the legislature, HOPE center beds referenced in section 12 of this act and responsible living skills program beds referenced in section 13 of this act shall be phased in at the rate of twenty-five percent each year beginning January 1, 2000, until the maximum is attained." [1999 c 267 § 26.]

**Effective date—1999 c 267 §§ 12 and 13:** "Sections 12 and 13 of this act take effect January 1, 2000." [1999 c 267 § 27.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.225 HOPE centers—Eligibility—Minors.** To be eligible for placement in a HOPE center, a minor must be either a street youth, as that term is defined in this chapter, or a youth who, without placement in a HOPE center, will continue to participate in increasingly risky behavior. Youth may also self-refer to a HOPE center. Payment for a HOPE center bed is not contingent upon prior approval by the department. [2008 c 267 § 10.]

**74.15.230 Responsible living skills programs—Established—Requirements.** The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

- (1) A license issued by the secretary;
- (2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;
- (3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;
- (4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and
- (5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.
- (6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational. [1999 c 267 § 13.]

(2008 Ed.)

**Phase in of beds—Effective date—1999 c 267 §§ 12 and 13:** See notes following RCW 74.15.220.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.240 Responsible living skills program—Eligibility.** To be eligible for placement in a responsible living skills program, the minor must be dependent under chapter 13.34 RCW and must have lived in a HOPE center or in a secure crisis residential center. However, if the minor's case-worker determines that placement in a responsible living skills program would be the most appropriate placement given the minor's current circumstances, prior residence in a HOPE center or secure crisis residential center before placement in a responsible living program is not required. Responsible living skills centers are intended as a placement alternative for dependent youth that the department chooses for the youth because no other services or alternative placements have been successful. Responsible living skills centers are not for dependent youth whose permanency plan includes return to home or family reunification. [2008 c 267 § 11; 1999 c 267 § 14.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules.** The secretary is authorized to license HOPE centers and responsible living skills programs that meet statutory and rule requirements created by the secretary. The secretary is authorized to develop rules necessary to carry out the provisions of sections 10 through 26, chapter 267, Laws of 1999. The secretary may rely upon existing licensing provisions in development of licensing requirements for HOPE centers and responsible living skills programs, as are appropriate to carry out the intent of sections 10 through 26, chapter 267, Laws of 1999. HOPE centers and responsible living skills programs shall be required to adhere to departmental regulations prohibiting the use of alcohol, tobacco, controlled substances, violence, and sexual activity between residents. [1999 c 267 § 15.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance.** The department shall provide technical assistance in preparation of grant proposals for HOPE centers and responsible living skills programs to nonprofit organizations unfamiliar with and inexperienced in submission of requests for proposals to the department. [1999 c 267 § 21.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts.** The department shall consider prioritizing, on an ongoing basis, the awarding of contracts for HOPE centers and responsible living skills programs to providers who have not traditionally been awarded contracts with the department. [1999 c 267 § 22.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.280 Emergency respite centers—Licensing—Rules.** The secretary is authorized to license emergency respite centers. The department may adopt rules to specify licensing requirements for emergency respite centers. [2001 c 230 § 2.]

**74.15.300 Enforcement action—Definition.** For the purposes of chapter 473, Laws of 2005, "enforcement action" means denial, suspension, revocation, modification, or non-renewal of a license pursuant to RCW 74.15.130(1) or assessment of civil monetary penalties pursuant to RCW 74.15.130(4). [2005 c 473 § 2.]

**Purpose—2005 c 473:** "The legislature recognizes that child care providers provide valuable services for the families of Washington state and are an important part of ensuring the healthy growth and development of young children. It also recognizes the importance of ensuring that operators of child day-care centers and family day-care providers are providing safe and quality care and operating in compliance with minimal standards.

The legislature further recognizes that parents, as consumers, have an interest in obtaining access to information that is relevant to making informed decisions about the persons with whom they entrust the care of their children. The purpose of this act is to establish a system, consistent throughout the state, through which parents, guardians, and other persons acting in loco parentis can obtain certain information about child care providers." [2005 c 473 § 1.]

**74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26.** Sections 10 through 26, chapter 267, Laws of 1999 may be referred to as the homeless youth prevention, protection, and education act, or the HOPE act. Every day many youth in this state seek shelter out on the street. A nurturing nuclear family does not exist for them, and state-sponsored alternatives such as foster homes do not meet the demand and isolate youth, who feel like outsiders in families not their own. The legislature recognizes the need to develop placement alternatives for dependent youth ages sixteen to eighteen, who are living on the street. The HOPE act is an effort to engage youth and provide them access to services through development of life skills in a setting that supports them. Nothing in sections 10 through 26, chapter 267, Laws of 1999 shall constitute an entitlement. [1999 c 267 § 10.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**74.15.901 Federal waivers—1999 c 267 §§ 10-26.** The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding. [1999 c 267 § 23.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

## Chapter 74.18 RCW

### DEPARTMENT OF SERVICES FOR THE BLIND

#### Sections

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**74.18.010 Intent.** The purposes of this chapter are to promote employment and independence of blind persons in the state of Washington through their complete integration into society on the basis of equality, and to encourage public acceptance of the abilities of blind persons. [2003 c 409 § 2; 1983 c 194 § 1.]

**Findings—2003 c 409:** "The legislature finds and declares the following:

- (1) Thousands of citizens in the state have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.
- (2) Governmental and nonprofit organizations provide access to reading material by specialized means, including books and magazines prepared in braille, audio, and large-type formats.
- (3) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.
- (4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational opportunities, literacy, and full participation in society by people with print disabilities.
- (5) Creation and storage of information by computer results in electronic files used for publishing and distribution.
- (6) The use of high-speed computer and telecommunications technology combined with customized software provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution by telephone.
- (7) Telephonic distribution of time-sensitive information, including daily newspapers, will enhance the state's current efforts to meet the needs of blind and disabled citizens for access to information which is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals." [2003 c 409 § 1.]

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

(1) "Department" means an agency of state government called the department of services for the blind.

(2) "Director" means the director of the department of services for the blind. The director is appointed by the governor with the consent of the senate.

(3) "Rehabilitation council for the blind" means the body of members appointed by the governor in accordance with the provisions of RCW 74.18.070 to advise the state agency.

(4) "Blind person" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; (b) has an eye condition of a progressive nature which may lead to blindness; or (c) is blind for purposes of the business enterprise program as set forth in RCW 74.18.200 through 74.18.230 in accordance with requirements of the Randolph-Sheppard Act of 1936.

(5) "Telephonic reading service" means audio information provided by telephone, including the acquisition and distribution of daily newspapers and other information of local, state, or national interest. [2003 c 409 § 3; 1983 c 194 § 2.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.030 Department created.** There is hereby created an agency of state government to be known as the department of services for the blind. The department shall deliver services to blind persons to the extent that appropriations are made available, provided that applicants meet the eligibility criteria for services authorized by this chapter. [1983 c 194 § 3.]

**74.18.040 Director—Appointment—Salary.** The executive head of the department shall be the director of the department of services for the blind. The director shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director's salary shall be fixed by the governor in accordance with the provisions of RCW 43.03.040. [1983 c 194 § 4.]

**74.18.045 Telephonic reading service.** (1)(a) The director shall provide access to a telephonic reading service for blind and disabled persons.

(b) The director shall establish criteria for eligibility for blind and disabled persons who may receive the telephonic reading services. The criteria may be based upon the eligibility criteria for persons who receive services established by the national library service for the blind and physically handicapped of the library of congress.

(2) The director may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

(3) The director may expand the type and scope of materials available on the telephonic reading service in order to meet the local, regional, or foreign language needs of blind or visually impaired residents of this state. The director may also expand the scope of services and availability of telephonic reading services by current methods and technologies that may be developed. The director may inform current and potential patrons of the availability of telephonic reading services through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(4) The director may expend moneys from the business enterprises revolving account accrued from vending machine sales in state and local government buildings, as well as donations and grants, for the purpose of supporting the cost of activities described in this section. [2003 c 409 § 4.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.050 Appointment of personnel.** The director may appoint such personnel as necessary, none of whom shall be members of the rehabilitation council for the blind. The director and other personnel who are assigned substantial responsibility for formulating agency policy or directing and controlling a major administrative division, together with their confidential secretaries, up to a maximum of six persons, shall be exempt from the provisions of chapter 41.06 RCW. [2003 c 409 § 5; 1983 c 194 § 5.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.060 Department—Powers and duties.** The department shall:

(1) Serve as the sole agency of the state for contracting for and disbursing all federal and state funds appropriated for programs established by and within the jurisdiction of this chapter, and make reports and render accounting as may be required;

(2) Adopt rules, in accordance with chapter 34.05 RCW, necessary to carry out the purposes of this chapter;

(3) Negotiate agreements with other state agencies to provide services so that individuals of any age who are blind or are both blind and otherwise disabled receive the most beneficial services. [2003 c 409 § 6; 1983 c 194 § 6.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.070 Rehabilitation council for the blind—Membership.** (1) There is hereby created the rehabilitation council for the blind. The rehabilitation council shall consist of the minimum number of voting members to meet the requirements of the rehabilitation council required under the federal rehabilitation act of 1973 as now or hereafter amended. A majority of the voting members shall be blind persons. Rehabilitation council members shall be residents of the state of Washington, and shall be appointed in accordance with the categories of membership specified in the federal rehabilitation act of 1973 as now or hereafter amended. The director of the department shall be an ex officio, nonvoting member.

(2) The governor shall appoint members of the rehabilitation council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the rehabilitation council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the rehabilitation council for cause. [2003 c 409 § 7; 2000 c 57 § 1; 1983 c 194 § 7.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.080 Rehabilitation council for the blind—Meetings—Travel expenses.** (1) The rehabilitation council for the blind shall meet officially with the director of the department quarterly to perform the duties enumerated in RCW 74.18.090. Additional meetings of the rehabilitation council may be convened at the call of the chairperson or of a majority of the members. The rehabilitation council shall elect a chairperson from among its members for a term of one year or until a successor has been elected.

(2) Rehabilitation council members shall receive reimbursement for travel expenses incurred in the performance of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2000 c 57 § 2; 1983 c 194 § 8.]

**74.18.090 Rehabilitation council for the blind—Powers.** The rehabilitation council for the blind may:

(1) Provide counsel to the director in developing, reviewing, making recommendations, and agreeing on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind persons, and other major policies which impact the quality or quantity of services for blind persons;

(2) Undertake annual reviews with the director of the needs of blind persons, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director;

(5) Perform additional functions as required by the federal rehabilitation act of 1973 as now or hereafter amended. [2003 c 409 § 8; 2000 c 57 § 3; 1983 c 194 § 9.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.100 Rehabilitation council for the blind—Director to consult.** It shall be the duty of the director to consult in a timely manner with the rehabilitation council for the blind on the matters enumerated in RCW 74.18.090. The director shall provide appropriate departmental resources for the use of the rehabilitation council in conducting its official business. [2000 c 57 § 4; 1983 c 194 § 10.]

**74.18.110 Receipt of gifts, grants, and bequests.** The department may receive, accept, and disburse gifts, grants, conveyances, devises, and bequests from public or private sources, in trust or otherwise, if the terms and conditions thereof will provide services for blind persons in a manner consistent with the purposes of this chapter and with other provisions of law. Any money so received shall be deposited in the state treasury for investment or expenditure in accordance with the conditions of its receipt. [2003 c 409 § 9; 1983 c 194 § 11.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.120 Administrative hearing—Appeal—Rules.** (1) An applicant or eligible person who is dissatisfied with a decision, action, or inaction made by the department or its agents regarding that person's eligibility or department services provided to that person is entitled to an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter 34.05 RCW by an administrative law judge.

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(2) The applicant or eligible individual may appeal final decisions issued following administrative hearings under RCW 34.05.510 through 34.05.598.

(3) The department shall develop rules governing other processes for dispute resolution as required under the federal rehabilitation act of 1973. [2003 c 409 § 10; 1989 c 175 § 150; 1983 c 194 § 12.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**74.18.123 Background checks—Individuals having unsupervised access to persons with significant disabilities—Rules.** (1) The department shall investigate the conviction records, pending charges, and disciplinary board final decisions of individuals acting on behalf of the department who will or may have unsupervised access to persons with significant disabilities as defined by the federal rehabilitation act of 1973. This includes:

- (a) Current employees of the department;
- (b) Applicants seeking or being considered for any position with the department; and
- (c) Any service provider, contractor, student intern, volunteer, or other individual acting on behalf of the department.

(2) The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. If the applicant or service provider has had a background check within the previous two years, the department may waive the requirement.

(3) When necessary, applicants may be employed and service providers may be engaged on a conditional basis pending completion of the background check.

(4) The department shall use the information solely to determine the character, suitability, and competence of employees, applicants, service providers, contractors, student interns, volunteers, and other individuals in accordance with RCW 41.06.475.

(5) The department shall adopt rules addressing procedures for undertaking background checks which shall include, but not be limited to, the following:

(a) The manner in which the individual will be provided access to and review of information obtained based on the background check required;

(b) Assurance that access to background check information shall be limited to only those individuals processing the information at the department;

(c) Action that shall be taken against a current employee, service provider, contractor, student intern, or volunteer who is disqualified from a position because of a background check not previously performed.

(6) The department shall determine who will pay costs associated with the background check. [2003 c 409 § 11.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.127 Confidentiality of personal information, records—Rules.** (1) Personal information and records

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obtained and retained by the department concerning applicants and eligible individuals are confidential, are not subject to public disclosure, and may be released only in accordance with law or with this provision.

(2) The department shall adopt rules and develop contract language to safeguard the confidentiality of all personal information, including photographs and lists of names. Rules and contract language shall ensure that:

(a) Specific safeguards are established to protect all current and future stored personal information;

(b) Specific safeguards and procedures are established for the release of personal health information in accordance with the health insurance portability and accountability act of 1996, 45 C.F.R. 160 through 45 C.F.R. 164;

(c) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed upon initial intake of the confidentiality of personal information and the conditions for accessing and releasing this information;

(d) All applicants or their representatives are informed about the department's need to collect personal information and the policies governing its use, including: (i) Identification of the authority under which information is collected; (ii) explanation of the principal purposes for which the department intends to use or release the information; (iii) explanation of whether providing requested information to the department is mandatory or voluntary and the effects of not providing requested information; (iv) identification of those situations in which the department requires or does not require informed written consent of the individual before information may be released; and (v) identification of other agencies to which information is routinely released; and

(e) An explanation of department policies and procedures affecting personal information will be provided at intake or on request to each individual in that individual's native language and in an appropriate format including but not limited to braille, audio recording, electronic media, or large print. [2003 c 409 § 12.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.130 Vocational rehabilitation—Eligibility.** The department shall provide a program of vocational rehabilitation to assist blind persons to overcome barriers to employment and to develop skills necessary for employment and independence. Applicants eligible for vocational rehabilitation services shall be blind persons who also meet eligibility requirements as specified in the federal rehabilitation act of 1973. [2003 c 409 § 13; 1983 c 194 § 13.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.140 Vocational rehabilitation—Services.** The department shall ensure that vocational rehabilitation services in accordance with requirements under the federal rehabilitation act of 1973 are available to meet the identified requirements of each eligible individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [2003 c 409 § 14; 1983 c 194 § 14.]

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**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.150 Vocational rehabilitation—Grants of equipment and material.** The department may grant to eligible participants in the vocational rehabilitation program equipment and materials in accordance with the provisions related to transfer of capital assets as set forth by the office of financial management in the state administrative and accounting manual, provided that the equipment or materials are required by the individual's plan for employment and are used in a manner consistent therewith. The department shall adopt rules to implement this section. [2003 c 409 § 15; 1996 c 7 § 1; 1983 c 194 § 15.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.170 Rehabilitation or habilitation facilities authorized.** The department may establish, construct, and/or operate rehabilitation or habilitation facilities to provide instruction in alternative skills necessary to adjust to blindness or substantial vision loss, to assist blind persons to develop increased confidence and independence, or to provide other services consistent with the purposes of this chapter. The department shall adopt rules concerning selection criteria for participation, services, and other matters necessary for efficient and effective operation of such facilities. [2003 c 409 § 16; 1983 c 194 § 16.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.180 Services for independent living.** (1) The department may provide a program of independent living services for blind persons who are not seeking vocational rehabilitation services.

(2) Independent living services may include, but are not limited to, instruction in adaptive skills of blindness, counseling regarding adjustment to vision loss, and provision of adaptive devices that enable service recipients to participate in the community and maintain or increase their independence. [2003 c 409 § 17; 1983 c 194 § 18.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.190 Services to blind children and their families.** (1) The department may offer services to assist blind children and their families to learn skills and locate resources which increase the child's ability for personal development and participation in society.

(2) Services provided under this section may include:

(a) Direct consultation with blind children and their families to provide needs assessment, counseling, developmental training, adaptive skills, and information regarding other available resources;

(b) Consultation and technical assistance in all sectors of society, at the request of a blind child, his or her family, or a service provider working with the child or family, to assure the blind child's rights to participate fully in educational, vocational, and social opportunities. The department is encouraged to establish working agreements and arrangements with community organizations and other state agencies which provide services to blind children.

(3) To facilitate the coordination of services to blind children and their families, the office of superintendent of

public instruction and the department of services for the blind shall negotiate an interagency agreement providing for coordinated service delivery and the sharing of information between the two agencies, including an annual register of blind students in the state of Washington. [1983 c 194 § 19.]

**74.18.200 Business enterprises program—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply in RCW 74.18.200 through 74.18.230.

(1) "Business enterprises program" means a program operated by the department under the federal Randolph-Sheppard Act, 20 U.S.C. Sec. 107 et seq., and under this chapter in support of blind persons operating vending businesses in public buildings.

(2) "Vending facility" means any stand, snack bar, cafeteria, or business at which food, tobacco, sundries, or other retail merchandise or service is sold or provided.

(3) "Vending machine" means any coin-operated machine that sells or provides food, tobacco, sundries, or other retail merchandise or service.

(4) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual selects.

(5) "Licensee" means a blind person licensed by the state of Washington under the Randolph-Sheppard Act, this chapter, and the rules issued hereunder.

(6) "Public building" means any building and immediately adjacent outdoor space associated therewith, such as a patio or entryway, which is: (a) Owned by the state of Washington or any political subdivision thereof or any space leased by the state of Washington or any political subdivision thereof in any privately-owned building; and (b) dedicated to the administrative functions of the state or any political subdivision. However, this term shall not include property under the jurisdiction and control of a local board of education without the consent of such board.

(7) "Priority" means the department has first and primary right to operate the food service and vending facilities, including vending machines, on federal, state, county, municipal, and other local government property except those otherwise exempted by statute. Such right may, at the sole discretion of the department, be waived in the event that the department is temporarily unable to assert the priority. [2003 c 409 § 18; 1985 c 97 § 1; 1983 c 194 § 20.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.210 Business enterprises program—Purposes.** The department shall maintain or cause to be maintained a business enterprises program for blind persons to operate vending facilities in public buildings. The purposes of the business enterprises program are to implement the Randolph-Sheppard Act and thereby give priority to qualified blind persons in operating vending facilities on federal property, to

make similar provisions for vending facilities in public buildings in the state of Washington and thereby increase employment opportunities for blind persons, and to encourage blind persons to become successful, independent business persons. [2003 c 409 § 19; 1983 c 194 § 21.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

**74.18.220 Business enterprises program—Vending facilities in public buildings.** (1) The department is authorized to license blind persons to operate vending facilities and vending machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state, or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and vending machines in public buildings. [1983 c 194 § 22.]

**74.18.230 Business enterprises revolving account.** (1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises program, which will pay only the blind vendors' portion, at the subscriber's rate, for the purpose of funding a plan of health insurance for blind vendors, as provided in RCW 41.05.225. Net proceeds, for purposes of this section, means gross sales less state sales tax and a fair minimum return to the vending machine owner or service provider, which return shall be a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving account shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act. [2003 c 409 § 20; 2002 c 71 § 2; 1993 c 369 § 1; 1991 sp.s. c 13 §§ 19, 116. Prior: 1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

**Findings—2003 c 409:** See note following RCW 74.18.010.

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

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

**74.18.901 Conflict with federal requirements.** If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and the findings or determination shall not affect the operation of the remainder of this chapter. [1983 c 194 § 25.]

**74.18.902 Severability—1983 c 194.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1983 c 194 § 31.]

**74.18.903 Effective dates—1983 c 194.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Section 27 of this act which transfers functions from the commission for the blind to the department of social and health services and section 26 of this act shall take effect immediately. All other sections of this act shall take effect June 30, 1983. [1983 c 194 § 33.]

### Chapter 74.20 RCW

#### SUPPORT OF DEPENDENT CHILDREN

##### Sections

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*Child support registry: Chapter 26.23 RCW.*

*Temporary assistance for needy families: Chapter 74.12 RCW.*

**74.20.010 Purpose—Legislative intent—Chapter to be liberally construed.** It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to par-

tially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement statute administered by the department. It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards. [1979 ex.s. c 171 § 24; 1979 c 141 § 364; 1963 c 206 § 1; 1959 c 322 § 2.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.021 Definitions.** See RCW 74.20A.020.

**74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules.** (1) Whenever the department receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required by subsection (6) of this section or through regulation issued by the secretary. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions

issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21A, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary, in the case of an individual who has never received assistance under a state program funded under part A and for whom the state has collected at least five hundred dollars of support, shall impose an annual fee of twenty-five dollars for each case in which services are furnished, which shall be retained by the state from support collected on behalf of the individual, but not from the first five hundred dollars of support. The secretary may, on showing of necessity, waive or defer any such fee or cost.

(7) Fees, due and owing, may be retained from support payments directly or collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21A RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by which said fee may be collected or to facilitate payment of the amount of delinquent support moneys or fees owed.

(9) The secretary shall adopt rules conforming to federal laws, including but not limited to complying with section 7310 of the federal deficit reduction act of 2005, 42 U.S.C. Sec. 654, and rules and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [2007 c 143 § 5; 1997 c 58 § 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1984 c 260:** See RCW 26.18.900.

**74.20.045 Employment status—Self-employed individuals—Enforcement.** The office of support enforcement shall, as a matter of policy, use all available remedies for the enforcement of support obligations where the obligor is a self-employed individual. The office of support enforcement shall not discriminate in favor of certain obligors based upon employment status. [1994 c 299 § 16.]

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

**74.20.055 Designated agency under federal law—Role of prosecuting attorneys.** The department of social and health services office of support enforcement is the designated agency in Washington state to administer the child support program under Title IV-D of the federal social security act and is responsible for providing necessary and mandated support enforcement services and ensuring that such services are available statewide. It is the intent of the legislature to enhance the total child support program in this state by granting the office of support enforcement administrative powers and flexibility. If the exercise of this authority is used to supplant or replace the role of the prosecuting attorneys for reasons other than economy or federal compliance, the Washington association of prosecuting attorneys shall report to the committees on judiciary of the senate and house of representatives. [1985 c 276 § 17.]

**74.20.057 Adjudicative proceedings—Role of department.** When the department appears or participates in an adjudicative proceeding under chapter 26.23 or 74.20A RCW it shall:

- (1) Act in furtherance of the state's financial interest in the matter;
- (2) Act in the best interests of the children of the state;
- (3) Facilitate the resolution of the controversy; and
- (4) Make independent recommendations to ensure the integrity and proper application of the law and process.

In the proceedings the department does not act on behalf or as an agent or representative of an individual. [1994 c 230 § 18.]

**74.20.060 Cooperation by person having custody of child—Penalty.** Any person having the care, custody or control of any dependent child or children who shall fail or refuse to cooperate with the department of social and health services, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1979 c 141 § 365; 1959 c 322 § 7.]

**74.20.065 Wrongful deprivation of custody—Legal custodian excused from support payments.** If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from

support payments for a child or children receiving or on whose behalf public assistance was provided under chapter 74.12 RCW, or for a child or children on behalf of whom the department is providing nonassistance support enforcement services. [2002 c 199 § 4; 1983 1st ex.s. c 41 § 31.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.20.101 Payment of support moneys to state support registry—Notice—Effects of noncompliance.** (1) A responsible parent shall make all support payments through the office of support enforcement or the Washington state support registry if:

(a) The parent's support order contains a provision directing the parent to make support payments through the office of support enforcement or the Washington state support registry; or

(b) If the parent has received written notice from the office of support enforcement under RCW 26.23.110, 74.20A.040, or 74.20A.055 that all future support payments must be made through the office of support enforcement or the Washington state support registry.

(2) A responsible parent who has been ordered or notified to make support payments to the office of support enforcement or the Washington state support registry shall not receive credit for payments which are not paid to the office of support enforcement or the Washington state support registry unless:

(a) The department determines that the granting of credit would not prejudice the rights of the residential parent or other person or agency entitled to receive the support payments and circumstances of an equitable nature exist; or

(b) A court, after a hearing at which all interested parties were given an opportunity to be heard, on equitable principles, orders that credit be given.

(3) The rights of the payee under an order for support shall not be prejudiced if the department grants credit under subsection (2)(a) of this section. If the department determines that credit should be granted pursuant to subsection (2) of this section, the department shall mail notice of its decision to the last known address of the payee, together with information about the procedure to contest the determination. [1989 c 360 § 7; 1987 c 435 § 30; 1979 ex.s. c 171 § 13; 1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

**Effective date—1987 c 435:** See RCW 26.23.900.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.160 Department may disclose information to internal revenue department.** Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of health, education and welfare of the federal government, the department of social and health services may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1979 c 141 § 366; 1963 c 206 § 5; 1959 c 322 § 17.]

(2008 Ed.)

**74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney.** The prosecuting attorney of any county except a county with a population of one million or more may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of \*chapter 26.21 RCW as it is now or hereafter amended (\*\*Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1991 c 363 § 150; 1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

**Reviser's note:** \*(1) Chapter 26.21 RCW was repealed by 2002 c 198 § 901, effective January 1, 2007. Later enactment, see chapter 26.21A RCW.

\*\* (2) The "Uniform Reciprocal Enforcement of Support Act" was redesignated the "Uniform Interstate Family Support Act" by 1993 c 318.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**74.20.220 Powers of department through the attorney general or prosecuting attorney.** In order to carry out its responsibilities imposed under this chapter and as required by federal law, the state department of social and health services, through the attorney general or prosecuting attorney, is hereby authorized to:

(1) Initiate an action in superior court to obtain a support order or obtain other relief related to support for a dependent child on whose behalf the department is providing public assistance or support enforcement services under RCW 74.20.040, or to enforce a superior court order.

(2) Appear as a party in dissolution, child support, parentage, maintenance suits, or other proceedings, for the purpose of representing the financial interest and actions of the state of Washington therein.

(3) Petition the court for modification of a superior court order when the office of support enforcement is providing support enforcement services under RCW 74.20.040.

(4) When the attorney general or prosecuting attorney appears in, defends, or initiates actions to establish, modify, or enforce child support obligations he or she represents the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other individual.

(5) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general or prosecuting attorney may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his or her failure to comply with any order of support previously entered.

(6) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children.

(7) Nothing in this section limits the authority of the attorney general or prosecuting attorney to use any and all civil and criminal remedies to enforce, establish, or modify child support obligations whether or not the custodial parent receives public assistance. [1991 c 367 § 44; 1979 c 141 § 367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**74.20.225 Subpoena authority—Enforcement.** In carrying out the provisions of this chapter or chapters 26.18, 26.23, 26.26, and 74.20A RCW, the secretary and other duly authorized officers of the department may subpoena witnesses, take testimony, and compel the production of such papers, books, records, and documents as they may deem relevant to the performance of their duties. The division of child support may enforce subpoenas issued under this power according to RCW 74.20A.350. [1997 c 58 § 898.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20.230 Petition for support order by married parent with minor children who are receiving public assistance.** Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of support should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**74.20.240 Petition for support order by married parent with minor children who are receiving public assistance—Order—Powers of court.** (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power

to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

**74.20.250 Petition for support order by married parent with minor children who are receiving public assistance—Waiver of filing fees.** The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

**74.20.260 Financial statements by parent whose absence is basis of application for public assistance.** Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his current monthly income, his total income over the past twelve months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses and such other information as is pertinent to determining his ability to support his children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [1979 c 141 § 368; 1963 c 206 § 11.]

**74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records.** The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning the parents of dependent children, to coordinate and supervise departmental activities in relation to such parents, to assure effective cooperation with law enforcement agencies, and to perform other functions authorized by state and federal support enforcement and child custody statutes and regulations.

To effectuate the purposes of this section, the secretary may request from state, county and local agencies all information and assistance as authorized by this chapter. Upon the request of the department of social and health services, all state, county and city agencies, officers and employees shall cooperate in the location of the parents of a dependent child and shall supply the department with all information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, courts having jurisdiction in support and/or abandonment proceedings or actions, or other authorized agencies or persons for use consistent with the intent of state and federal support enforcement and child custody stat-

utes and regulations. [1983 1st ex.s. c 41 § 15; 1979 c 141 § 370; 1963 c 206 § 13.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.20.300 Department exempt from fees relating to paternity or support.** No filing or recording fees, court fees, or fees for making copies of documents shall be required from the state department of social and health services by any county clerk, county auditor, or other county officer for the filing of any actions or documents necessary to establish paternity or enforce or collect support moneys.

Filing fees shall also not be required of any prosecuting attorney or the attorney general for action to establish paternity or enforce or collect support moneys. [1979 ex.s. c 171 § 1; 1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

**Severability—1979 ex.s. c 171:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 171 § 28.]

**74.20.310 Guardian ad litem in actions brought to determine parent and child relationship—Notice.** (1) The provisions of RCW 26.26.555 requiring appointment of a guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26 RCW if:

(a) The action is brought by the attorney general on behalf of the department of social and health services and the child; or

(b) The action is brought by any prosecuting attorney on behalf of the state and the child when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

(2) On the issue of parentage, the attorney general or prosecuting attorney functions as the child's guardian ad litem provided the interests of the state and the child are not in conflict.

(3) The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary.

(4) The summons shall contain a notice to the parents that pursuant to RCW 26.26.555 the parents have a right to move the court for a guardian ad litem for the child other than the prosecuting attorney or the attorney general subject to subsection (2) of this section. [2002 c 302 § 705; 1991 c 367 § 45; 1979 ex.s. c 171 § 15.]

**Application—Construction—Short title—Severability—2002 c 302:** See RCW 26.26.903, 26.26.911, and 26.26.912.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance.** Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted

to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing. [1997 c 58 § 935; 1979 ex.s. c 171 § 17.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services.** (1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state-funded program, or a program funded under Title IV-A, IV-E, or XIX of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services.

(3) Effective October 1, 2008, whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, a member of the family is deemed to have made an assignment to the state any right the family member may have, or on behalf of

the family member receiving such assistance, to support from any other person, not exceeding the total amount of assistance paid to the family, which accrues during the period that the family receives assistance under the program. [2007 c 143 § 6; 2000 c 86 § 6; 1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.340 Employees' case workload standards.** The department shall develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. [1998 c 245 § 150; 1979 ex.s. c 171 § 25.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.350 Costs and attorneys' fees.** In order to facilitate and ensure compliance with Title IV-D of the federal social security act, now existing or hereafter amended, wherein the state is required to undertake to establish paternity of such children as are born out of wedlock, the secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts of this state, who are engaged in private practice for the purpose of maintaining actions under chapter 26.26 RCW on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary's designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under chapter 26.26 RCW. The representation by a private attorney shall be only on behalf of the subject child, the custodial natural parent, and the child's personal representative or guardian ad litem, and shall not in any manner be, or be construed to be, in representation of the department of social and health services or the state of Washington, such representation being restricted to that provided pursuant to chapters 43.10 and 36.27 RCW. [1979 ex.s. c 171 § 19.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20.360 Orders for genetic testing.** (1) The division of child support may issue an order for genetic testing when providing services under this chapter and Title IV-D of the federal social security act if genetic testing:

(a) Is appropriate in an action under chapter 26.26 RCW, the uniform parentage act;

(b) Is appropriate in an action to establish support under RCW 74.20A.056; or

(c) Would assist the parties or the division of child support in determining whether it is appropriate to proceed with an action to establish or disestablish paternity.

(2) The order for genetic testing shall be served on the alleged parent or parents and the legal parent by personal service or by any form of mail requiring a return receipt.

(3) Within twenty days of the date of service of an order for genetic testing, any party required to appear for genetic testing, the child, or a guardian on the child's behalf, may petition in superior court under chapter 26.26 RCW to bar or postpone genetic testing.

(4) The order for genetic testing shall contain:

(a) An explanation of the right to proceed in superior court under subsection (3) of this section;

(b) Notice that if no one proceeds under subsection (3) of this section, the agency issuing the order will schedule genetic testing and will notify the parties of the time and place of testing by regular mail;

(c) Notice that the parties must keep the agency issuing the order for genetic testing informed of their residence address and that mailing a notice of time and place for genetic testing to the last known address of the parties by regular mail constitutes valid service of the notice of time and place;

(d) Notice that the order for genetic testing may be enforced through:

(i) Public assistance grant reduction for noncooperation, pursuant to agency rule, if the child and custodian are receiving public assistance;

(ii) Termination of support enforcement services under Title IV-D of the federal social security act if the child and custodian are not receiving public assistance;

(iii) A referral to superior court for an appropriate action under chapter 26.26 RCW; or

(iv) A referral to superior court for remedial sanctions under RCW 7.21.060.

(5) The department may advance the costs of genetic testing under this section.

(6) If an action is pending under chapter 26.26 RCW, a judgment for reimbursement of the cost of genetic testing may be awarded under RCW 26.26.570.

(7) If no action is pending in superior court, the department may impose an obligation to reimburse costs of genetic testing according to rules adopted by the department to implement RCW 74.20A.056. [2002 c 302 § 706; 1997 c 58 § 901.]

**Application—Construction—Short title—Severability—2002 c 302:** See RCW 26.26.903, 26.26.911, and 26.26.912.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

## Chapter 74.20A RCW

### SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

#### Sections

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*Birth certificate—Establishing paternity: RCW 70.58.080.*

*Child support enforcement: Chapter 26.18 RCW.*

*Child support registry: Chapter 26.23 RCW.*

**74.20A.010 Purpose—Remedies additional.** Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants for basic maintenance requirements when parents fail to meet

their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

**74.20A.020 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

(1) "Department" means the state department of social and health services.

(2) "Secretary" means the secretary of the department of social and health services, the secretary's designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a

dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(13) "Child support order" means a superior court order or an administrative order.

(14) "Financial institution" means:

(a) A depository institution, as defined in section 3(c) of the federal deposit insurance act;

(b) An institution-affiliated party, as defined in section 3(u) of the federal deposit insurance act;

(c) Any federal or state credit union, as defined in section 101 of the federal credit union act, including an institution-affiliated party of such credit union, as defined in section 206(r) of the federal deposit insurance act; or

(d) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.

(15) "License" means a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity to a licensee evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle. "License" does not mean the tax registration or certification issued under Title 82 RCW by the department of revenue.

(16) "Licensee" means any individual holding a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle.

(17) "Licensing entity" includes any department, board, commission, or other organization authorized to issue, renew, suspend, or revoke a license authorizing an individual to engage in a business, occupation, profession, industry, recreational pursuit, or the operation of a motor vehicle, and includes the Washington state supreme court, to the extent that a rule has been adopted by the court to implement suspension of licenses related to the practice of law.

(18) "Noncompliance with a child support order" for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreement with the department towards a support arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

(19) "Noncompliance with a residential or visitation order" means that a court has found the parent in contempt of court under RCW 26.09.160(3) for failure to comply with a residential provision of a court-ordered parenting plan. [1997 c 58 § 805; 1990 1st ex.s. c 2 § 15. Prior: 1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

*Birth certificate—Establishing paternity: RCW 70.58.080.*

#### **74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.**

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, or for the care and maintenance of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, and the federal deficit reduction act of 2005, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a child support order. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21A, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from, a residential habilitation center as defined by RCW 71A.10.020(8) unless the child with a developmental disability is placed as a result of an action under chapter 13.34 RCW. The child support obligation shall be calculated pursuant to chapter 26.19 RCW. [2007 c 143 § 7; 2004 c 183 § 5; 2000 c 86 § 7; 1997 c 58 § 934; 1993 sp.s. c 24 § 926; 1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Effective date—2004 c 183:** See note following RCW 13.34.160.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Severability—1988 c 176:** See RCW 71A.10.900.

**Effective date—1987 c 435:** See RCW 26.23.900.

**Severability—1984 c 260:** See RCW 26.18.900.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.035 Augmentation of paternity establishment services.** The department of social and health services shall augment its present paternity establishment services through the hiring of additional assistant attorneys general, or contracting with prosecutors or private attorneys licensed in the state of Washington in those judicial districts experiencing delay or an accumulation of unserved paternity cases. The employment of private attorneys shall be limited in scope to renewable six-month periods in judicial districts where the prosecutor or the attorney general cannot provide adequate, cost-effective service. The department of social and health services shall provide a written report of the circumstances requiring employment of private attorneys to the judiciary committees of the senate and house of representatives and provide copies of such reports to the office of the attorney general and to the Washington association of prosecuting attorneys. [1987 c 441 § 3.]

**Legislative findings—1987 c 441:** "The state of Washington through the department of social and health services is required by state and federal statutes to provide paternity establishment services. These statutes require that reasonable efforts to establish paternity be made, if paternity of the child is in question, in all public assistance cases and whenever such services are requested in nonassistance cases.

The increasing number of children being born out of wedlock together with improved awareness of the benefits to the child and society of having paternity established have resulted in a greater demand on the existing judicial paternity establishment system." [1987 c 441 § 1.]

**74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when.** (1) The secretary may issue a notice of a support debt accrued and/or accruing based upon RCW 74.20A.030, assignment of a support debt or a request for support enforcement services under RCW 74.20.040 (2) or (3), to enforce and collect a support debt created by a superior court order or administrative order. The

payee under the order shall be informed when a notice of support debt is issued under this section.

(2) The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or is authorized to enforce and collect under RCW 74.20A.030, has an assigned interest, or has been authorized to enforce pursuant to RCW 74.20.040 (2) or (3);

(b) A statement that the property of the debtor is subject to collection action;

(c) A statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and

(d) A statement that the net proceeds will be applied to the satisfaction of the support debt.

(4) Action to collect a support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt.

(5) The secretary shall not be required to issue or serve such notice of support debt prior to taking collection action under this chapter when a responsible parent's support order:

(a) Contains language directing the parent to make support payments to the Washington state support registry; and

(b) Includes a statement that income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided in RCW 26.23.050(1). [1989 c 360 § 8; 1985 c 276 § 2; 1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

**74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions—Rules.** (1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The

notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice;

(f) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer.

(9) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 8; 2002 c 199 § 5; 1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Effective date—1982 c 189:** See note following RCW 34.12.020.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules.** (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first-class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) Either or both parents are responsible for providing health insurance for their child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105;

(b) The alleged father or custodial parent may file an application for an adjudicative proceeding at which they both will be required to appear and show cause why the amount stated in the notice as to support is incorrect and should not be ordered;

(c) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(d) If neither the alleged father nor the custodial parent requests that a blood or genetic test be administered or files an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist.

(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under RCW 26.26.500 through 26.26.630 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(8)(a) Subsections (1) through (7) of this section do not apply to acknowledgments of paternity filed with the state registrar of vital statistics after July 1, 1997.

(b) If an acknowledged father has signed an acknowledgment of paternity that has been filed with the state registrar of vital statistics after July 1, 1997:

(i) The division of child support may serve a notice and finding of financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of paternity to the notice;

(ii) The notice shall include a statement that the acknowledged father or any other signatory may commence a proceeding in court to rescind or challenge the acknowledg-

ment or denial of paternity under RCW 26.26.330 and 26.26.335;

(iii) A statement that either or both parents are responsible for providing health insurance for his or her child if coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related as provided under RCW 26.09.105; and

(iv) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

(c) If neither the acknowledged father nor the other party to the notice files an application for an adjudicative proceeding or the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of paternity, the amount of support stated in the notice and finding of financial responsibility becomes final, subject only to a subsequent determination under RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

(d) An acknowledged father or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(e) If neither the acknowledged father nor the custodial parent requests an adjudicative proceeding, or if no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under RCW 26.26.500 through 26.26.630.

(9) Acknowledgments of paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26, the uniform parentage act, and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section.

(11) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under parts 45 C.F.R. 302, 303, 304, 305, and 308. [2007 c 143 § 9. Prior: 2002 c 302 § 707; 2002 c 199 § 6; 1997 c 58 § 941; prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Application—Construction—Short title—Severability—2002 c 302:** See RCW 26.26.903, 26.26.911, and 26.26.912.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

*Birth certificate—Establishing paternity:* RCW 70.58.080.

**74.20A.057 Jurisdiction over responsible parent.** A support obligation arising under the statutes or common law of this state binds the responsible parent, present in this state, regardless of the presence or residence of the custodian or children. The obligor is presumed to have been present in the state of Washington during the period for which support is sought until otherwise shown. The department may establish an administrative order pursuant to RCW 74.20A.055 that is based upon any support obligation imposed or impossible under the statutes or common law of any state in which the obligor was present during the period for which support is sought. [1985 c 276 § 15.]

**74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure.** (1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d).

(2) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a party requests an adjustment in an order for child support that was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based; or

(c) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(3) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require health insurance coverage for a child covered by the order; or

(b) Modify an existing order for health insurance coverage.

(2008 Ed.)

(4) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(5)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (4) of this section.

(b) If, pursuant to subsection (4) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (4) of this section may be filed.

(6) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments as defined in \*section 24 of this act is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(8) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(9) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(10) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW. [1991 c 367 § 47.]

\*Reviser's note: "Section 24 of this act" was vetoed by the governor.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**74.20A.060 Assertion of lien—Effect.** (1) The secretary may assert a lien upon the real or personal property of a responsible parent:

(a) When a support payment is past due, if the parent's support order contains notice that liens may be enforced against real and personal property, or notice that action may be taken under this chapter;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055;

(d) Twenty-one days after service of a notice and finding of parental responsibility;

(e) Twenty-one days after service of a notice of support owed under RCW 26.23.110; or

(f) When appropriate under RCW 74.20A.270.

(2) The division of child support may use uniform interstate lien forms adopted by the United States department of health and human services to assert liens on a responsible parent's real and personal property located in another state.

(3) The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located.

(4) Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless:

(a) A written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state; or

(b) A determination has been made in an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1997 c 58 § 906. Prior: 1989 c 360 § 9; 1989 c 175 § 153; 1979 ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—1989 c 360 §§ 9, 10, 16, and 39:** "(1) Sections 9, 10, and 16 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1989].

(2) Section 39 of this act shall take effect July 1, 1990." [1989 c 360 § 43.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.070 Service of lien.** (1) The secretary may at any time after filing of a support lien serve a copy of the lien upon any person, firm, corporation, association, political subdivision, or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor.

(2) The support lien shall be served upon the person, firm, corporation, association, political subdivision, or department of the state:

(a) In the manner prescribed for the service of summons in a civil action;

(b) By certified mail, return receipt requested; or

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, or department of the state to accept service by electronic means.

(3) No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon the person, firm, corporation, association, political subdivision, or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section. [1997 c 130 § 6; 1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

*Civil procedure—Commencement of actions: Chapter 4.28 RCW.*

**74.20A.080 Order to withhold and deliver—Issuance and service—Contents—Effect—Duties of person served—Processing fee.** (1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested;

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means;

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (d)(i) or (ii) of

this subsection is required for initiating an action to ensure employer compliance with the withholding requirement; or

(v) By regular mail to an address if designated by the financial institution as a central levy or garnishment address, and if the notice is clearly identified as a levy or garnishment order. Before the division of child support may initiate an action for noncompliance with a withholding action against a financial institution, the division of child support must serve the order to withhold and deliver on the financial institution in the manner described in (d)(i) or (ii) of this subsection.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in this state or in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the order to withhold and deliver in the case where the order was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Within seven working days deliver the property to the secretary;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order;

(c) A person or entity, other than an employer as defined in Title 50 RCW, who has received the order to withhold and deliver does not possess property of or owe money to the debtor; or

(d) An employer who has received the order to withhold and deliver no longer employs, contracts, or owes money to the debtor under a contract of employment, express or implied.

(8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver. [2002 c 199 § 7; 2000 c 86 § 8; 1998 c 160 § 1. Prior: 1997 c 130 § 7; 1997 c 58 § 907; 1994 c 230

§ 20; prior: 1989 c 360 § 10; 1989 c 175 § 154; 1985 c 276 § 6; 1979 ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

**Effective date—1998 c 160 §§ 1, 5, and 8:** "Sections 1, 5, and 8 of this act take effect October 1, 1998." [1998 c 160 § 9.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—1989 c 360 §§ 9, 10, 16, and 39:** See note following RCW 74.20A.060.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined.** Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 6.27.150 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050 or Title 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1982 1st ex.s. c 18 § 12. Prior: 1982 c 201 § 21; 1979 ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

**Severability—Conflict with federal requirements—1982 1st ex.s. c 18:** See notes following RCW 50.12.200.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.095 Support enforcement services—Action against earnings within state—Notice.** When providing support enforcement services, the office of support enforcement may take action, under this chapter and chapter 26.23 RCW, against a responsible parent's earnings or assets, located in, or subject to the jurisdiction of, the state of Wash-

ington regardless of the presence or residence of the responsible parent. If the responsible parent resides in another state or country, the office of support enforcement shall, unless otherwise authorized by state or federal law, serve a notice under RCW 74.20A.040 more than sixty days before taking collection action. [2000 c 86 § 9; 1991 c 367 § 48.]

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**74.20A.100 Civil liability upon failure to comply with order or lien—Collection.** (1) Any person, firm, corporation, association, political subdivision, or department of the state shall be liable to the department, or to the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act and issuing a notice, garnishment, or wage assignment attaching wages or earnings in satisfaction of a support obligation, in the amount that should have been withheld, together with costs, interest, and reasonable attorney fees if that person or entity:

(a) Fails to answer an order to withhold and deliver, or substantially similar action issued by the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act, within the time prescribed herein;

(b) Fails or refuses to deliver property pursuant to said order;

(c) After actual notice of filing of a support lien, pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien to or for the benefit of the debtor or any other person;

(d) Fails or refuses to surrender property distrained under RCW 74.20A.130 upon demand; or

(e) Fails or refuses to honor an assignment of earnings presented by the secretary.

(2) The secretary is authorized to issue a notice of non-compliance under RCW 74.20A.350 or to proceed in superior court to obtain a judgment for noncompliance under this section. [1997 c 296 § 15; 1997 c 58 § 895; 1989 c 360 § 5; 1985 c 276 § 7; 1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

**Reviser's note:** This section was amended by 1997 c 58 § 895 and by 1997 c 296 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.110 Release of excess to debtor.** Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1979 ex.s. c 171 § 7; 1971 ex.s. c 164 § 11.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.120 Banks, savings and loan associations, credit unions—Service on main office or branch, effect—Collection actions against community bank account, right to adjudicative proceeding.** A lien, order to withhold and deliver, or any other notice or document authorized by this chapter or chapter 26.23 RCW may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of such financial institution. Service on the main office shall be effective to attach the deposits of a responsible parent in the financial institution and compensation payable for personal services due the responsible parent from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the responsible parent, excluding compensation payable for personal services, in the possession or control of the particular branch served.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely application, has a right to an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200. [1989 c 360 § 30; 1989 c 175 § 155; 1983 1st ex.s. c 41 § 3; 1971 ex.s. c 164 § 12.]

**Reviser's note:** This section was amended by 1989 c 175 § 155 and by 1989 c 360 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure.** Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property subject to said lien. Not less than ten days prior to the date of sale, the secretary shall cause a copy of the notice of sale to be transmitted by regular mail and by any form of mailing requiring a return receipt to the debtor and any person known to have or claim an interest in the property. Said notice shall contain a general description of the property to be sold and the time, date, and place of the sale. The notice of sale shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at

public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [1987 c 435 § 32; 1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

**Effective date—1987 c 435:** See RCW 26.23.900.

**74.20A.140 Action for foreclosure of support lien—Satisfaction.** Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

**74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption.** Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to

him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

**74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases.** With respect to any arrearages on a support debt assessed under this chapter, the secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon a support debt. The secretary may, upon petition of the debtor providing sufficient evidence of hardship, after consideration of the child support schedule adopted under \*RCW 26.19.040, release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of the responsible parent or parents and minor children in the home of the responsible parent. Nothing in this section shall be construed to require the secretary to take any action which would require collection of less than the obligation for current support required under a superior court order or an administrative order or to take any action which would result in a bar of collection of arrearages from the debtor by reason of the statute of limitations. [1988 c 275 § 11; 1985 c 276 § 8; 1979 ex.s. c 171 § 8; 1971 ex.s. c 164 § 16.]

**\*Reviser's note:** RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.170 Secretary may release lien or order or return seized property—Effect.** The secretary may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

**74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy.** If the secretary finds that the collection of any support debt, accrued under a support order, based upon subrogation or an authorization to enforce and collect under RCW 74.20A.030, or assignment of, or a request for support enforcement services to enforce and collect the amount of support ordered by any support order is in jeopardy, the secretary may make a written demand under RCW 74.20A.040 for immediate payment of the support debt and, upon failure or refusal immediately to pay said support debt, may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: PROVIDED, That no further action under RCW 74.20A.080, 74.20A.130, and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [2000 c 86 § 10;

1985 c 276 § 9; 1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

**74.20A.188 Request for assistance on automated enforcement of interstate case—Certification required.**

(1) Before the state may assist another state or jurisdiction with a high-volume automated administrative enforcement of an interstate case, the requesting state must certify that:

(a) The requesting state has met all due process requirements for the establishment of the support order;

(b) The requesting state has met all due process requirements for the enforcement of the support order, including that the obligor has been notified that another state may take action against the obligor's wages, earnings, assets, or benefits, and may enforce against the obligor's real and personal property under the child support statutes of this state or any other state without further notice; and

(c) The amount of arrears transmitted by the requesting state is due under the support order.

(2) Receipt of a request for assistance on automated enforcement of an interstate case by the state constitutes certification under this section. [2000 c 86 § 11.]

**74.20A.200 Judicial relief after administrative remedies exhausted.**

Any person against whose property a support lien has been filed or an order to withhold and deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is located. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1985 c 276 § 10; 1979 ex.s. c 171 § 9; 1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection.**

Any support debt due the department from a responsible parent may be written off and cease to be accounted as an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise, or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms. [1989 c 360 § 4; 1989 c 78 § 2; 1979 ex.s. c 171 § 16; 1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

**Reviser's note:** This section was amended by 1989 c 78 § 2 and by 1989 c 360 § 4, each without reference to the other. Both amendments are

incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.230 Employee debtor rights protected—Remedies.** No employer shall discharge or discipline an employee or refuse to hire a person for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings. If an employer discharges or disciplines an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1985 c 276 § 11; 1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

**74.20A.240 Assignment of earnings to be honored—Effect—Processing fee.** Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment. A person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the assignment of earnings under this chapter is not civilly liable to the debtor for complying with the assignment of earnings under this chapter. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process except for another wage assignment, garnishment, attachment, or other legal process for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed fifteen dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings. [1997 c 296 § 16; 1994 c 230 § 21; 1985 c 276 § 12; 1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

**74.20A.250 Secretary empowered to act as attorney, endorse drafts.** Whenever the secretary has been authorized

under RCW 74.20.040 to take action to establish, enforce, and collect support moneys, the custodial parent and the child or children are deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney-in-fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children to effect proper and lawful distribution of the support moneys in accordance with 42 U.S.C. Sec. 657. [1985 c 276 § 13; 1979 ex.s. c 171 § 20; 1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.260 Industrial insurance disability payments subject to collection by office of support enforcement.** Disability payments made pursuant to Title 51 RCW shall be classified as earnings and shall be subject to collection action by the office for support enforcement under this chapter and all other applicable state statutes. [1987 c 435 § 34; 1973 1st ex.s. c 183 § 24.]

**Effective date—1987 c 435:** See RCW 26.23.900.

**74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim.** (1) The secretary may issue a notice of retained support or notice to recover a support payment to any person:

(a) Who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW;

(b) Who has received a support payment erroneously directed to the wrong payee, or issued by the department in error; or

(c) Who is in possession of a support payment obtained through the internal revenue service tax refund offset process, which payment was later reclaimed from the department by the internal revenue service as a result of an amended tax return filed by the obligor or the obligor's spouse.

(2) The notice shall state the legal basis for the claim and shall provide sufficient detail to enable the person to identify the support moneys in issue.

(3) The department shall serve the notice by certified mail, return receipt requested, or in the manner of a summons in a civil action.

(4) The amounts claimed in the notice shall become assessed, determined, and subject to collection twenty days from the date of service of the notice unless within those twenty days the person in possession of the support moneys:

(a) Acknowledges the department's right to the moneys and executes an agreed settlement providing for repayment of the moneys; or

(b) Requests an adjudicative proceeding to determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department

ment. The burden of proof to establish ownership of the support moneys claimed is on the department.

(5) After the twenty-day period, a person served with a notice under this section may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending the final administrative order. Any such moneys held and/or taken by collection action after the date of any such stay shall be held by the department pending the final order, to be disbursed in accordance with the final order.

(6) If the debtor fails to attend or participate in the hearing or other stage of an adjudicative proceeding, the presiding officer shall, upon showing of valid service, enter an order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action.

(7) The department may take action to collect an obligation established under this section using any remedy available under this chapter or chapter 26.09, 26.18, 26.23, or 74.20 RCW for the collection of child support.

(8) If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in an adjudicative proceeding, the judgment shall supersede the final administrative order. The department may take action pursuant to chapter 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

(9) If a person owing a debt established under this section is receiving public assistance, the department may collect the debt by offsetting up to ten percent of the grant payment received by the person. No collection action may be taken against the earnings of a person receiving cash public assistance to collect a debt assessed under this section.

(10) Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected under this section. [1997 c 58 § 896. Prior: 1989 c 360 § 35; 1989 c 175 § 156; 1985 c 276 § 14; 1984 c 260 § 41; 1979 ex.s. c 171 § 18.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1984 c 260:** See RCW 26.18.900.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.275 Support payments in possession of third parties—Collection.** (1) If a person or entity not entitled to child support payments wrongfully or negligently retains child support payments owed to another or to the Washington state support registry, those payments retain their character as child support payments and may be collected by the division of child support using any remedy available to the division of child support under Washington law for the collection of child support.

(2) Child support moneys subject to collection under this section may be collected for the duration of the statute of limitations as it applies to the support order governing the support obligations, and any legislative or judicial extensions thereto.

(3) This section applies to the following:

(a) Cases in which an employer or other entity obligated to withhold child support payments from the parent's pay, bank, or escrow account, or from any other asset or distribution of money to the parent, has withheld those payments and failed to remit them to the payee;

(b) Cases in which child support moneys have been paid to the wrong person or entity in error;

(c) Cases in which child support recipients have retained child support payments in violation of a child support assignment executed or arising by operation of law in exchange for the receipt of public assistance; and

(d) Any other case in which child support payments are retained by a party not entitled to them.

(4) This section does not apply to fines levied under RCW 74.20A.350(3)(b). [1997 c 58 § 892.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.280 Department to respect privacy of recipients.** While discharging its responsibilities to enforce the support obligations of responsible parents, the department shall respect the right of privacy of recipients of public assistance and of other persons. Any inquiry about sexual activity shall be limited to that necessary to identify and locate possible fathers and to gather facts needed in the adjudication of parentage. [1987 c 441 § 2; 1979 ex.s. c 171 § 23.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.290 Applicant for adjudicative proceeding must advise department of current address.** Whenever any person files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it shall be the responsibility of the person to notify the department of the person's mailing address at the time the application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the administrative proceeding and any judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and 34.05 RCW. [1989 c 175 § 157; 1979 ex.s. c 171 § 21.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**74.20A.300 Health insurance coverage required.** (1) Whenever a support order is entered or modified under this chapter, the department shall require the responsible parent to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable to the department within twenty days of the entry of the order.

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with \*RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [1994 c 230 § 22; 1989 c 416 § 6.]

**\*Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8 that were subsequently vetoed by the governor.

**74.20A.310 Federal and state cooperation—Rules—Construction.** In furtherance of the policy of the state to cooperate with the federal government in the administration of the child support enforcement program, the department may adopt such rules and regulations as may become necessary to entitle the state to participate in federal funds, unless such rules would be expressly prohibited by law. Any section or provision of law dealing with the child support program which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds. If any law dealing with the child support enforcement program is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1989 c 416 § 7.]

**74.20A.320 License suspension program—Noncompliance with a child support order—Certification of noncompliance—Notice, adjudicative proceeding—Stay of certification—Rules.** (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order. The department shall attach a copy of the responsible parent's child support order to the notice. Service of the notice must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the address and telephone number of the department's division of child support office that issues the notice and must inform the responsible parent that:

(a) The parent may request an adjudicative proceeding to contest the issue of compliance with the child support order. The only issues that may be considered at the adjudicative proceeding are whether the parent is required to pay child support under a child support order and whether the parent is in compliance with that order;

(b) A request for an adjudicative proceeding shall be in writing and must be received by the department within twenty days of the date of service of the notice;

(c) If the parent requests an adjudicative proceeding within twenty days of service, the department will stay action

to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order pending entry of a written decision after the adjudicative proceeding;

(d) If the parent does not request an adjudicative proceeding within twenty days of service and remains in noncompliance with a child support order, the department will certify the parent's name to the department of licensing and any appropriate licensing entity for noncompliance with a child support order;

(e) The department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance if the parent agrees to make timely payments of current support and agrees to a reasonable payment schedule for payment of the arrears. It is the parent's responsibility to contact in person or by mail the department's division of child support office indicated on the notice within twenty days of service of the notice to arrange for a payment schedule. The department may stay certification for up to thirty days after contact from a parent to arrange for a payment schedule;

(f) If the department certifies the responsible parent to the department of licensing and a licensing entity for noncompliance with a child support order, the licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(g) If the department certifies the responsible parent as a person who is in noncompliance with a child support order, the department of fish and wildlife will suspend the fishing license, hunting license, commercial fishing license, or any other license issued under chapters 77.32, 77.28 \*[75.28], and \*75.25 RCW that the responsible parent may possess. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapters 77.32 and \*75.25 RCW;

(h) Suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(i) If after receiving the notice of noncompliance with a child support order, the responsible parent files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, or if a motion for modification of a court or administrative order for child support is pending, the department or the court may stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification; and

(j) If the responsible parent subsequently becomes in compliance with the child support order, the department will promptly provide the parent with a release stating that the parent is in compliance with the order, and the parent may

request that the licensing entity or the department of licensing reinstate the suspended license.

(3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order; and

(c) The responsible parent is in compliance with the order.

(4) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(5) If a responsible parent contacts the department's division of child support office indicated on the notice of noncompliance within twenty days of service of the notice and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears. In no event shall the stay continue for more than thirty days from the date of contact by the parent. The department shall establish a schedule for payment of arrears that is fair and reasonable, and that considers the financial situation of the responsible parent and the needs of all children who rely on the responsible parent for support. At the end of the thirty days, if no payment schedule has been agreed to in writing and the department has acted in good faith, the department shall proceed with certification of noncompliance.

(6) If a responsible parent timely requests an adjudicative proceeding pursuant to subsection (4) of this section, the department may not certify the name of the parent to the department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order.

(7) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order or a residential or visitation order if:

(a) The responsible parent does not timely request an adjudicative proceeding upon service of a notice issued under subsection (1) of this section and is not in compliance with a child support order twenty-one days after service of the notice;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order;

(c) The court enters a judgment on a petition for judicial review that finds the responsible parent is not in compliance with a child support order;

(d) The department and the responsible parent have been unable to agree on a fair and reasonable schedule of payment of the arrears;

(e) The responsible parent fails to comply with a payment schedule established pursuant to subsection (5) of this section; or

\*\*The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record.

(8) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (7) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order or a residential or visitation order.

(9) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, or when the department receives a court order under \*\*\*section 886 of this act stating that the parent is in compliance with a residential or visitation order, the department shall promptly provide the parent with a release stating that the responsible parent is in compliance with the order. A copy of the release shall be transmitted by the department to the appropriate licensing entities.

(10) The department may adopt rules to implement and enforce the requirements of this section. The department shall deliver a copy of rules adopted to implement and enforce this section to the legislature by June 30, 1998.

(11) Nothing in this section prohibits a responsible parent from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. If there is a reasonable likelihood that a pending motion or request will significantly change the amount of the child support obligation, the department or the court may stay action to certify the responsible parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause to extend the stay. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification.

(12) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (9) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

(13) The procedures in chapter 58, Laws of 1997, constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422. [1997 c 58 § 802.]

**Reviser's note:** \*(1) Chapters 75.25 and 75.28 RCW were recodified, repealed, or decodified by 2000 c 107. See Comparative Table for that chapter in the Table of Disposition of Former RCW Sections, Volume 0.

\*\*\*(2) Subsection (7)(f) of this section was vetoed by the governor. The vetoed language is as follows:

"(f) The department is ordered to certify the responsible parent by a court order under section 887 of this act."

\*\*\*\*(3) Section 886 of this act was vetoed by the governor.

**Effective dates—1997 c 58:** "(2) Sections 801 through 887, 889, and 890 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(3) Sections 701 through 704 of this act take effect January 1, 1998.

(4) Section 944 of this act takes effect October 1, 1998." [1997 c 58 § 1013.]

\***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

**Intent—1997 c 58:** "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents.** (1) The department and all of the various licensing entities subject to RCW 74.20A.320 shall enter into such agreements as are necessary to carry out the requirements of the license suspension program established in RCW 74.20A.320.

(2) The department and all licensing entities subject to RCW 74.20A.320 shall compare data to identify responsible parents who may be subject to the provisions of chapter 58, Laws of 1997. The comparison may be conducted electronically, or by any other means that is jointly agreeable between the department and the particular licensing entity. The data shared shall be limited to those items necessary to [for] implementation of chapter 58, Laws of 1997. The purpose of the comparison shall be to identify current licensees who are not in compliance with a child support order, and to provide to the department the following information regarding those licensees:

- (a) Name;
- (b) Date of birth;
- (c) Address of record;

(d) Federal employer identification number and social security number;

(e) Type of license;

(f) Effective date of license or renewal;

(g) Expiration date of license; and

(h) Active or inactive status. [1997 c 58 § 803.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules.** (1) The division of child support may issue a notice of noncompliance to any person, firm, entity, or agency of state or federal government that the division believes is not complying with:

(a) A notice of payroll deduction issued under chapter 26.23 RCW;

(b) A lien, order to withhold and deliver, or assignment of earnings issued under this chapter;

(c) Any other wage assignment, garnishment, attachment, or withholding instrument properly served by the agency or firm providing child support enforcement services for another state, under Title IV-D of the federal social security act;

(d) A subpoena issued by the division of child support, or the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act;

(e) An information request issued by the division of child support, or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, to an employer or entity required to respond to such requests under RCW 74.20A.360; or

(f) The duty to report newly hired employees imposed by RCW 26.23.040.

(2) Liability for noncompliance with a wage withholding, garnishment, order to withhold and deliver, or any other lien or attachment issued to secure payment of child support is governed by RCW 26.23.090 and 74.20A.100, except that liability for noncompliance with remittance time frames is governed by subsection (3) of this section.

(3) The division of child support may impose fines of up to one hundred dollars per occurrence for:

(a) Noncompliance with a subpoena or an information request issued by the division of child support, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act;

(b) Noncompliance with the required time frames for remitting withheld support moneys to the Washington state support registry, or the agency or firm providing child support enforcement services for another state, except that no liability shall be established for failure to make timely remittance unless the division of child support has provided the person, firm, entity, or agency of state or federal government with written warning:

(i) Explaining the duty to remit withheld payments promptly;

(ii) Explaining the potential for fines for delayed submission; and

(iii) Providing a contact person within the division of child support with whom the person, firm, entity, or agency of state or federal government may seek assistance with child support withholding issues.

(4) The division of child support may assess fines according to RCW 26.23.040 for failure to comply with employer reporting requirements.

(5) The division of child support may suspend licenses for failure to comply with a subpoena issued under RCW 74.20.225.

(6) The division of child support may serve a notice of noncompliance by personal service or by any method of mailing requiring a return receipt.

(7) The liability asserted by the division of child support in the notice of noncompliance becomes final and collectible on the twenty-first day after the date of service, unless within that time the person, firm, entity, or agency of state or federal government:

(a) Initiates an action in superior court to contest the notice of noncompliance;

(b) Requests a hearing by delivering a hearing request to the division of child support in accordance with rules adopted by the secretary under this section; or

(c) Contacts the division of child support and negotiates an alternate resolution to the asserted noncompliance or demonstrates that the person, firm, entity, or agency of state or federal government has complied with the child support processes.

(8) The notice of noncompliance shall contain:

(a) A full and fair disclosure of the rights and obligations created by this section; and

(b) Identification of the:

(i) Child support process with respect to which the division of child support is alleging noncompliance; and

(ii) State child support enforcement agency issuing the original child support process.

(9) In an administrative hearing convened under subsection (7)(b) of this section, the presiding officer shall determine whether or not, and to what extent, liability for noncompliance exists under this section, and shall enter an order containing these findings. If liability does exist, the presiding officer shall include language in the order advising the parties to the proceeding that the liability may be collected by any means available to the division of child support under subsection (12) of this section without further notice to the liable party.

(10) Hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW.

(11) After the twenty days following service of the notice, the person, firm, entity, or agency of state or federal government may petition for a late hearing. A petition for a late hearing does not stay any collection action to recover the debt. A late hearing is available upon a showing of any of the grounds stated in civil rule 60 for the vacation of orders.

(12) The division of child support may collect any obligation established under this section using any of the remedies available under chapter 26.09, 26.18, \*26.21, 26.23, 74.20, or 74.20A RCW for the collection of child support.

(13) The division of child support may enter agreements for the repayment of obligations under this section. Agreements may:

(a) Suspend the obligation imposed by this section conditioned on future compliance with child support processes. Such suspension shall end automatically upon any failure to comply with a child support process. Amounts suspended become fully collectible without further notice automatically upon failure to comply with a child support process;

(b) Resolve amounts due under this section and provide for repayment.

(14) The secretary may adopt rules to implement this section. [1997 c 58 § 893.]

**\*Reviser's note:** Chapter 26.21 RCW was repealed by 2002 c 198 § 901, effective January 1, 2007. Later enactment, see chapter 26.21A RCW.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance.** (1) Notwithstanding any other provision of Washington law, the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act may access records of the following nature, in the possession of any agency or entity listed in this section:

(a) Records of state and local agencies, including but not limited to:

(i) The state registrar, including but not limited to records of birth, marriage, and death;

(ii) Tax and revenue records, including, but not limited to, information on residence addresses, employers, and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational, professional, and recreational licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs; and

(vii) Records of the department of corrections, and of county and municipal correction or confinement facilities;

(b) Records of public utilities and cable television companies relating to persons who owe or are owed support, or against whom a support obligation is sought, including names and addresses of the individuals, and employers' names and addresses pursuant to RCW 74.20.225 and RCW 74.20A.120; and

(c) Records held by financial institutions, pursuant to RCW 74.20A.370.

(2) Upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the social security act, any employer shall provide information as to the employment, earnings, benefits, and residential address and phone number of any employee.

(3) Entities in possession of records described in subsection (1)(a) and (c) of this section must provide information and records upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act. The division of child support may enter into agreements providing for electronic access to these records.

(4) Public utilities and cable television companies must provide the information in response to a judicial or administrative subpoena issued by the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act.

(5) Entities responding to information requests and subpoenas under this section are not liable for disclosing information pursuant to the request or subpoena.

(6) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120.

(7) The division of child support may impose fines for noncompliance with this section using the notice of noncompliance under RCW 74.20A.350. [1997 c 58 § 897.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.370 Financial institution data matches.** (1) Each calendar quarter financial institutions doing business in the state of Washington shall report to the department the name, record address, social security number or other taxpayer identification number, and other information determined necessary by the department for each individual who maintains an account at such institution and is identified by the department as owing a support debt.

(2) The department and financial institutions shall enter into agreements to develop and operate a data match system, using automated data exchanges to the extent feasible, to minimize the cost of providing information required under subsection (1) of this section.

(3) The department may pay a reasonable fee to a financial institution for conducting the data match not to exceed the actual costs incurred.

(4) A financial institution is not liable for any disclosure of information to the department under this section.

(5) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120. [1997 c 58 § 899.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**74.20A.900 Severability—Alternative when method of notification held invalid.** If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

*Civil procedure—Commencement of actions: Chapter 4.28 RCW.*

**74.20A.910 Savings clause.** The repeal of RCW 74.20A.050 and the amendment of RCW 74.20A.030 and 74.20A.250 by this 1979 act is not intended to affect any existing or accrued right, any action or proceeding already taken or instituted, any administrative action already taken, or any rule, regulation, or order already promulgated. The repeal and amendments are not intended to revive any law heretofore repealed. [1979 ex.s. c 171 § 27.]

**Severability—1979 ex.s. c 171:** See note following RCW 74.20.300.

**Chapter 74.25 RCW**

**JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM**

Sections

- 74.25.010 State policy—Legislative findings.
- 74.25.040 Volunteer work—Child care or other work—Training.

**74.25.010 State policy—Legislative findings.**

**Reviser's note:** RCW 74.25.010 was amended by 1997 c 59 § 29 without reference to its repeal by 1997 c 58 § 322. It has been decodified for publication purposes under RCW 1.12.025.

**74.25.040 Volunteer work—Child care or other work—Training.** (1) Recipients of temporary assistance for needy families who are employed or participating in a work activity under \*section 312 of this act may volunteer or work in a licensed child care facility. Licensed child care facilities participating in this effort shall provide care for the recipient's children and provide for the development of positive child care skills.

(2) The department shall train two hundred fifty recipients of temporary assistance for needy families to become family child care providers or child care center teachers. The department shall offer the training in rural and urban communities. The department shall adopt rules to implement the child care training program in this section.

(3) Recipients trained under this section shall provide child care services to clients of the department for two years following the completion of their child care training. [1997 c 59 § 30; 1997 c 58 § 405; 1994 c 299 § 8.]

**Reviser's note:** \*(1) Section 312 of this act was vetoed by the governor.

(2) This section was amended by 1997 c 58 § 405 and by 1997 c 59 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—1997 c 58:** See note following RCW 43.215.545.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Intent—Finding—Severability—Conflict with federal requirements—1994 c 299:** See notes following RCW 74.12.400.

## Chapter 74.25A RCW

## EMPLOYMENT PARTNERSHIP PROGRAM

## Sections

- 74.25A.005 Legislative findings.
- 74.25A.010 Employment partnership program—Created—Goals.
- 74.25A.020 Pilot projects—Grants to be used as wage subsidies—Criteria.
- 74.25A.030 Employer eligibility—Conditions.
- 74.25A.040 Diversion of grants to worker-owned businesses.
- 74.25A.045 Local employment partnership council.
- 74.25A.050 Program participants—Eligibility for assistance programs.
- 74.25A.060 Program participants—Benefits and salary not to be diminished.
- 74.25A.070 Program participants—Classification under federal job training law.
- 74.25A.080 Department of social and health services to seek federal funds.
- 74.25A.900 Intent—Finding—Severability—Conflict with federal requirements—1994 c 299.

**74.25A.005 Legislative findings.** The legislature finds that the restructuring in the Washington economy has created rising public assistance caseloads and declining real wages for Washington workers. There is a profound need to develop partnership programs between the private and public sectors to create new jobs with adequate salaries and promotional opportunities for chronically unemployed and underemployed citizens of the state. Most public assistance recipients want to become financially independent through paid employment. A voluntary program which utilizes public wage subsidies and employer matching salaries has provided a beneficial financial incentive allowing public assistance recipients transition to permanent full-time employment. [1994 c 299 § 19; 1986 c 172 § 1. Formerly RCW 50.63.010.]

**Report—1994 c 299:** "The department of social and health services shall report to the appropriate committees of the house of representatives and senate on the implementation of this employment partnership program for recipients of aid to families with dependent children by October 1, 1995." [1994 c 299 § 27.]

**74.25A.010 Employment partnership program—Created—Goals.** The employment partnership program is created to develop a series of geographically distributed model projects to provide permanent full-time employment for low-income and unemployed persons. The program shall be administered by the department of social and health services. The department shall contract for the program through local public or private nonprofit organizations. The goals of the program are as follows:

- (1) To reduce inefficiencies in administration and provide model coordination of agencies with responsibilities for employment and human service delivery to unemployed persons;
- (2) To create voluntary financial incentives to simultaneously reduce unemployment and welfare caseloads;
- (3) To provide other state and federal support services to the client population to enable economic independence;
- (4) To improve partnerships between the public and private sectors designed to move recipients of public assistance into productive employment; and
- (5) To provide employers with information on federal targeted jobs tax credit and other state and federal tax incentives for participation in the program. [1994 c 299 § 20; 1986 c 172 § 2. Formerly RCW 50.63.020.]

**74.25A.020 Pilot projects—Grants to be used as wage subsidies—Criteria.** The secretary of the department of social and health services shall establish pilot projects that enable grants to be used as a wage subsidy. The department of social and health services shall comply with applicable federal statutes and regulations, and shall seek any waivers from the federal government necessary to operate the employment partnership program. The projects shall be available on an individual case-by-case basis or subject to the limitations outlined in RCW 74.25A.040 for the start-up or reopening of a plant under worker ownership. The projects shall be subject to the following criteria:

- (1) It shall be a voluntary program and no person may have any sanction applied for failure to participate.
- (2) Employment positions established by this chapter shall not be created as the result of, nor result in, any of the following:
  - (a) Displacement of current employees, including overtime currently worked by these employees;
  - (b) The filling of positions that would otherwise be promotional opportunities for current employees;
  - (c) The filling of a position, before compliance with applicable personnel procedures or provisions of collective bargaining agreements;
  - (d) The filling of a position created by termination, lay-off, or reduction in workforce;
  - (e) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific work site, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff;
  - (f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers;
  - (g) Decertification of any collective bargaining unit.
- (3) Wages shall be paid at the usual and customary rate of comparable jobs and may include a training wage if permitted by applicable federal statutes and regulations;
- (4) A recoupment process shall recover state supplemented wages from an employer when a job does not last six months following the subsidization period for reasons other than the employee voluntarily quitting or being fired for good cause as determined by the local employment partnership council under rules prescribed by the secretary;
- (5) Job placements shall have promotional opportunities or reasonable opportunities for wage increases;
- (6) Other necessary support services such as training, day care, medical insurance, and transportation shall be provided to the extent possible;
- (7) Employers shall provide monetary matching funds of at least fifty percent of total wages;
- (8) Wages paid to participants shall be a minimum of five dollars an hour; and
- (9) The projects shall target the populations in the priority and for the purposes set forth in \*RCW 74.25.020, to the extent that necessary support services are available. [1994 c 299 § 21; 1986 c 172 § 3. Formerly RCW 50.63.030.]

**\*Reviser's note:** The 1994 c 299 amendments to RCW 74.25.020 were vetoed by the governor. RCW 74.25.020 was subsequently repealed by 1997 c 58 § 322.

**74.25A.030 Employer eligibility—Conditions.** An employer, before becoming eligible to fill a position under the employment partnership program, shall certify to the local employment partnership council that the employment, offer of employment, or work activity complies with the following conditions:

(1) The conditions of work are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(2) The assignments are not in any way related to political, electoral, or partisan activities;

(3) The employer shall provide industrial insurance coverage as required by Title 51 RCW;

(4) The employer shall provide unemployment compensation coverage as required by Title 50 RCW;

(5) The employment partnership program participants hired following the completion of the program shall be provided benefits equal to those provided to other employees including social security coverage, sick leave, the opportunity to join a collective bargaining unit, and medical benefits. [1994 c 299 § 22; 1986 c 172 § 4. Formerly RCW 50.63.040.]

**74.25A.040 Diversion of grants to worker-owned businesses.** Grants may be diverted for the start-up or retention of worker-owned businesses if:

(1) A feasibility study or business plan is completed on the proposed business; and

(2) The project is approved by the loan committee of the \*Washington state development loan fund as created by RCW 43.168.110. [1986 c 172 § 5. Formerly RCW 50.63.050.]

\*Reviser's note: The "Washington state development loan fund" was renamed the "rural Washington loan fund" pursuant to 1999 c 164 § 504.

**74.25A.045 Local employment partnership council.** A local employment partnership council shall be established in each pilot project area to assist the department of social and health services in the administration of this chapter and to allow local flexibility in dealing with the particular needs of each pilot project area. Each council shall be primarily responsible for recruiting and encouraging participation of employment providers in the project site. Each council shall be composed of nine members who shall be appointed by the county legislative authority of the county in which the pilot project operates. Councilmembers shall be residents of or employers in the pilot project area in which they are appointed and shall serve three-year terms. The council shall have two members who are current or former recipients of the aid to families with dependent children or temporary assistance for needy families programs or food stamp or benefits program, two members who represent labor, and five members who represent the local business community. In addition, one person representing the local community service office of the department of social and health services, one person representing a community action agency or other non-profit service provider, and one person from a local city or county government shall serve as nonvoting members. [1998 c 79 § 17; 1997 c 59 § 31; 1994 c 299 § 23.]

**74.25A.050 Program participants—Eligibility for assistance programs.** Participants shall be considered recipient

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of temporary assistance for needy families and remain eligible for medicaid benefits even if the participant does not receive a residual grant. Work supplementation participants shall be eligible for (1) the thirty-dollar plus one-third of earned income exclusion from income, (2) the work related expense disregard, and (3) any applicable child care expense disregard deemed available to recipient of aid in computing his or her grant under this chapter, unless prohibited by federal law. [1997 c 59 § 32; 1994 c 299 § 24; 1986 c 172 § 6. Formerly RCW 50.63.060.]

**74.25A.060 Program participants—Benefits and salary not to be diminished.** An applicant or recipient of aid under this chapter who participates in the employment partnership program shall be guaranteed that the value of the benefits available to him or her before entry into the program shall not be diminished. In addition, a participant employed under this chapter shall be treated in the same manner as are regular employees, and the participant's salary shall be the amount that he or she would have received if employed in that position and not participating under this chapter. [1986 c 172 § 7. Formerly RCW 50.63.070.]

**74.25A.070 Program participants—Classification under federal job training law.** Applicants for and recipients of aid under this chapter are "individuals in special need" of training as described in section 2 of the federal job training partnership act, 29 U.S.C. Sec. 1501 et seq., "individuals who require special assistance" as provided in section 123 of that act, and "most in need" of employment and training opportunities as described in section 141 of that act. [1986 c 172 § 8. Formerly RCW 50.63.080.]

**74.25A.080 Department of social and health services to seek federal funds.** The department of social and health services shall seek any federal funds available for implementation of this chapter, including, but not limited to, funds available under Title IV of the federal social security act (42 U.S.C. Sec. 601 et seq.) for the job opportunities and basic skills program. [1994 c 299 § 25; 1986 c 172 § 9. Formerly RCW 50.63.090.]

**74.25A.900 Intent—Finding—Severability—Conflict with federal requirements—1994 c 299.** See notes following RCW 74.12.400.

## Chapter 74.26 RCW

### SERVICES FOR CHILDREN WITH MULTIPLE HANDICAPS

#### Sections

74.26.010	Legislative intent.
74.26.020	Eligibility criteria.
74.26.030	Program plan for services—Local agency support.
74.26.040	Administrative responsibility—Regulations.
74.26.050	Contracts for services—Supervision.
74.26.060	Program costs—Liability of insurers.

**74.26.010 Legislative intent.** In recognition of the fact that there is a small population of children with multiple disabilities and specific and continuing medical needs now

being served in high-daily-cost hospitals that could be more appropriately and cost-efficiently served in alternative residential alternatives, it is the intent of the legislature to establish a controlled program to develop and review an alternative service delivery system for certain multiply handicapped children who have continuing intensive medical needs but who are not required to continue in residence in a hospital setting. [1980 c 106 § 1.]

**74.26.020 Eligibility criteria.** (1) To be eligible for services under this alternative program, a person must meet all the following criteria:

(a) The individual must be under twenty-two years of age;

(b) The individual must be under the care of a physician and such physician must diagnose the child's condition as sufficiently serious to warrant eligibility;

(c) The individual must be presently residing in, or in immediate jeopardy of residing in, a hospital or other residential medical facility for the purpose of receiving intensive support medical services; and

(d) The individual must fall within one of the four functional/medical definitional categories listed in subsection (2) of this section.

(2) Functional/medical definitional categories:

(a) Respiratory impaired; with an acquired or congenital defect of the oropharynx, trachea, bronchial tree, or lung requiring continuing dependency on a respiratory assistive device in order to allow the disease process to heal or the individual to grow to a sufficient size to live as a normal person;

(b) Respiratory with multiple physical impairments; with acquired or congenital defects of the central nervous system or multiple organ systems requiring continued dependency on a respiratory assistive device and/or other medical, surgical, and physical therapy treatments in order to allow the disease process to heal or the individual to gain sufficient size to permit surgical correction of the defect or the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(c) Multiply physically impaired; with congenital or acquired defects of multiple systems and at least some central nervous system impairment that causes loss of urine and stool sphincter control as well as paralysis or loss or reduction of two or more extremities, forcing the individual to be dependent on a wheelchair or other total body mobility device, also requiring medical, surgical, and physical therapy intervention in order to allow the individual to grow to a size that permits surgical correction of the defects or allows the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(d) Static encephalopathies; with severe brain insults of acquired or congenital origin causing the individual to be medically diagnosed as totally dependent for all bodily and social functions except cardiorespiratory so that the individual requires continuous long-term daily medical/nursing care. [1980 c 106 § 2.]

**74.26.030 Program plan for services—Local agency support.** (1) A written individual program plan shall be developed for each child served under this controlled program by the division of developmental disabilities in cooperation with the child's parents or if available, legal guardians, and under the supervision of the child's primary health care provider.

(2) The plan shall provide for the systematic provision of all required services. The services to be available as required by the child's individual needs shall include: (a) Nursing care, including registered and licensed practical nurses, and properly trained nurse's aides; (b) physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultive, or on-going treatment basis; (c) respiratory therapists and devices; (d) dental care of both routine and emergent nature; (e) on-going nutritional consultation from a trained professional; (f) communication disorder therapy; (g) physical and occupational habilitation and rehabilitation therapy and devices; (h) special and regular education; (i) recreation therapy; (j) psychological counseling; and (k) transportation.

(3) A portion of these required services can be provided from state and local agencies having primary responsibility for such services, but the ultimate responsibility for ensuring and coordinating the delivery of all necessary services shall rest with the division of developmental disabilities. [1980 c 106 § 3.]

**74.26.040 Administrative responsibility—Regulations.** The department of social and health services, division of developmental disabilities, shall bear all administrative responsibility for the effective and rapid implementation of this controlled program. The division shall promulgate regulations within sixty days after June 12, 1980, to provide minimum standards and qualifications for the following program elements:

- (1) Residential services;
- (2) Medical services;
- (3) Day program;
- (4) Facility requirements and accessibility for all buildings in which the program is to be conducted;
- (5) Staff qualifications;
- (6) Staff training;
- (7) Program evaluation; and
- (8) Protection of client's rights, confidentiality, and informed consent. [1980 c 106 § 4.]

**74.26.050 Contracts for services—Supervision.** The division of developmental disabilities shall implement this controlled program through a "request-for-proposal" method and subsequent contracts for services with any local, county, or state agency demonstrating a probable ability to meet the program's goals. The proposals must demonstrate an ability to provide or insure the provision of all services set forth in RCW 74.26.030 if necessary for the children covered by the proposals.

The division of developmental disabilities shall thoroughly supervise, review, and audit fiscal and program performance for the individuals served under this control program. A comparison of all costs incurred by all public agencies for each individual prior to the implementation of this

program and all costs incurred after one year under this program shall be made and reported back to the legislature in the 1982 session. [1980 c 106 § 5.]

**74.26.060 Program costs—Liability of insurers.** This program or any components necessary to the child shall be available to eligible children at no cost to their parents provided that any medical insurance benefits available to the child for his/her medical condition shall remain liable for payment for his/her cost of care. [1980 c 106 § 6.]

**Chapter 74.29 RCW**

**REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES**

(Formerly: Vocational rehabilitation and services for handicapped persons)

Sections

74.29.005	Purpose.
74.29.010	Definitions.
74.29.020	Powers and duties of state agency.
74.29.037	Cooperative agreements with state and local agencies.
74.29.050	Acceptance of federal aid—Generally.
74.29.055	Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds.
74.29.080	Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations.

*Department of social and health services (including division of vocational rehabilitation): Chapter 43.20A RCW.*

*Investment of industrial insurance funds in student loans for vocational training and education: RCW 51.44.100.*

**74.29.005 Purpose.** The purposes of this chapter are (1) to rehabilitate individuals with disabilities who have a barrier to employment so that they may prepare for and engage in a gainful occupation; (2) to provide persons with physical, mental, or sensory disabilities with a program of services which will result in greater opportunities for them to enter more fully into life in the community; (3) to promote activities which will assist individuals with disabilities to become self-sufficient and self-supporting; and (4) to encourage and develop community rehabilitation programs, job support services, and other resources needed by individuals with disabilities. [1993 c 213 § 1; 1969 ex.s. c 223 § 28A.10.005. Prior: 1967 c 118 § 1. Formerly RCW 28A.10.005, 28.10.005.]

**74.29.010 Definitions.** (1) "Individual with disabilities" means an individual:

(a) Who has a physical, mental, or sensory disability, which requires vocational rehabilitation services to prepare for, enter into, engage in, retain, or engage in and retain gainful employment consistent with his or her capacities and abilities; or

(b) Who has a physical, mental, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of vocational rehabilitation or independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

(2) "Individual with severe disabilities" means an individual with disabilities:

(a) Who has a physical, mental, or sensory impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of employment outcome, and/or independence and participation in family or community life;

(b) Whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time; and

(c) Who has one or more physical, mental, or sensory disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and rehabilitation needs to cause comparable substantial functional limitation.

(3) "Physical, mental, or sensory disability" means a physical, mental, or sensory condition which materially limits, contributes to limiting or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning.

(4) "Rehabilitation services" means goods or services provided to: (a) Determine eligibility and rehabilitation needs of individuals with disabilities, and/or (b) enable individuals with disabilities to attain or retain employment and/or independence, and/or (c) contribute substantially to the rehabilitation of a group of individuals with disabilities. To the extent federal funds are available, goods and services may include, but are not limited to, the establishment, construction, development, operation and maintenance of community rehabilitation programs and independent living centers, as well as special demonstration projects.

(5) "Independence" means a reasonable degree of restoration from dependency upon others to self-direction and greater control over circumstances of one's life for personal needs and care and includes but is not limited to the ability to live in one's home.

(6) "Job support services" means ongoing goods and services provided after vocational rehabilitation, subject to available funds, that support an individual with severe disabilities in employment. Such services include, but are not limited to, extraordinary supervision or job coaching.

(7) "State agency" means the department of social and health services. [1993 c 213 § 2; 1970 ex.s. c 18 § 52; 1969 ex.s. c 223 § 28A.10.010. Prior: 1967 ex.s. c 8 § 41; 1967 c 118 § 2; 1957 c 223 § 1; 1933 c 176 § 2; RRS § 4925-2. Formerly RCW 28A.10.010, 28.10.010.]

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**74.29.020 Powers and duties of state agency.** Subject to available funds, and consistent with federal law and regulations the state agency shall:

(1) Develop statewide rehabilitation programs;

(2) Provide vocational rehabilitation services, independent living services, and/or job support services to individuals with disabilities or severe disabilities;

(3) Disburse all funds provided by law and may receive, accept and disburse such gifts, grants, conveyances, devises and bequests of real and personal property from public or private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out rehabilitation services as specified by law and the regulations of the state agency; and may sell, lease or exchange real or personal property according to the terms and conditions thereof. Any money so received shall be deposited in the state treasury for investment, reinvestment or expenditure in accordance with the conditions of its receipt and RCW 43.88.180;

(4) Appoint and fix the compensation and prescribe the duties, of the personnel necessary for the administration of this chapter, unless otherwise provided by law;

(5) Make exploratory studies, do reviews, and research relative to rehabilitation;

(6) Coordinate with the state rehabilitation advisory council and the state independent living advisory council on the administration of the programs;

(7) Report to the governor and to the legislature on the administration of this chapter, as requested; and

(8) Adopt rules, in accord with chapter 34.05 RCW, necessary to carry out the purposes of this chapter. [1993 c 213 § 3; 1969 ex.s. c 223 § 28A.10.020. Prior: 1967 ex.s. c 8 § 42; 1967 c 118 § 6; 1963 c 135 § 1; 1957 c 223 § 3; 1933 c 176 § 3; RRS § 4925-3. Formerly RCW 28A.10.020, 28.10.030.]

**74.29.037 Cooperative agreements with state and local agencies.** The state agency may establish cooperative agreements with other state and local agencies. [1993 c 213 § 6; 1969 ex.s. c 223 § 28A.10.037. Prior: 1967 ex.s. c 8 § 45; 1967 c 118 § 7. Formerly RCW 28A.10.037, 28.10.037.]

**74.29.050 Acceptance of federal aid—Generally.** The state of Washington does hereby:

(1) Accept the provisions and maximum possible benefits resulting from any acts of congress which provide benefits for the purposes of this chapter;

(2) Designate the state treasurer as custodian of all moneys received by the state from appropriations made by the congress of the United States for purposes of this chapter, and authorize the state treasurer to make disbursements therefrom upon the order of the state agency; and

(3) Empower and direct the state agency to cooperate with the federal government in carrying out the provisions of this chapter or of any federal law or regulation pertaining to vocational rehabilitation, and to comply with such conditions as may be necessary to assure the maximum possible benefits resulting from any such federal law or regulation. [1969 ex.s. c 223 § 28A.10.050. Prior: 1967 ex.s. c 8 § 43; 1967 c 118 § 9; 1957 c 223 § 5; 1955 c 371 § 1; 1933 c 176 § 5; RRS § 4925-5. Formerly RCW 28A.10.050, 28.10.050.]

**74.29.055 Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds.** If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remainder of this chapter. [1969 ex.s. c 223 § 28A.10.055. Prior: 1967 c 118 § 10. Formerly RCW 28A.10.055, 28.10.055.]

**74.29.080 Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations.** (1) Determination of eligibility and need for rehabilitation services and determination of eligibility for job support services shall be made by the state agency for each individual according to its established rules, policies, procedures, and standards.

(2) The state agency may purchase, from any source, rehabilitation services and job support services for individuals with disabilities, subject to the individual's income or other resources that are available to contribute to the cost of such services.

(3) The state agency shall maintain registers of individuals and organizations which meet required standards and qualify to provide rehabilitation services and job support services to individuals with disabilities. Eligibility of such individuals and organizations shall be based upon standards and criteria promulgated by the state agency. [1993 c 213 § 4; 1983 1st ex.s. c 41 § 16; 1979 c 151 § 11; 1972 ex.s. c 15 § 1; 1970 ex.s. c 18 § 53; 1970 ex.s. c 15 § 23; 1969 ex.s. c 223 § 28A.10.080. Prior: 1969 c 105 § 2; 1967 ex.s. c 8 § 46; 1967 c 118 § 8. Formerly RCW 28A.10.080, 28.10.080.]

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

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

## Chapter 74.31 RCW

### TRAUMATIC BRAIN INJURIES

#### Sections

74.31.005	Findings—Intent.
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**74.31.005 Findings—Intent.** The center for disease control estimates that at least five million three hundred thousand Americans, approximately two percent of the United States population, currently have a long-term or lifelong need for help to perform activities of daily living as a result of a traumatic brain injury. Each year approximately one million four hundred thousand people in this country, including children, sustain traumatic brain injuries as a result of a variety of causes including falls, motor vehicle injuries, being struck by

an object, or as a result of an assault and other violent crimes, including domestic violence. Additionally, there are significant numbers of veterans who sustain traumatic brain injuries as a result of their service in the military.

Traumatic brain injury can cause a wide range of functional changes affecting thinking, sensation, language, or emotions. It can also cause epilepsy and increase the risk for conditions such as Alzheimer's disease, Parkinson's disease, and other brain disorders that become more prevalent with age. The impact of a traumatic brain injury on the individual and family can be devastating.

The legislature recognizes that current programs and services are not funded or designed to address the diverse needs of this population. It is the intent of the legislature to develop a comprehensive plan to help individuals with traumatic brain injuries meet their needs. The legislature also recognizes the efforts of many in the private sector who are providing services and assistance to individuals with traumatic brain injuries. The legislature intends to bring together those in both the public and private sectors with expertise in this area to address the needs of this growing population. [2007 c 356 § 1.]

**Short title—2007 c 356:** "This act may be known and cited as the Tommy Manning act." [2007 c 356 § 11.]

**74.31.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of social and health services.

(2) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.

(3) "Secretary" means the secretary of social and health services.

(4) "Traumatic brain injury" means injury to the brain caused by physical trauma resulting from, but not limited to, incidents involving motor vehicles, sporting events, falls, and physical assaults. Documentation of traumatic brain injury shall be based on adequate medical history, neurological examination, mental status testing, or neuropsychological evaluation. A traumatic brain injury shall be of sufficient severity to result in impairments in one or more of the following areas: Cognition; language memory; attention; reasoning; abstract thinking; judgment; problem solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; or information processing. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

(5) "Traumatic brain injury account" means the account established under RCW 74.31.060.

(6) "Council" means the Washington traumatic brain injury strategic partnership advisory council created under RCW 74.31.020. [2007 c 356 § 2.]

**Short title—2007 c 356:** See note following RCW 74.31.005.

**74.31.020 Washington traumatic brain injury strategic partnership advisory council—Members—Expenses—Appointment—Duties.** (1) The Washington traumatic brain injury strategic partnership advisory council is established as an advisory council to the governor, the leg-

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islature, and the secretary of the department of social and health services.

(2) The council shall be composed of the following members who shall be appointed by the governor:

(a) The secretary or the secretary's designee, and representatives from the following: Children's administration, mental health division, aging and disability services administration, and vocational rehabilitation;

(b) The executive director of a state brain injury association;

(c) A representative from a nonprofit organization serving individuals with traumatic brain injury;

(d) The secretary of the department of health or the secretary's designee;

(e) The secretary of the department of corrections or the secretary's designee;

(f) A representative of the department of community, trade, and economic development;

(g) A representative from an organization serving veterans;

(h) A representative from the national guard;

(i) A representative of a Native American tribe located in Washington;

(j) The executive director of the Washington protection and advocacy system;

(k) A neurologist who has experience working with individuals with traumatic brain injuries;

(l) A neuropsychologist who has experience working with persons with traumatic brain injuries;

(m) A social worker or clinical psychologist who has experience in working with persons who have sustained traumatic brain injuries;

(n) A rehabilitation specialist, such as a speech pathologist, vocational rehabilitation counselor, occupational therapist, or physical therapist who has experience working with persons with traumatic brain injuries;

(o) Two persons who are individuals with a traumatic brain injury;

(p) Two persons who are family members of individuals with traumatic brain injuries; and

(q) Two members of the public who have experience with issues related to the causes of traumatic brain injuries.

(3) Councilmembers shall not be compensated for serving on the council, but may be reimbursed for all reasonable expenses related to costs incurred in participating in meetings for the council.

(4) Initial appointments to the council shall be made by July 30, 2007. The terms of appointed council members shall be three years, except that the terms of the appointed members who are initially appointed shall be staggered by the governor to end as follows:

(a) Four members on June 30, 2008;

(b) Three members on June 30, 2009; and

(c) Three members on June 30, 2010.

(5) No member may serve more than two consecutive terms.

(6) The appointed members of the council shall, to the extent possible, represent rural and urban areas of the state.

(7) A chairperson shall be elected every two years by majority vote from among the councilmembers. The chairperson shall act as the presiding officer of the council.

(8) The duties of the council include:

(a) Collaborating with the department to develop a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries;

(b) By November 1, 2007, providing recommendations to the department on criteria to be used to select programs facilitating support groups for individuals with traumatic brain injuries and their families under RCW 74.31.050;

(c) By December 1, 2007, submitting a report to the legislature and the governor on the following:

(i) The development of a comprehensive statewide information and referral network for individuals with traumatic brain injuries;

(ii) The development of a statewide registry to collect data regarding individuals with traumatic brain injuries, including the potential to utilize the department of information services to develop the registry;

(iii) The efforts of the department to provide services for individuals with traumatic brain injuries;

(d) By December 30, 2007, reviewing the preliminary comprehensive statewide plan developed by the department to meet the needs of individuals with traumatic brain injuries as required in RCW 74.31.030 and submitting a report to the legislature and the governor containing comments and recommendations regarding the plan.

(9) The council may utilize the advice or services of a nationally recognized expert, or other individuals as the council deems appropriate, to assist the council in carrying out its duties under this section. [2007 c 356 § 3.]

**Short title—2007 c 356:** See note following RCW 74.31.005.

**74.31.030 Designation of staff person—Department duties—Reports.** (1) By July 30, 2007, the department shall designate a staff person who shall be responsible for the following:

(a) Coordinating policies, programs, and services for individuals with traumatic brain injuries; and

(b) Providing staff support to the council created in RCW 74.31.020.

(2) The department shall provide data and information to the council established under RCW 74.31.020 that is requested by the council and is in the possession or control of the department.

(3) By December 1, 2007, the department shall provide a preliminary report to the legislature and the governor, and shall provide a final report by December 1, 2008, containing recommendations for a comprehensive statewide plan to address the needs of individuals with traumatic brain injuries, including the use of public-private partnerships and a public awareness campaign. The comprehensive plan should be created in collaboration with the council and should consider the following:

(a) Building provider capacity and provider training;

(b) Improving the coordination of services;

(c) The feasibility of establishing agreements with private sector agencies to develop services for individuals with traumatic brain injuries; and

(d) Other areas the council deems appropriate.

(4) By December 1, 2007, the department shall:

(a) Provide information and referral services to individuals with traumatic brain injuries until the statewide referral and information network is developed. The referral services may be funded from the traumatic brain injury account established under RCW 74.31.060; and

(b) Encourage and facilitate the following:

(i) Collaboration among state agencies that provide services to individuals with traumatic brain injuries;

(ii) Collaboration among organizations and entities that provide services to individuals with traumatic brain injuries; and

(iii) Community participation in program implementation.

(5) By December 1, 2007, and by December 1st each year thereafter, the department shall issue a report to the governor and the legislature containing the following:

(a) A summary of action taken by the department to meet the needs of individuals with traumatic brain injuries; and

(b) Recommendations for improvements in services to address the needs of individuals with traumatic brain injuries. [2007 c 356 § 4.]

**Short title—2007 c 356:** See note following RCW 74.31.005.

**74.31.040 Public awareness campaign.** By December 1, 2007, in collaboration with the council, the department shall institute a public awareness campaign that utilizes funding from the traumatic brain injury account to leverage a private advertising campaign to persuade Washington residents to be aware and concerned about the issues facing individuals with traumatic brain injuries through all forms of media including television, radio, and print. [2007 c 356 § 5.]

**Short title—2007 c 356:** See note following RCW 74.31.005.

**74.31.050 Support group programs—Funding—Recommendations.** (1) By March 1, 2008, the department shall provide funding to programs that facilitate support groups to individuals with traumatic brain injuries and their families.

(2) The department shall use a request for proposal process to select the programs to receive funding. The council shall provide recommendations to the department on the criteria to be used in selecting the programs.

(3) The programs shall be funded solely from the traumatic brain injury account established in RCW 74.31.060, to the extent that funds are available. [2007 c 356 § 6.]

**Short title—2007 c 356:** See note following RCW 74.31.005.

**74.31.060 Traumatic brain injury account.** The traumatic brain injury account is created in the state treasury. Two dollars of the fee imposed under RCW 46.63.110(7)(c) must be deposited into the account. Moneys in the account may be spent only after appropriation, and may be used only to provide a public awareness campaign and services relating to traumatic brain injury under RCW 74.31.040 and 74.31.050, for information and referral services, and for costs of required department staff who are providing support for the council and information and referral services under RCW 74.31.020 and 74.31.030. The secretary of the department of social and health services has the authority to administer the funds. [2007 c 356 § 7.]

\*Reviser's note: 2007 c 356 § 7 directed that this section be added to chapter 46.20 RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.31 RCW.

Short title—2007 c 356: See note following RCW 74.31.005.

## Chapter 74.32 RCW

### ADVISORY COMMITTEES ON VENDOR RATES

#### Sections

74.32.100	Advisory committee on vendor rates—Created—Members—Chairman.
74.32.110	Advisory committee on vendor rates—"Vendor rates" defined.
74.32.120	Advisory committee on vendor rates—Meetings—Travel expenses.
74.32.130	Advisory committee on vendor rates—Powers and duties.
74.32.140	Investigation to determine if additional requirements or standards affecting vendor group.
74.32.150	Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.
74.32.160	Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source.
74.32.170	Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.
74.32.180	Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.

**74.32.100 Advisory committee on vendor rates—Created—Members—Chairman.** There is hereby created a governor's advisory committee on vendor rates. The committee shall be composed of nine members appointed by the governor. In addition, the secretary of the department of social and health services or his designee shall be an ex officio member of the committee. Members shall be selected on the basis of their interest in problems related to the department of social and health services, and no less than two members shall be licensed certified public accountants. The members shall serve at the pleasure of the governor. The governor shall select one member to serve as chairman of the committee and he shall serve as such at the pleasure of the governor. [1971 ex.s. c 87 § 1; 1969 ex.s. c 203 § 1.]

**74.32.110 Advisory committee on vendor rates—"Vendor rates" defined.** The term "vendor rates" as used throughout RCW 74.32.100 through 74.32.130 shall include, but not be limited to, the cost-reimbursement basis upon which all participating hospital organizations receive compensation. [1969 ex.s. c 203 § 2.]

**74.32.120 Advisory committee on vendor rates—Meetings—Travel expenses.** The committee shall meet at least a total of three and no more than twelve times per year at such specific times and places as may be determined by the chairman. Members shall be entitled to reimbursement for travel expenses as provided for in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 170; 1969 ex.s. c 203 § 3.]

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

**74.32.130 Advisory committee on vendor rates—Powers and duties.** The committee shall have the following powers and duties:

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(1) Study and review the methods and procedures for establishing the rates and/or fees of all vendors of goods, services and care purchased by the department of social and health services including all medical and welfare care and services.

(2) Provide each professional and trade association or other representative groups of each of the service areas, the opportunity to present to the committee their evidence for justifying the methods of computing and the justification for the rates and/or fees they propose.

(3) The committee shall have the authority to request vendors to appoint a fiscal intermediary to provide the committee with an evaluation and justification of the method of establishing rates and/or fees.

(4) Prepare and submit a written report to the governor, at least sixty days prior to each session of the legislature, which contains its findings and recommendations concerning the methods and procedures for establishing rates and/or fees and the specific rates and/or fees that should be paid by the department of social and health services to the various designated vendors. This report shall include the suggested effective dates of the recommended rates and/or fees when appropriate.

The vendors shall furnish adequate documented evidence related to the cost of providing their particular services, care or supplies, in the form, to the extent and at such times as the committee may determine.

The chairman of this committee, shall have the same authority as provided in RCW 74.04.290 as it is now or hereafter amended. [1971 ex.s. c 87 § 2; 1969 ex.s. c 203 § 4.]

**74.32.140 Investigation to determine if additional requirements or standards affecting vendor group.** Before completing its recommendations regarding rates, the governor's committee on vendor rates shall conduct an extensive investigation to determine the nature and extent of any additional requirements or standards established which affect any vendor group if the same have not been fully considered and provided for in the committee's last recommendations, and shall similarly determine the nature and effect of any additional requirements or standards which are expected to be imposed during the period covered by the committee's recommendations. [1971 ex.s. c 298 § 1.]

**74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.** The additional requirements and standards referred to in RCW 74.32.140 shall include but shall not be limited to changes in minimum wage or overtime provisions, changes in building code or facility requirements for occupancy or licensing, and changes in requirements for staffing, available equipment, or methods and procedures. [1971 ex.s. c 298 § 2.]

**74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source.** The committee shall investigate such changes whether their source is or may be federal, state, or local governmental agencies, departments and officers, and shall give full consideration to the cost of

such changes and expected changes in the vendor rates recommended. [1971 ex.s. c 298 § 3.]

**74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.** The committee shall also consider prevailing wage scales and fringe benefit programs affecting the vendor's industry or affecting related or associated industries or vendor classes, and shall consider in its rate recommendations a scale of competitive wages, to assure the availability of necessary personnel in each vendor program. [1971 ex.s. c 298 § 4.]

**74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.** The committee shall further fully account in its recommended rate structure for the effect of changes in payroll and property taxes[,] accurate costs of insurance, and increased or lowered costs of borrowing money. [1971 ex.s. c 298 § 5.]

### Chapter 74.34 RCW

#### ABUSE OF VULNERABLE ADULTS

##### Sections

74.34.005	Findings.
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74.34.300	Vulnerable adult fatality reviews.

74.34.900	Severability—1984 c 97.
74.34.901	Severability—1986 c 187.

*Domestic violence prevention, authority of department of social and health services to seek relief on behalf of vulnerable adults: RCW 26.50.021.*

*Patients in nursing homes and hospitals, abuse: Chapter 70.124 RCW.*

**74.34.005 Findings.** The legislature finds and declares that:

(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

(2) A vulnerable adult may be home bound or otherwise unable to represent himself or herself in court or to retain legal counsel in order to obtain the relief available under this chapter or other protections offered through the courts;

(3) A vulnerable adult may lack the ability to perform or obtain those services necessary to maintain his or her well-being because he or she lacks the capacity for consent;

(4) A vulnerable adult may have health problems that place him or her in a dependent position;

(5) The department and appropriate agencies must be prepared to receive reports of abandonment, abuse, financial exploitation, or neglect of vulnerable adults;

(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult. [1999 c 176 § 2.]

**Findings—Purpose—1999 c 176:** "The legislature finds that the provisions for the protection of vulnerable adults found in chapters 26.44, 70.124, and 74.34 RCW contain different definitions for abandonment, abuse, exploitation, and neglect. The legislature finds that combining the sections of these chapters that pertain to the protection of vulnerable adults would better serve this state's population of vulnerable adults. The purpose of chapter 74.34 RCW is to provide the department and law enforcement agencies with the authority to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and legal remedies to protect these vulnerable adults." [1999 c 176 § 1.]

**Severability—1999 c 176:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 176 § 36.]

**Conflict with federal requirements—1999 c 176:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1999 c 176 § 37.]

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse,

and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

(4) "Department" means the department of social and health services.

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

(7) "Incapacitated person" means a person who is at a significant risk of personal or financial harm under RCW 11.88.010(1) (a), (b), (c), or (d).

(8) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(9) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of the vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(10) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(11) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

(12) "Permissive reporter" means any person, including, but not limited to, an employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(13) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management, social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(14) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(15) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider. [2007 c 312 § 1; 2006 c 339 § 109; 2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Effective date—2003 c 230:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.34.021 Vulnerable adult—Definition.** For the purposes of this chapter, the term "vulnerable adult" includes persons receiving services from any individual who for compensation serves as a personal aide to a person who self-directs his or her own care in his or her home under chapter 336, Laws of 1999. [1999 c 336 § 6.]

**Finding—Intent—1999 c 336:** See note following RCW 74.39.007.

**74.34.025 Limitation on recovery for protective services and benefits.** The cost of benefits and services provided to a vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery. [1999 c 176 § 4; 1997 c 392 § 304.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.34.035 Reports—Mandated and permissive—Contents—Confidentiality.** (1) When there is reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to

believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(6) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(7) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(8) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential. [2003 c 230 § 2; 1999 c 176 § 5.]

**Effective date—2003 c 230:** See note following RCW 74.34.020.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.040 Reports—Contents—Identity confidential.** The reports made under \*RCW 74.34.030 shall contain the following information if known:

(1) Identification of the vulnerable adult;

(2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;

(3) Evidence of previous abuse, neglect, exploitation, or abandonment;

(4) The name and address of the person making the report; and

(5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. [1986 c 187 § 2; 1984 c 97 § 10.]

**\*Reviser's note:** RCW 74.34.030 was repealed by 1999 c 176 § 35.

**74.34.050 Immunity from liability.** (1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. [1999 c 176 § 6; 1997 c 386 § 34; 1986 c 187 § 3; 1984 c 97 § 11.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**74.34.053 Failure to report—False reports—Penalties.** (1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor. [1999 c 176 § 7.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority.** (1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, chapter 42.56 RCW, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult. [2005 c 274 § 354; 1999 c 176 § 8.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.067 Investigations—Interviews—Ongoing case planning—Conclusion of investigation.** (1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged

abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department has reason to believe that the vulnerable adult has suffered from abuse, neglect, self-neglect, abandonment, or financial exploitation, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(8) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [2007 c 312 § 2; 1999 c 176 § 9.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.068 Investigation results—Report—Rules.**

(1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, regional support networks authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section. [2001 c 233 § 2.]

**Finding—2001 c 233:** "The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer." [2001 c 233 § 1.]

**74.34.070 Cooperative agreements for services.** The department may develop cooperative agreements with community-based agencies providing services for vulnerable adults. The agreements shall cover: (1) The appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse; (2) the provision of case-management services; (3) standardized data collection procedures; and (4) related coordination activities. [1999 c 176 § 10; 1997 c 386 § 35; 1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.34.080 Injunctions.** If access is denied to an employee of the department seeking to investigate an allegation of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abandoned, abused, financially exploited, or neglected; and

(2) The employee of the department seeking to investigate the report has been denied access. [1999 c 176 § 11; 1984 c 97 § 14.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.090 Data collection system—Confidentiality.**

The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential. [1984 c 97 § 15.]

**74.34.095 Confidential information—Disclosure.**

(1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombudsman programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper. [2000 c 87 § 4; 1999 c 176 § 17.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.110 Protection of vulnerable adults—Petition for protective order.**

An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult, or interested person on behalf of the vulnerable adult, may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath, or a declaration signed under penalty of perjury, stating the specific facts and circumstances which demonstrate the need for the relief sought. If the petition is filed by an interested person, the affidavit or declaration must also

include a statement of why the petitioner qualifies as an interested person.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action pending that relates to the issues presented in the petition for an order for protection.

(5) Within ninety days of receipt of the master copy from the administrative office of the courts, all court clerk's offices shall make available the standardized forms and instructions required by RCW 74.34.115.

(6) Any assistance or information provided by any person, including, but not limited to, court clerks, employees of the department, and other court facilitators, to another to complete the forms provided by the court in subsection (5) of this section does not constitute the practice of law.

(7) A petitioner is not required to post bond to obtain relief in any proceeding under this section.

(8) An action under this section shall be filed in the county where the vulnerable adult resides; except that if the vulnerable adult has left or been removed from the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the vulnerable adult's previous or new residence.

(9) No filing fee may be charged to the petitioner for proceedings under this section. Standard forms and written instructions shall be provided free of charge. [2007 c 312 § 3; 1999 c 176 § 12; 1986 c 187 § 5.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.115 Protection of vulnerable adults—Administrative office of the courts—Standard petition—Order for protection—Standard notice—Court staff handbook.**

(1) The administrative office of the courts shall develop and prepare standard petition, temporary order for protection, and permanent order for protection forms, a standard notice form to provide notice to the vulnerable adult if the vulnerable adult is not the petitioner, instructions, and a court staff handbook on the protection order process. The standard petition and order for protection forms must be used after October 1, 2007, for all petitions filed and orders issued under this chapter. The administrative office of the courts, in preparing the instructions, forms, notice, and handbook, may consult with attorneys from the elder law section of the Washington state bar association, judges, the department, the Washington protection and advocacy system, and law enforcement personnel.

(a) The instructions shall be designed to assist petitioners in completing the petition, and shall include a sample of the standard petition and order for protection forms.

(b) The order for protection form shall include, in a conspicuous location, notice of criminal penalties resulting from violation of the order.

(c) The standard notice form shall be designed to explain to the vulnerable adult in clear, plain language the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

(2) The administrative office of the courts shall distribute a master copy of the standard forms, instructions, and court staff handbook to all court clerks and shall distribute a master copy of the standard forms to all superior, district, and municipal courts.

(3) The administrative office of the courts shall determine the significant non-English-speaking or limited-English-speaking populations in the state. The administrator shall then arrange for translation of the instructions required by this section, which shall contain a sample of the standard forms, into the languages spoken by those significant non-English-speaking populations, and shall distribute a master copy of the translated instructions to all court clerks by December 31, 2007.

(4) The administrative office of the courts shall update the instructions, standard forms, and court staff handbook when changes in the law make an update necessary. The updates may be made in consultation with the persons and entities specified in subsection (1) of this section.

(5) For purposes of this section, "court clerks" means court administrators in courts of limited jurisdiction and elected court clerks. [2007 c 312 § 4.]

**74.34.120 Protection of vulnerable adults—Hearing.**

(1) The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition.

(2) Personal service shall be made upon the respondent not less than six court days before the hearing. When good faith attempts to personally serve the respondent have been unsuccessful, the court shall permit service by mail or by publication.

(3) When a petition under RCW 74.34.110 is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served upon the vulnerable adult not less than six court days before the hearing. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using the standard notice form developed under RCW 74.34.115. When good faith attempts to personally serve the vulnerable adult have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained.

(4) If timely service under subsections (2) and (3) of this section cannot be made, the court shall continue the hearing date until the substitute service approved by the court has been satisfied.

(5)(a) A petitioner may move for temporary relief under chapter 7.40 RCW. The court may continue any temporary order for protection granted under chapter 7.40 RCW until the hearing on a petition under RCW 74.34.110 is held.

(b) Written notice of the request for temporary relief must be provided to the respondent, and to the vulnerable adult if someone other than the vulnerable adult filed the petition. A temporary protection order may be granted without written notice to the respondent and vulnerable adult if it clearly appears from specific facts shown by affidavit or declaration that immediate and irreparable injury, loss, or damage would result to the vulnerable adult before the respondent and vulnerable adult can be served and heard, or that show the respondent and vulnerable adult cannot be served with

notice, the efforts made to serve them, and the reasons why prior notice should not be required. [2007 c 312 § 5; 1986 c 187 § 6.]

**74.34.130 Protection of vulnerable adults—Judicial relief.** The court may order relief as it deems necessary for the protection of the vulnerable adult, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against the vulnerable adult;

(2) Excluding the respondent from the vulnerable adult's residence for a specified period or until further order of the court;

(3) Prohibiting contact with the vulnerable adult by respondent for a specified period or until further order of the court;

(4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(5) Requiring an accounting by respondent of the disposition of the vulnerable adult's income or other resources;

(6) Restraining the transfer of the respondent's and/or vulnerable adult's property for a specified period not exceeding ninety days; and

(7) Requiring the respondent to pay a filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed five years. The clerk of the court shall enter any order for protection issued under this section into the judicial information system. [2007 c 312 § 6. Prior: 2000 c 119 § 27; 2000 c 51 § 2; 1999 c 176 § 13; 1986 c 187 § 7.]

**Application—2000 c 119:** See note following RCW 26.50.021.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.135 Protection of vulnerable adults—Filings by others—Dismissal of petition or order—Testimony or evidence—Additional evidentiary hearings—Temporary order.** (1) When a petition for protection under RCW 74.34.110 is filed by someone other than the vulnerable adult or the vulnerable adult's full guardian over either the person or the estate, or both, and the vulnerable adult for whom protection is sought advises the court at the hearing that he or she does not want all or part of the protection sought in the petition, then the court may dismiss the petition or the provisions that the vulnerable adult objects to and any protection order issued under RCW 74.34.120 or 74.34.130, or the court may take additional testimony or evidence, or order additional evidentiary hearings to determine whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order. If an additional evidentiary hearing is ordered and the court determines that there is reason to believe that there is a genuine issue about whether the vulnerable adult is unable to protect his or her person or estate in connection with the issues raised in the petition or order, the court may issue a temporary order for protection of

the vulnerable adult pending a decision after the evidentiary hearing.

(2) An evidentiary hearing on the issue of whether the vulnerable adult is unable, due to incapacity, undue influence, or duress, to protect his or her person or estate in connection with the issues raised in the petition or order, shall be held within fourteen days of entry of the temporary order for protection under subsection (1) of this section. If the court did not enter a temporary order for protection, the evidentiary hearing shall be held within fourteen days of the prior hearing on the petition. Notice of the time and place of the evidentiary hearing shall be personally served upon the vulnerable adult and the respondent not less than six court days before the hearing. When good faith attempts to personally serve the vulnerable adult and the respondent have been unsuccessful, the court shall permit service by mail, or by publication if the court determines that personal service and service by mail cannot be obtained. If timely service cannot be made, the court may set a new hearing date. A hearing under this subsection is not necessary if the vulnerable adult has been determined to be fully incapacitated over either the person or the estate, or both, under the guardianship laws, chapter 11.88 RCW. If a hearing is scheduled under this subsection, the protection order shall remain in effect pending the court's decision at the subsequent hearing.

(3) At the hearing scheduled by the court, the court shall give the vulnerable adult, the respondent, the petitioner, and in the court's discretion other interested persons, the opportunity to testify and submit relevant evidence.

(4) If the court determines that the vulnerable adult is capable of protecting his or her person or estate in connection with the issues raised in the petition, and the individual continues to object to the protection order, the court shall dismiss the order or may modify the order if agreed to by the vulnerable adult. If the court determines that the vulnerable adult is not capable of protecting his or her person or estate in connection with the issues raised in the petition or order, and that the individual continues to need protection, the court shall order relief consistent with RCW 74.34.130 as it deems necessary for the protection of the vulnerable adult. In the entry of any order that is inconsistent with the expressed wishes of the vulnerable adult, the court's order shall be governed by the legislative findings contained in RCW 74.34.005. [2007 c 312 § 9.]

**74.34.140 Protection of vulnerable adults—Execution of protective order.** When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. [1986 c 187 § 8.]

**74.34.145 Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110.** (1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the vulnerable adult, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, shall prominently bear on the front page of the order the legend: VIOLATION

OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the vulnerable adult, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010. [2007 c 312 § 7; 2000 c 119 § 2.]

**Application—2000 c 119:** See note following RCW 26.50.021.

**74.34.150 Protection of vulnerable adults—Department may seek relief.** The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. When the department has reason to believe a vulnerable adult lacks the ability or capacity to consent, the department, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of the vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for seeking or failing to seek relief on behalf of any persons under this section. [2007 c 312 § 8; 1986 c 187 § 9.]

**74.34.160 Protection of vulnerable adults—Proceedings are supplemental.** Any proceeding under RCW 74.34.110 through 74.34.150 is in addition to any other civil or criminal remedies. [1986 c 187 § 11.]

**74.34.163 Application to modify or vacate order.** Any vulnerable adult who has not been adjudicated fully incapacitated under chapter 11.88 RCW, or the vulnerable adult's guardian, at any time subsequent to entry of a permanent protection order under this chapter, may apply to the court for an order to modify or vacate the order. In a hearing on an application to dismiss or modify the protection order, the court shall grant such relief consistent with RCW 74.34.110 as it deems necessary for the protection of the vulnerable adult, including dismissal or modification of the protection order. [2007 c 312 § 10.]

**74.34.165 Rules.** The department may adopt rules relating to the reporting, investigation, and provision of protective services in in-home settings, consistent with the objectives of this chapter. [1999 c 176 § 18.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.170 Services of department discretionary—Funding.** The provision of services under RCW \*74.34.030, 74.34.040, 74.34.050, and \*\*74.34.100 through 74.34.160 are discretionary and the department shall not be required to expend additional funds beyond those appropriated. [1986 c 187 § 10.]

(2008 Ed.)

**Reviser's note:** \*(1) RCW 74.34.030 was repealed by 1999 c 176 § 35.  
 \*\*(2) RCW 74.34.100 was recodified as RCW 74.34.015 pursuant to 1995 1st sp.s. c 18 § 89, effective July 1, 1995. RCW 74.34.015 was subsequently repealed by 1999 c 176 § 35.

**74.34.180 Retaliation against whistleblowers and residents—Remedies—Rules.** (1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department or the department of health about suspected abandonment, abuse, financial exploitation, or neglect by any person in a facility, licensed or required to be licensed, or care provided in a facility or in a home setting, by any person associated with a hospice, home care, or home health agency licensed under chapter 70.127 RCW or other in-home provider, may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to expel a resident from a facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a review conducted by the department that shows that the resident or consumer's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or a person with a mandatory duty to report under this chapter, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, or the department of health, or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a facility or an agency licensed under chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining a whistleblower for

other lawful purposes; or (ii) for facilities licensed under chapter 70.128 RCW, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a facility or an agency licensed under chapter 70.127 RCW from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6)(a) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(b) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 14; 1997 c 392 § 202.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.34.200 Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent.** (1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice,

or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section. [1999 c 176 § 15; 1995 1st sp.s. c 18 § 85.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.34.205 Abandonment, abuse, or neglect—Exceptions.** (1) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(2) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services. [1999 c 176 § 16.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**74.34.210 Order for protection or action for damages—Standing—Jurisdiction.** A petition for an order for protection may be brought by the vulnerable adult, the vulnerable adult's guardian or legal fiduciary, the department, or any interested person as defined in RCW 74.34.020. An action for damages under this chapter may be brought by the vulnerable adult, or where necessary, by his or her family members and/or guardian or legal fiduciary. The death of the vulnerable adult shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable adult, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for recovery of all damages for the benefit of the deceased person's beneficiaries set forth in chapter 4.20 RCW or if there are no beneficiaries, then for recovery of all economic losses sustained by the deceased person's estate. [2007 c 312 § 11; 1995 1st sp.s. c 18 § 86.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.34.300 Vulnerable adult fatality reviews.** (1) The department may conduct a vulnerable adult fatality review in the event of a death of a vulnerable adult when the department has reason to believe that the death of the vulnerable adult may be related to the abuse, abandonment, exploitation, or neglect of the vulnerable adult, or may be related to the vulnerable adult's self-neglect, and the vulnerable adult was:

(a) Receiving home and community-based services in his or her own home, described under chapters 74.39 and 74.39A RCW, within sixty days preceding his or her death; or

(b) Living in his or her own home and was the subject of a report under this chapter received by the department within twelve months preceding his or her death.

(2) When conducting a vulnerable adult fatality review of a person who had been receiving hospice care services before the person's death, the review shall provide particular consideration to the similarities between the signs and symptoms of abuse and those of many patients receiving hospice care services.

(3) All files, reports, records, communications, and working papers used or developed for purposes of a fatality review are confidential and not subject to disclosure pursuant to RCW 74.34.095.

(4) The department may adopt rules to implement this section. [2008 c 146 § 10.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**74.34.900 Severability—1984 c 97.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 97 § 18.]

**74.34.901 Severability—1986 c 187.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 187 § 12.]

## Chapter 74.36 RCW

### FUNDING FOR COMMUNITY PROGRAMS FOR THE AGING

#### Sections

74.36.100	Department to participate in and administer Federal Older Americans Act of 1965.
74.36.110	Community programs and projects for the aging—Allotments for—Purpose.
74.36.120	Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.
74.36.130	Community programs and projects for the aging—State funding, limitations—Payments, type.

*State council on aging: RCW 43.20A.680.*

**74.36.100 Department to participate in and administer Federal Older Americans Act of 1965.** The department of social and health services is authorized to take advantage of and participate in the Federal Older Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be

(2008 Ed.)

available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**74.36.110 Community programs and projects for the aging—Allotments for—Purpose.** The secretary of the department of social and health services or his designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made available under the Federal Older Americans Act of 1965 as amended. [1971 ex.s. c 169 § 10.]

*Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.*

**74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval.** (1) The secretary or his designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his designee, but the administrative procedure act, chapter 34.05 RCW, shall not apply. [1971 ex.s. c 169 § 11.]

**74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type.** (1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his designee may determine, including provisions for adequate accounting systems, reasonable record retention periods and financial audits. [1971 ex.s. c 169 § 12.]

*Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.*

## Chapter 74.38 RCW

### SENIOR CITIZENS SERVICES ACT

#### Sections

74.38.010	Legislative recognition—Public policy.
74.38.020	Definitions.

74.38.030	Administration of community-based services program—Area plans—Annual state plan—Determination of low-income eligible persons.
74.38.040	Scope and extent of community based services program.
74.38.050	Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions.
74.38.060	Expansion of federal programs authorized.
74.38.061	Expansion of federal programs authorized.
74.38.070	Reduced utility rates for low-income senior citizens and other low-income citizens.
74.38.900	Short title.
74.38.905	Severability—1975-'76 2nd ex.s. c 131.

#### 74.38.010 Legislative recognition—Public policy.

The legislature recognizes the need for the development and expansion of alternative services and forms of care for senior citizens. Such services should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, it shall be the policy of this state to develop, expand, or maintain those programs which provide an alternative to institutional care when that form of care is premature, unnecessary, or inappropriate. [1977 ex.s. c 321 § 1; 1975-'76 2nd ex.s. c 131 § 1.]

**74.38.020 Definitions.** As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et seq.), as now or hereafter amended.

(3) "Department" means the department of social and health services.

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty-five years of age or more; or

(b) Sixty years of age or more and are either (i) nonemployed, or (ii) employed for twenty hours per week or less; and

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended.

(9) "Need" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended. [1989 1st ex.s. c 9 § 817; 1977 ex.s. c 321 § 2; 1975-'76 2nd ex.s. c 131 § 2.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**74.38.030 Administration of community-based services program—Area plans—Annual state plan—Determination of low-income eligible persons.** (1) The program of community-based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. For area plans prepared for submission in 2009, and thereafter, the area agencies may include the findings and recommendations of area-wide planning initiatives that they may undertake with appropriate local and regional partners regarding the changing age demographics of their area and the implications of this demographic change for public policies and public services. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low-income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the

date of such determination. [2008 c 146 § 5; 1975-'76 2nd ex.s. c 131 § 3.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**74.38.040 Scope and extent of community based services program.** The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombudsman programs for residents of all long-term care facilities. [1983 c 290 § 14; 1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

**Severability—1983 c 290:** See RCW 43.190.900.

**74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions.** The services pro-

vided in RCW 74.38.040 may be provided to nonlow income eligible persons: PROVIDED, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: PROVIDED, FURTHER, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombudsman program under chapter 43.190 RCW and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [1983 c 290 § 15; 1979 ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

**Severability—1983 c 290:** See RCW 43.190.900.

**Effective date—1979 ex.s. c 147:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 147 § 4.]

**74.38.060 Expansion of federal programs authorized.** The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

*RSVP funding: RCW 43.63A.275.*

**74.38.061 Expansion of federal programs authorized.** The department may expand the foster grandparent, senior companion, and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1977 ex.s. c 321 § 5.]

**74.38.070 Reduced utility rates for low-income senior citizens and other low-income citizens.** Notwithstanding any other provision of law, any county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low-income senior citizens or other low-income citizens: PROVIDED, That, for the purposes of this section, "low-income senior citizen" or "other low-income citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing the utility services. Any reduction in rates granted in whatever manner to low-income senior citizens or other low-income

citizens in one part of a service area shall be uniformly extended to low-income senior citizens or other low-income citizens in all other parts of the service area. [2002 c 270 § 1; 1998 c 300 § 8; 1990 c 164 § 1; 1988 c 44 § 1; 1980 c 160 § 1; 1979 c 116 § 1.]

**Findings—Intent—1998 c 300:** See RCW 19.29A.005.

**Construction—Severability—1998 c 300:** See RCW 19.29A.900 and 19.29A.901.

**74.38.900 Short title.** Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

**74.38.905 Severability—1975-'76 2nd ex.s. c 131.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 131 § 10.]

## Chapter 74.39 RCW

### LONG-TERM CARE SERVICE OPTIONS

#### Sections

74.39.001	Finding.
74.39.005	Purpose.
74.39.007	Definitions.
74.39.010	Option—Flexibility—Title XIX of the federal social security act.
74.39.020	Opportunities—Increase of federal funds—Title XIX of the federal social security act.
74.39.030	Community options program entry system—Waiver—Respite services.
74.39.041	Community residential options—Nursing facility eligible clients.
74.39.050	Individuals with functional disabilities—Self-directed care.
74.39.060	Personal aide providers—Registration.
74.39.070	Personal aide—Qualification exemptions.
74.39.900	Severability—1989 c 427.

**74.39.001 Finding.** The legislature finds that:

Washington's chronically functionally disabled population is growing at a rapid pace. This growth, along with economic and social changes and the coming age wave, presents opportunities for the development of long-term care community services networks and enhanced volunteer participation in those networks, and creates a need for different approaches to currently fragmented long-term care programs. The legislature further recognizes that persons with functional disabilities should receive long-term care services that encourage individual dignity, autonomy, and development of their fullest human potential. [1989 c 427 § 1.]

**74.39.005 Purpose.** The purpose of this chapter is to:

(1) Establish a balanced range of health, social, and supportive services that deliver long-term care services to chronically, functionally disabled persons of all ages;

(2) Ensure that functional ability shall be the determining factor in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing functional disability;

(3) Ensure that services are provided in the most independent living situation consistent with individual needs;

(4) Ensure that long-term care service options shall be developed and made available that enable functionally dis-

abled persons to continue to live in their homes or other community residential facilities while in the care of their families or other volunteer support persons;

(5) Ensure that long-term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in directly meeting the needs of persons with functional limitations;

(6) Develop a systematic plan for the coordination, planning, budgeting, and administration of long-term care services now fragmented between the division of developmental disabilities, division of mental health, aging and adult services administration, division of children and family services, division of vocational rehabilitation, office on AIDS, division of health, and bureau of alcohol and substance abuse;

(7) Encourage the development of a statewide long-term care case management system that effectively coordinates the plan of care and services provided to eligible clients;

(8) Ensure that individuals and organizations affected by or interested in long-term care programs have an opportunity to participate in identification of needs and priorities, policy development, planning, and development, implementation, and monitoring of state supported long-term care programs;

(9) Support educational institutions in Washington state to assist in the procurement of federal support for expanded research and training in long-term care; and

(10) Facilitate the development of a coordinated system of long-term care education that is clearly articulated between all levels of higher education and reflective of both in-home care needs and institutional care needs of functionally disabled persons. [1995 1st sp.s. c 18 § 10; 1989 c 427 § 2.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39.007 Definitions.** The definitions in this section apply throughout RCW 74.39.007, 74.39.050, 74.39.060, 74.39.070, 43.190.060, and section 1, chapter 336, Laws of 1999 unless the context clearly requires otherwise.

(1) "Self-directed care" means the process in which an adult person, who is prevented by a functional disability from performing a manual function related to health care that an individual would otherwise perform for himself or herself, chooses to direct and supervise a paid personal aide to perform those tasks.

(2) "Personal aide" means an individual, working privately or as an individual provider under contract or agreement with the department of social and health services, who acts at the direction of an adult person with a functional disability living in his or her own home and provides that person with health care services that a person without a functional disability can perform. [1999 c 336 § 2.]

**Finding—Intent—1999 c 336:** "(1) The legislature finds that certain aspects of health licensure laws have the unintended consequence of limiting the right of persons with functional disabilities to care for themselves in their own home, and of securing assistance from other persons in performing routine health-related tasks that persons without these disabilities customarily perform.

(2) It is the intent of the legislature to clarify the right of adults with functional disabilities to choose to self-direct their own health-related tasks through personal aides, and to describe the circumstances under which self-

directed care may take place in the home setting. The legislature declares that it is in the public interest to preserve the autonomy and dignity of persons with functional disabilities to care for themselves in their own homes, among the continuum of options for health care services where the judgment and control over the care rests with the individual." [1999 c 336 § 1.]

**74.39.010 Option—Flexibility—Title XIX of the federal social security act.** A valuable option available to Washington state to achieve the goals of RCW 74.39.001 and 74.39.005 is the flexibility in personal care and other long-term care services encouraged by the federal government under Title XIX of the federal social security act. These services include options to expand community-based long-term care services, such as adult family homes, congregate care facilities, respite, chore services, hospice, and case management. [1989 c 427 § 3.]

**74.39.020 Opportunities—Increase of federal funds—Title XIX of the federal social security act.** Title XIX of the federal social security act offers valuable opportunities to increase federal funds available to provide community-based long-term care services to functionally disabled persons in their homes, and in noninstitutional residential facilities, such as adult family homes and congregate care facilities. [1989 c 427 § 9.]

**74.39.030 Community options program entry system—Waiver—Respite services.** The department shall request an amendment to its community options program entry system waiver under section 1905(c) of the federal social security act to include respite services as a service available under the waiver. [1989 c 427 § 11.]

**74.39.041 Community residential options—Nursing facility eligible clients.** (1) To the extent of available funds and subject to any conditions placed on appropriations for this purpose, the department may provide one or more home and community-based waiver programs in accordance with section 1915(c) of the federal social security act for Washington residents who have a gross income in excess of three hundred percent of the federal supplemental security income benefit level. The waiver services provided in accordance with this section may differ from, and shall operate with a separate limit or limits on total enrollment than, those provided for persons who are categorically needy as defined in Title XIX of the federal social security act. The department shall adopt rules to establish eligibility criteria, applicable income standards, and the specific waiver services to be provided. Total annual enrollment levels and the services to be provided shall be as specified in the waiver agreement or agreements with the federal government, subject to any conditions on appropriations for this purpose.

(2) If a nursing facility resident becomes eligible for home and community-based waiver service alternatives to nursing facility care, but chooses to continue to reside in a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(3) If a recipient of home and community-based waiver services may continue to receive home and community-based waiver services, despite an otherwise disqualifying level of

income, but chooses to seek admission to a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(4) The department will fully disclose to all individuals eligible for waiver services under this section the services available in different long-term care settings. [2001 c 269 § 2.]

**74.39.050 Individuals with functional disabilities—Self-directed care.** (1) An adult person with a functional disability living in his or her own home may direct and supervise a paid personal aide in the performance of a health care task.

(2) The following requirements shall guide the provision of self-directed care under chapter 336, Laws of 1999:

(a) Health care tasks are those medical, nursing, or home health services that enable the person to maintain independence, personal hygiene, and safety in his or her own home, and that are services that a person without a functional disability would customarily and personally perform without the assistance of a licensed health care provider.

(b) The individual who chooses to self-direct a health care task is responsible for initiating self-direction by informing the health care professional who has ordered the treatment which involves that task of the individual's intent to perform that task through self-direction.

(c) When state funds are used to pay for self-directed tasks, a description of those tasks will be included in the client's comprehensive assessment, and subject to review with each annual reassessment.

(d) When a licensed health care provider orders treatment involving a health care task to be performed through self-directed care, the responsibility to ascertain that the patient understands the treatment and will be able to follow through on the self-directed care task is the same as it would be for a patient who performs the health care task for himself or herself, and the licensed health care provider incurs no additional liability when ordering a health care task which is to be performed through self-directed care.

(e) The role of the personal aide in self-directed care is limited to performing the physical aspect of health care tasks under the direction of the person for whom the tasks are being done. This shall not affect the ability of a personal aide to provide other home care services, such as personal care or homemaker services, which enable the client to remain at home.

(f) The responsibility to initiate self-directed health care tasks, to possess the necessary knowledge and training for those tasks, and to exercise judgment regarding the manner of their performance rests and remains with the person who has chosen to self-direct those tasks, including the decision to employ and dismiss a personal aide. [1999 c 336 § 3.]

**Finding—Intent—1999 c 336:** See note following RCW 74.39.007.

**74.39.060 Personal aide providers—Registration.** Any individual who, for compensation, serves as a personal aide provider under contract or agreement with the department of social and health services, to a person who self-directs his or her own care in his or her own home, shall reg-

ister with the department of social and health services. [1999 c 336 § 4.]

**Finding—Intent—1999 c 336:** See note following RCW 74.39.007.

#### 74.39.070 Personal aide—Qualification exemptions.

A personal aide, in the performance of a health care task, who is directed and supervised by a person with a functional disability in his or her own home, is exempt from any legal requirement to qualify and be credentialed by the department of health as a health care provider under Title 18 RCW to the extent of the responsibilities provided and health care tasks performed under chapter 336, Laws of 1999. [1999 c 336 § 8.]

**Finding—Intent—1999 c 336:** See note following RCW 74.39.007.

**74.39.900 Severability—1989 c 427.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 427 § 43.]

### Chapter 74.39A RCW LONG-TERM CARE SERVICES OPTIONS—EXPANSION

#### Sections

- 74.39A.005 Findings.
- 74.39A.007 Purpose and intent.
- 74.39A.009 Definitions.
- 74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules.
- 74.39A.020 Adult residential care—Contracts—Rules.
- 74.39A.030 Expansion of home and community services—Payment rates.
- 74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care.
- 74.39A.050 Quality improvement principles.
- 74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited.
- 74.39A.070 Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations.
- 74.39A.080 Department authority to take actions in response to noncompliance or violations.
- 74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language.
- 74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider.
- 74.39A.100 Chore services—Legislative finding, intent.
- 74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service.
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- 74.39A.130 Chore services—Department to develop program.
- 74.39A.140 Chore services—Employment of public assistance recipients.
- 74.39A.150 Chore services for disabled persons—Eligibility.
- 74.39A.155 Support for persons at risk of institutional placement.
- 74.39A.160 Transfer of assets—Penalties.
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- 74.39A.230 Authority created.
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- 74.39A.320 Establishment of capital add-on rate—Determination of medicaid occupancy percentage.
- 74.39A.330 Peer mentoring.
- 74.39A.340 Continuing education.
- 74.39A.350 Advanced training.
- 74.39A.360 Training partnership.
- 74.39A.900 Section captions—1993 c 508.
- 74.39A.901 Conflict with federal requirements.
- 74.39A.902 Severability—1993 c 508.
- 74.39A.903 Effective date—1993 c 508.

**74.39A.005 Findings.** The legislature finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care continues to be family and friends. However, these traditional caregivers are increasingly employed outside the home. There is a growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The legislature further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services at home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The legislature finds that as other long-term care options become more available, the relative need for nursing home beds is likely to decline. The legislature recognizes, however, that nursing home care will continue to be a critical part of the state's long-term care options, and that such services should promote individual dignity, autonomy, and a homelike environment.

The legislature finds that many recipients of in-home services are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and clients' needs increase. The legislature intends that current training standards be enhanced. [2000 c 121 § 9; 1993 c 508 § 1.]

**74.39A.007 Purpose and intent.** It is the legislature's intent that:

- (1) Long-term care services administered by the department of social and health services include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;
- (2) Home and community-based services be developed, expanded, or maintained in order to meet the needs of consumers and to maximize effective use of limited resources;
- (3) Long-term care services be responsive and appropriate to individual need and also cost-effective for the state;
- (4) Nursing home care is provided in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and timely

discharge to a less restrictive care setting when appropriate; and

(5) State health planning for nursing home bed supply take into account increased availability of other home and community-based service options. [1993 c 508 § 2.]

**74.39A.009 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(6) "Department" means the department of social and health services.

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(8) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(9) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermit-

tently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11)(a) "Long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers.

(12) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(13) "Secretary" means the secretary of social and health services.

(14) "Training partnership" means a joint partnership or trust established and maintained jointly by the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 to provide training, peer mentoring, and examinations required under this chapter, and educational, career development, or other services to individual providers.

(15) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [2007 c 361 § 2; 2004 c 142 § 14; 1997 c 392 § 103.]

**Construction—2007 c 361:** "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2007 c 361 § 11.]

**Severability—2007 c 361:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 361 § 12.]

**Captions not law—2007 c 361:** "Captions used in this act are not any part of the law." [2007 c 361 § 15.]

**Short title—2007 c 361:** "This act may be known and cited as the establishing quality in long-term care services act." [2007 c 361 § 16.]

**Effective dates—2004 c 142:** See note following RCW 18.20.020.

**Short title—1997 c 392:** "This act shall be known and may be cited as the Clara act." [1997 c 392 § 101.]

**Findings—1997 c 392:** "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe, and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty

in matching client needs and services to multiple categorical funding sources.

The legislature further finds that Washington's chronically functionally disabled population of all ages is growing at a rapid pace due to a population of the very old and increased incidence of disability due in large measure to technological improvements in acute care causing people to live longer. Further, to meet the significant and growing long-term care needs into the near future, rapid, fundamental changes must take place in the way we finance, organize, and provide long-term care services to the chronically functionally disabled.

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

**Construction—Conflict with federal requirements—1997 c 392:**

"Any section or provision of this act that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department of health or the department of social and health services. If any section of this act is found to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. The rules issued under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 392 § 504.]

**Part headings and captions not law—1997 c 392:** "Part headings and captions used in this act are not part of the law." [1997 c 392 § 531.]

**74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules.** (1) To the extent of available funding, the department of social and health services may contract with licensed boarding homes under chapter 18.20 RCW and tribally licensed boarding homes for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in

behalf of the assisted living services or enhanced adult residential care client shall be subject to the department's rules. [1995 1st sp.s. c 18 § 14; 1993 c 508 § 3.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.020 Adult residential care—Contracts—Rules.** (1) To the extent of available funding, the department of social and health services may contract for adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care client shall be subject to the adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract. [2004 c 142 § 15; 1995 1st sp.s. c 18 § 15.]

**Effective dates—2004 c 142:** See note following RCW 18.20.020.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.030 Expansion of home and community services—Payment rates.** (1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including

assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and boarding homes for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care. In the event of any conflict between any such rule and a collective bargaining agreement entered into under RCW 74.39A.270 and 74.39A.300, the collective bargaining agreement prevails.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use for the purpose of providing enhanced adult residential care under chapter 70.38 RCW, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of contracted enhanced adult residential care services. As an incentive for nursing homes to permanently convert a portion of its nursing home bed capacity for the purpose of providing enhanced adult residential care, the department may authorize a supplemental add-on to the enhanced adult residential care rate.

(c) The department may authorize a supplemental assisted living services rate for up to four years for facilities that convert from nursing home use and do not retain rights to the converted nursing home beds under chapter 70.38 RCW, if the department determines that payment of a supplemental rate is cost-effective and necessary to foster expansion of contracted assisted living services. [2002 c 3 § 10 (Initiative Measure No. 775, approved November 6, 2001); 1995 1st sp.s. c 18 § 2.]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**Conflict with federal requirements—1995 1st sp.s. c 18:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1995 1st sp.s. c 18 § 74.]

**Severability—1995 1st sp.s. c 18:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 18 § 119.]

**Effective date—1995 1st sp.s. c 18:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 18 § 120.]

**74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care.** The department shall work in partnership with hospitals in assisting patients and their families to find long-term care services of their choice. The department shall not delay hospital discharges but shall assist and support the activities of hospital

discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options to individuals who are hospitalized and likely to need long-term care.

(1) To the extent of available funds, the department shall assess individuals who:

(a) Are medicaid clients, medicaid applicants, or eligible for both medicare and medicaid; and

(b) Apply or are likely to apply for admission to a nursing facility.

(2) For individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility, the department shall, to the extent of available funds, offer an assessment and information regarding appropriate in-home and community services.

(3) When the department finds, based on assessment, that the individual prefers and could live appropriately and cost-effectively at home or in some other community-based setting, the department shall:

(a) Advise the individual that an in-home or other community service is appropriate;

(b) Develop, with the individual or the individual's representative, a comprehensive community service plan;

(c) Inform the individual regarding the availability of services that could meet the applicant's needs as set forth in the community service plan and explain the cost to the applicant of the available in-home and community services relative to nursing facility care; and

(d) Discuss and evaluate the need for on-going involvement with the individual or the individual's representative.

(4) When the department finds, based on assessment, that the individual prefers and needs nursing facility care, the department shall:

(a) Advise the individual that nursing facility care is appropriate and inform the individual of the available nursing facility vacancies;

(b) If appropriate, advise the individual that the stay in the nursing facility may be short term; and

(c) Describe the role of the department in providing nursing facility case management. [1995 1st sp.s. c 18 § 6.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.050 Quality improvement principles.** The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and

education steering committee established in \*RCW 74.39A.190. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in \*RCW 74.39A.190.

(13) The department shall establish, by rule, training, background checks, and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health

services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998. [2004 c 140 § 6; 2000 c 121 § 10; 1999 c 336 § 5; 1998 c 85 § 1; 1997 c 392 § 209; 1995 1st sp.s. c 18 § 12.]

\*Reviser's note: RCW 74.39A.190 was repealed by 2007 c 361 § 10.

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

**74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited.** (1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide chronic long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombudsman as provided by RCW 43.190.050.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis for investigation; or (c) corrective action has been taken as determined by the ombudsman or the department.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombudsman, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss the alleged violations with the inspector and to provide other information the complainant believes will assist the inspector; informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use

its best efforts to interview the vulnerable adult or adults allegedly harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(d) Substantiated complaints involving harm to a resident, if an applicable law or rule has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license or contract suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents and to enforce compliance with this chapter.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombudsman program or department staff to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that

provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombudsman. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [2001 c 193 § 1; 1999 c 176 § 34; 1997 c 392 § 210; 1995 1st sp.s. c 18 § 13.]

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.070 Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations.** (1) The department shall, by rule, establish reasonable minimum qualifications and training requirements to assure that assisted living service, enhanced adult residential care service, and adult residential care providers with whom the department contracts are capable of providing services consistent with this chapter. The rules shall apply only to residential capacity for which the state contracts.

(2) The department shall not contract for assisted living, enhanced adult residential care, or adult residential care services with a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more of the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children. [1995 1st sp.s. c 18 § 16.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.080 Department authority to take actions in response to noncompliance or violations.** (1) The department is authorized to take one or more of the actions listed in

subsection (2) of this section in any case in which the department finds that a provider of assisted living services, adult residential care services, or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a contract;

(b) Impose reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions

for continuation of a contract are effective immediately upon notice and shall continue pending any hearing. [2001 c 193 § 3; 1996 c 193 § 1; 1995 1st sp.s. c 18 § 17.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language.**

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and disabled persons in the community.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan

of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care. [2004 c 141 § 3; 1999 c 175 § 2; 1995 1st sp.s. c 18 § 38.]

**Findings—1999 c 175:** "(1) The legislature finds that the quality of long-term care services provided to, and protection of, Washington's low-income elderly and disabled residents is of great importance to the state. The legislature further finds that revised in-home care policies are needed to more effectively address concerns about the quality of these services.

(2) The legislature finds that consumers of in-home care services frequently are in contact with multiple health and long-term care providers in the public and private sector. The legislature further finds that better coordination between these health and long-term care providers, and case managers, can increase the consumer's understanding of their plan of care, maximize the health benefits of coordinated care, and facilitate cost efficiencies across health and long-term care systems." [1999 c 175 § 1.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider.**

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider who has not been referred to a consumer by the authority established under chapter 3, Laws of 2002 has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessment and reauthorization of services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the

department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The consumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW.

When the department or area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection. [2004 c 141 § 1; 2002 c 3 § 11 (Initiative Measure No. 775, approved November 6, 2001); 2000 c 87 § 5; 1999 c 175 § 3.]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**Findings—1999 c 175:** See note following RCW 74.39A.090.

**74.39A.100 Chore services—Legislative finding, intent.** The legislature finds that it is desirable to provide a coordinated and comprehensive program of in-home services for certain citizens in order that such persons may remain in their own homes, obtain employment if possible, and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. The legislature intends that the services will be provided in a fashion which promotes independent living. [1980 c 137 § 1; 1973 1st ex.s. c 51 § 1. Formerly RCW 74.08.530.]

**74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service.** It is the intent of the legislature that chore services be provided to eligible persons within the limits of funds appropriated for that purpose. Therefore, the department shall provide services only to those persons identified as at risk of being placed in a long-term care facility in the absence of such services. The department shall not provide chore services to any individual who is eligible for, and whose needs can be met by another community service administered by the department. Chore services shall be provided to the extent necessary to maintain a safe and healthful living environment. It is the policy of the state to encourage the development of volunteer chore services in local communities as a means of meeting chore care service needs and directing financial resources. In determining eligibility for chore services, the department shall consider the following:

(1) The kind of services needed;

(2) The degree of service need, and the extent to which an individual is dependent upon such services to remain in his or her home or return to his or her home;

(3) The availability of personal or community resources which may be utilized to meet the individual's need; and

(4) Such other factors as the department considers necessary to insure service is provided only to those persons whose chore service needs cannot be met by relatives, friends, non-profit organizations, other persons, or by other programs or resources.

In determining the level of services to be provided under this chapter, the client shall be assessed using an instrument designed by the department to determine the level of functional disability, the need for service and the person's risk of long-term care facility placement. [1995 1st sp.s. c 18 § 36; 1989 c 427 § 5; 1981 1st ex.s. c 6 § 16. Formerly RCW 74.08.545.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Severability—1989 c 427:** See RCW 74.39.900.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**74.39A.120 Chore services—Expenditure limitation—Priorities—Rule on patient resource limit.** (1) The department shall establish a monthly dollar lid for each region on chore services expenditures within the legislative appropriation. Priority for services shall be given to the following situations:

(a) People who were receiving chore personal care services as of June 30, 1995;

(b) People for whom chore personal care services are necessary to return to the community from a nursing home;

(c) People for whom chore personal care services are necessary to prevent unnecessary nursing home placement; and

(d) People for whom chore personal care services are necessary as a protective measure based on referrals resulting from an adult protective services investigation.

(2) The department shall require a client to participate in the cost of chore services as a necessary precondition to receiving chore services paid for by the state. The client shall retain an amount equal to one hundred percent of the federal poverty level, adjusted for household size, for maintenance needs. The department shall consider the remaining income as the client participation amount for chore services except for those persons whose participation is established under \*RCW 74.08.570.

(3) The department shall establish, by rule, the maximum amount of resources a person may retain and be eligible for chore services. [1995 1st sp.s. c 18 § 37.]

**\*Reviser's note:** RCW 74.08.570 was recodified as RCW 74.39A.150 pursuant to 1995 1st sp.s. c 18 § 34.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.130 Chore services—Department to develop program.** (1) The department is authorized to develop a program to provide for chore services under this chapter.

(2) The department may provide assistance in the recruiting of providers of the services enumerated in RCW 74.39A.120 and seek to assure the timely provision of services in emergency situations.

(3) The department shall assure that all providers of the chore services under this chapter are compensated for the delivery of the services on a prompt and regular basis. [1995 1st sp.s. c 18 § 40; 1989 c 427 § 6; 1983 c 3 § 189; 1980 c 137 § 2; 1973 1st ex.s. c 51 § 3. Formerly RCW 74.08.550.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Severability—1989 c 427:** See RCW 74.39.900.

**74.39A.140 Chore services—Employment of public assistance recipients.** In developing the program set forth in \*RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under \*\*RCW 74.08.541. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1983 c 3 § 190; 1973 1st ex.s. c 51 § 4. Formerly RCW 74.08.560.]

**Reviser's note:** \*(1) RCW 74.08.550 was recodified as RCW 74.39A.130 pursuant to 1995 1st sp.s. c 18 § 34, effective July 1, 1995.

\*\*\*(2) RCW 74.08.541 was repealed by 1995 1st sp.s. c 18 § 35, effective July 1, 1995.

**74.39A.150 Chore services for disabled persons—Eligibility.** (1) An otherwise eligible disabled person shall not be deemed ineligible for chore services under this chapter if the person's gross income from employment, adjusted downward by the cost of the chore services to be provided and the disabled person's work expenses, does not exceed the maximum eligibility standard established by the department for such chore services. The department shall establish a methodology for client participation that allows such disabled persons to be employed.

(2) If a disabled person arranges for chore services through an individual provider arrangement, the client's contribution shall be counted as first dollar toward the total amount owed to the provider for chore services rendered.

(3) As used in this section:

(a) "Gross income" means total earned wages, commissions, salary, and any bonus;

(b) "Work expenses" includes:

(i) Payroll deductions required by law or as a condition of employment, in amounts actually withheld;

(ii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars; and

(iii) Expenses of employment necessary for continued employment, such as tools, materials, union dues, transportation to service customers if not furnished by the employer, and uniforms and clothing needed on the job and not suitable for wear away from the job;

(c) "Employment" means any work activity for which a recipient receives monetary compensation;

(d) "Disabled" means:

(i) Permanently and totally disabled as defined by the department and as such definition is approved by the federal social security administration for federal matching funds;

(ii) Eighteen years of age or older;

(iii) A resident of the state of Washington; and

(iv) Willing to submit to such examinations as are deemed necessary by the department to establish the extent and nature of the disability. [1995 1st sp.s. c 18 § 41; 1989 c 427 § 7; 1980 c 137 § 3. Formerly RCW 74.08.570.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Severability—1989 c 427:** See RCW 74.39.900.

**74.39A.155 Support for persons at risk of institutional placement.** Within funds appropriated for this purpose, the department shall provide additional support for residents in community settings who exhibit challenging behaviors that put them at risk for institutional placement. The residents must be receiving services under the community options program entry system waiver or the medically needy residential facility waiver under section 1905(c) of the federal social security act and must have been evaluated under the individual comprehensive assessment reporting and evaluation process. [2008 c 146 § 8.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**74.39A.160 Transfer of assets—Penalties.** (1) A person who receives an asset from an applicant for or recipient of long-term care services for less than fair market value shall be subject to a civil fine payable to the department if:

(a) The applicant for or recipient of long-term care services transferred the asset for the purpose of qualifying for state or federal coverage for long-term care services and the person who received the asset was aware, or should have been aware, of this purpose;

(b) Such transfer establishes a period of ineligibility for such service under state or federal laws or regulations; and

(c) The department provides coverage for such services during the period of ineligibility because the failure to provide such coverage would result in an undue hardship for the applicant or recipient.

(2) The civil fine imposed under this section shall be imposed in a judicial proceeding initiated by the department and shall equal (a) up to one hundred fifty percent of the amount the department expends for the care of the applicant or recipient during the period of ineligibility attributable to the amount transferred to the person subject to the civil fine plus (b) the department's court costs and legal fees.

(3) Transfers subject to a civil fine under this section shall be considered null and void and a fraudulent conveyance as to the department. The department shall have the right to petition a court to set aside such transfers and require all assets transferred returned to the applicant or recipient. [1995 1st sp.s. c 18 § 55.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.170 Recovery of payments—Transfer of assets rules for eligibility—Disclosure of estate recovery costs, terms, and conditions.** (1) All payments made in state-funded long-term care shall be recoverable as if they were medical assistance payments subject to recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without regard to the recipient's age.

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(2) In determining eligibility for state-funded long-term care services programs, the department shall impose the same rules with respect to the transfer of assets for less than fair market value as are imposed under 42 U.S.C. 1396p with respect to nursing home and home and community services.

(3) It is the responsibility of the department to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered long-term care services subject to recovery of payments.

(4) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the department shall provide a written description of the community service options.

(5) The department of social and health services shall develop an implementation plan for notifying the client or his or her legal representative at least quarterly of the types of services used and the cost of those services (debt) that will be charged against the estate. The estate planning implementation plan shall be submitted by December 12, 1999, to the appropriate standing committees of the house of representatives and the senate, and to the joint legislative and executive task force on long-term care. [1999 c 354 § 1; 1995 1st sp.s. c 18 § 56.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

*Recovery for state-funded long-term care—Legislative intent: RCW 43.20B.090.*

**74.39A.180 Authority to pay for probate actions and collection of bad debts.** Notwithstanding any other provision of law:

(1) In order to facilitate and ensure compliance with the federal social security act, Title XIX, as now existing or hereafter amended, later enactment to be adopted by reference by the director by rule, and other state laws mandating recovery of assets from estates of persons receiving long-term care services, the secretary of the department, with the approval of the office of the attorney general, may pay the reasonable and proper fees of attorneys admitted to practice before courts of this state, and associated professionals such as guardians, who are engaged in probate practice for the purpose of maintaining actions under Title 11 RCW, to the end that assets are not wasted, but are rather collected and preserved, and used for the care of the client or the reimbursement of the department pursuant to this chapter or chapter 43.20B RCW.

(2) The department may hire such other agencies and professionals on a contingency basis or otherwise as are necessary and cost-effective to collect bad debts owed to the department for long-term care services. [1995 1st sp.s. c 18 § 57.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.39A.200 Training curricula, materials—In public domain—Exceptions.** All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter 42.56 RCW.

(2008 Ed.)

Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain. [2005 c 274 § 355; 2000 c 121 § 11.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**74.39A.210 Disclosure of employee information—Employer immunity—Rebuttable presumption.** An employer providing home and community services, including facilities licensed under chapters 18.51, 18.20, and 70.128 RCW, an employer of a program authorized under RCW 71A.12.040(10), or an in-home services agency employer licensed under chapter 70.127 RCW, who discloses information about a former or current employee to a prospective home and community services employer, nursing home employer, or are an in-home services agency employer, is presumed to be acting in good faith and is immune from civil and criminal liability for such disclosure or its consequences if the disclosed information relates to: (1) The employee's ability to perform his or her job; (2) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (3) any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult. For purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false or made with reckless disregard for the truth of the information disclosed. Should the employee successfully rebut the presumption of good faith standard in a court of competent jurisdiction, and therefore be the prevailing party, the prevailing party shall be entitled to recover reasonable attorneys' fees against the employer. Nothing in this section shall affect or limit any other state, federal, or constitutional right otherwise available. [2001 c 319 § 13.]

**74.39A.220 Findings—2002 c 3 (Initiative Measure No. 775).** The people of the state of Washington find as follows:

(1) Thousands of Washington seniors and persons with disabilities live independently in their own homes, which they prefer and is less costly than institutional care such as nursing homes.

(2) Many Washington seniors and persons with disabilities currently receive long-term in-home care services from individual providers hired directly by them under the medicare personal care, community options programs entry system, or chore services program.

(3) Quality long-term in-home care services allow Washington seniors, persons with disabilities, and their families the choice of allowing seniors and persons with disabilities to remain in their homes, rather than forcing them into institutional care such as nursing homes. Long-term in-home

care services are also less costly, saving Washington taxpayers significant amounts through lower reimbursement rates.

(4) The quality of long-term in-home care services in Washington would benefit from improved regulation, higher standards, better accountability, and improved access to such services. The quality of long-term in-home care services would further be improved by a well-trained, stable individual provider workforce earning reasonable wages and benefits.

(5) Washington seniors and persons with disabilities would benefit from the establishment of an authority that has the power and duty to regulate and improve the quality of long-term in-home care services.

(6) The authority should ensure that the quality of long-term in-home care services provided by individual providers is improved through better regulation, higher standards, increased accountability, and the enhanced ability to obtain services. The authority should also encourage stability in the individual provider workforce through collective bargaining and by providing training opportunities. [2002 c 3 § 1 (Initiative Measure No. 775, approved November 6, 2001).]

**Captions not law—2002 c 3 (Initiative Measure No. 775):** "Captions used in this act are not any part of the law." [2002 c 3 § 16 (Initiative Measure No. 775, approved November 6, 2001).]

**Severability—2002 c 3 (Initiative Measure No. 775):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 3 § 17 (Initiative Measure No. 775, approved November 6, 2001).]

**74.39A.230 Authority created.** (1) The home care quality authority is established to regulate and improve the quality of long-term in-home care services by recruiting, training, and stabilizing the workforce of individual providers.

(2) The authority consists of a board of nine members appointed by the governor. Five board members shall be current and/or former consumers of long-term in-home care services provided for functionally disabled persons, at least one of whom shall be a person with a developmental disability; one board member shall be a representative of the developmental disabilities planning council; one board member shall be a representative of the governor's committee on disability issues and employment; one board member shall be a representative of the state council on aging; and one board member shall be a representative of the Washington state association of area agencies on aging. Each board member serves a term of three years. If a vacancy occurs, the governor will make an appointment to become immediately effective for the unexpired term. Each board member is eligible for reappointment and may serve no more than two consecutive terms. In making appointments, the governor will take into consideration any nominations or recommendations made by the groups or agencies represented. [2002 c 3 § 2 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.240 Definitions.** The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041, and 74.09.740 unless the context clearly requires otherwise.

(1) "Authority" means the home care quality authority.

(2) "Board" means the board created under RCW 74.39A.230.

(3) "Consumer" means a person to whom an individual provider provides any such services.

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270. [2002 c 3 § 3 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.250 Authority duties.** (1) The authority must carry out the following duties:

(a) Establish qualifications and reasonable standards for accountability for and investigate the background of individual providers and prospective individual providers, except in cases where, after the department has sought approval of any appropriate amendments or waivers under RCW 74.09.740, federal law or regulation requires that such qualifications and standards for accountability be established by another entity in order to preserve eligibility for federal funding. Qualifications established must include compliance with the minimum requirements for training and satisfactory criminal background checks as provided in RCW 74.39A.050 and confirmation that the individual provider or prospective individual provider is not currently listed on any long-term care abuse and neglect registry used by the department at the time of the investigation;

(b) Undertake recruiting activities to identify and recruit individual providers and prospective individual providers;

(c) Provide training opportunities, either directly or through contract, for individual providers, prospective individual providers, consumers, and prospective consumers;

(d) Provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the authority shall determine that:

(i) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW 74.39A.050;

(ii) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(iii) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department;

(e) Remove from the referral registry any individual provider or prospective individual provider the authority determines not to meet the qualifications set forth in (d) of this subsection or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual pro-

vider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW;

(f) Provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider;

(g) Give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

(h) Cooperate with the department, area agencies on aging, and other federal, state, and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the authority identifies concerns regarding the services being provided by an individual provider, the authority must notify the relevant area agency or department case manager regarding such concerns.

(2) In determining how best to carry out its duties, the authority must identify existing individual provider recruitment, training, and referral resources made available to consumers by other state and local public, private, and nonprofit agencies. The authority may coordinate with the agencies to provide a local presence for the authority and to provide consumers greater access to individual provider recruitment, training, and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the authority may contract with the agencies to provide recruitment, training, and referral services if the authority determines the agencies can provide the services according to reasonable standards of performance determined by the authority. The authority must provide an opportunity for consumer participation in the determination of the standards. [2002 c 3 § 4 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.260 Department duties.** The department must perform criminal background checks for individual providers and prospective individual providers and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. [2002 c 3 § 5 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions.** (1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargain-

ing under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers. The governor or the governor's designee shall consult the authority on all issues for which the exclusive bargaining representative requests to engage in collective bargaining under subsections (6) and (7) of this section. The authority shall work with the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (6) and (7) of this section.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires; and

(ii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from

individual providers who are not referred to them by the authority.

(5) In implementing and administering this chapter, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer or its core responsibility to manage long-term in-home care services under this chapter, including determination of the level of care that each consumer is eligible to receive. However, at the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over how the department's core responsibility affects hours of work for individual providers. This subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over employer contributions to the training partnership for the costs of: (a) Meeting all training and peer mentoring required under this chapter; and (b) other training intended to promote the career development of individual providers.

(8)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter.

(9) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

**Reviser's note:** This section was amended by 2007 c 278 § 3 and by 2007 c 361 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2007 c 361 §§ 7 and 8:** "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**Effective date—2006 c 106:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

**Severability—2004 c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

**Effective date—2004 c 3:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.280 Powers.** In carrying out its duties under chapter 3, Laws of 2002, the authority may:

(1) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations, and individuals to pay them for services rendered or furnished;

(2) Offer and provide recruitment, training, and referral services to providers of long-term in-home care services other than individual providers and prospective individual providers, for a fee to be determined by the authority;

(3) Issue rules under the administrative procedure act, chapter 34.05 RCW, as necessary for the purpose and policies of chapter 3, Laws of 2002;

(4) Establish offices, employ and discharge employees, agents, and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur

expenses, and create such liabilities as are reasonable and proper for the administration of chapter 3, Laws of 2002;

(5) Solicit and accept for use any grant of money, services, or property from the federal government, the state, or any political subdivision or agency thereof, including federal matching funds under Title XIX of the federal social security act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof in making an application for any grant;

(6) Coordinate its activities and cooperate with similar agencies in other states;

(7) Establish technical advisory committees to assist the board;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Acquire, hold, or dispose of real or personal property or any interest therein, and construct, lease, or otherwise provide facilities for the activities conducted under this chapter, provided that the authority may not exercise any power of eminent domain;

(10) Sue and be sued in its own name;

(11) Delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with the purposes of this chapter; and

(12) Do other acts necessary or convenient to execute the powers expressly granted to it. [2002 c 3 § 7 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.290 Performance review.** (1) The joint legislative audit and review committee will conduct a performance review of the authority and submit the review to the legislature and the governor. The first review will be submitted before December 1, 2006, and the second review shall be submitted before December 1, 2009.

(2) The first performance review will include an evaluation of the health, welfare, and satisfaction with services provided of the consumers receiving long-term in-home care services from individual providers under chapter 3, Laws of 2002, including the degree to which all required services have been delivered, the degree to which consumers receiving services from individual providers have ultimately required additional or more intensive services, such as home health care, or have been placed in other residential settings or nursing homes, the promptness of response to consumer complaints, and any other issue the committee deems relevant.

(3) The first performance review will provide an explanation of the full cost of individual provider services, including the administrative costs of the authority, unemployment compensation, social security and medicare payroll taxes paid by the department, and area agency on aging home care oversight costs.

(4) The first performance review will make recommendations to the legislature and the governor for any amendments to chapter 3, Laws of 2002 that will further ensure the well-being of consumers and prospective consumers under chapter 3, Laws of 2002, and the most efficient means of delivering required services. In addition, the first perfor-

mance review will include findings and recommendations regarding the appropriateness of the authority's assumption of responsibility for verification of hours worked by individual providers, payment of individual providers, and other duties.

(5) The second performance review will assess the services provided by the home care quality authority to meet its statutory duties, and address any other questions required by the legislature. [2008 c 140 § 1; 2002 c 3 § 8 (Initiative Measure No. 775, approved November 6, 2001).]

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.300 Funding.** (1) Upon meeting the requirements of subsection (2) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to administer chapter 3, Laws of 2002 and to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 or for legislation necessary to implement such agreement.

(2) A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 shall not be submitted by the governor to the legislature unless such request:

(a) Has been submitted to the director of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

(3) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(4) When any increase in individual provider wages or benefits is negotiated or agreed to, no increase in wages or benefits negotiated or agreed to under this chapter will take effect unless and until, before its implementation, the department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

(5) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and fringe benefits provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(6) After the expiration date of any collective bargaining agreement entered into under RCW 74.39A.270, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in RCW 74.39A.270(6)(f).

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(7) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement. [2004 c 3 § 2; 2002 c 3 § 9 (Initiative Measure No. 775, approved November 6, 2001).]

**Severability—Effective date—2004 c 3:** See notes following RCW 74.39A.270.

**Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775):** See RCW 74.39A.220 and notes following.

**74.39A.310 Contract for individual home care services providers—Cost of increase in wages and benefits funded—Formula.** (1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those benefits defined in subsection (2) of this section. That per-hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

(i) Regular wages;

(ii) Benefit pay, such as vacation, sick, and holiday pay;

(iii) Taxes on wages/benefit pay;

(iv) Mileage; and

(v) Contributions to a training partnership; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(2) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care agencies at the same rate as negotiated and funded in the collective bargaining agreement for individual providers of home care services. [2007 c 361 § 8; 2006 c 9 § 1.]

**Effective date—2007 c 361 §§ 7 and 8:** See note following RCW 74.39A.270.

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**Temporary rate increase—2006 c 9:** "For the fiscal year ending June 30, 2007, the per-hour amount added to the home care agency vendor rate pursuant to section 1(1)(a) of this act shall be limited to the cost of: (1) A \$0.02 per-hour increase in wages, plus the employer share of unemployment and social security taxes on the amount of the increase; and (2) the cost of annual leave benefits negotiated and funded for individual providers of home care services. This section expires June 30, 2007." [2006 c 9 § 2.]

**Effective date—2006 c 9:** "This act takes effect July 1, 2006." [2006 c 9 § 3.]

**74.39A.320 Establishment of capital add-on rate—Determination of medicaid occupancy percentage.** (1) To the extent funds are appropriated for this purpose, the department shall establish a capital add-on rate, not less than the

July 1, 2005, capital add-on rate established by the department, for those assisted living facilities contracting with the department that have a medicaid occupancy percentage of sixty percent or greater.

(2) Effective for July 1, 2006, and for each July 1st rate-setting period thereafter, the department shall determine the facility's medicaid occupancy percentage using the last six months' medicaid resident days from the preceding calendar year divided by the product of all its licensed boarding home beds irrespective of use, times calendar days for the six-month period. For the purposes of this section, medicaid resident days include those clients who are enrolled in a medicaid managed long-term care program, including but not limited to the program for all inclusive care and the medicaid integration project.

(3) The medicaid occupancy percentage established beginning on July 1, 2006, and for each July 1st thereafter, shall be used to determine whether an assisted living facility qualifies for the capital add-on rate under this section. Those facilities that qualify for the capital add-on rate shall receive the capital add-on rate throughout the applicable fiscal year. [2006 c 260 § 1.]

**Effective date—2006 c 260:** "This act takes effect July 1, 2006." [2006 c 260 § 2.]

**74.39A.330 Peer mentoring.** Long-term care workers shall be offered on-the-job training or peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after January 1, 2010. [2007 c 361 § 3.]

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**74.39A.340 Continuing education.** Long-term care workers shall complete twelve hours of continuing education training in advanced training topics each year. This requirement applies beginning on January 1, 2010. [2007 c 361 § 4.]

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**74.39A.350 Advanced training.** The department shall offer, directly or through contract, training opportunities sufficient for a long-term care worker to accumulate sixty-five hours of training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through a contract with the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this

section. This requirement to offer advanced training applies beginning January 1, 2010. [2007 c 361 § 5.]

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**74.39A.360 Training partnership.** Beginning January 1, 2010, for individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, all training and peer mentoring required under this chapter shall be provided by a training partnership. Contributions to the partnership pursuant to a collective bargaining agreement negotiated under this chapter shall be made beginning July 1, 2009. The training partnership shall provide reports as required by the department verifying that all individual providers have complied with all training requirements. The exclusive bargaining representative shall designate the training partnership. [2007 c 361 § 6.]

**Construction—Severability—Captions not law—Short title—2007 c 361:** See notes following RCW 74.39A.009.

**74.39A.900 Section captions—1993 c 508.** Section captions as used in this act constitute no part of the law. [1993 c 508 § 10.]

**74.39A.901 Conflict with federal requirements.** If any part of this chapter or a collective bargaining agreement under this chapter is found by a court of competent jurisdiction to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter or the agreement is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this chapter or the agreement in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2004 c 3 § 5; 1993 c 508 § 11.]

**Severability—Effective date—2004 c 3:** See notes following RCW 74.39A.270.

**74.39A.902 Severability—1993 c 508.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 508 § 12.]

**74.39A.903 Effective date—1993 c 508.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]. [1993 c 508 § 13.]

## Chapter 74.41 RCW RESPITE CARE SERVICES

### Sections

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**74.41.010 Legislative findings.** The legislature recognizes that:

(1) Most care provided for functionally disabled adults is delivered by family members or friends who are not compensated for their services. Family involvement is a crucial element for avoiding or postponing institutionalization of the disabled adult.

(2) Family or other caregivers who provide continuous care in the home are frequently under substantial stress, physical, psychological, and financial. The stress, if unrelieved by family or community support to the caregiver, may lead to premature or unnecessary nursing home placement.

(3) Respite care and other community-based supportive services for the caregiver and for the disabled adult could relieve some of the stresses, maintain and strengthen the family structure, and postpone or prevent institutionalization.

(4) With family and friends providing the primary care for the disabled adult, supplemented by community health and social services, long-term care may be less costly than if the individual were institutionalized. [1984 c 158 § 1.]

**74.41.020 Intent.** It is the intent of the legislature to provide a comprehensive program of long-term care information and support, including in-home and out-of-home respite care services, for family and other unpaid caregivers who provide the daily services required when caring for adults with functional disabilities. The family caregiver long-term care information and support services shall:

(1) Provide information, relief, and support to family or other unpaid caregivers of adults with functional disabilities;

(2) Encourage family and other nonpaid individuals to provide care for adults with functional disabilities at home, and thus offer a viable alternative to placement in a long-term care facility;

(3) Ensure that respite care is made generally available on a sliding-fee basis to eligible participants in the program according to priorities established by the department;

(4) Be provided in the least restrictive setting available consistent with the individually assessed needs of the adults with functional disabilities;

(5) Include services appropriate to the needs of persons caring for individuals with dementing illnesses; and

(6) Provide unpaid family and other unpaid caregivers with services that enable them to make informed decisions about current and future care plans, solve day-to-day caregiving problems, learn essential caregiving skills, and locate services that may strengthen their capacity to provide care. [2000 c 207 § 2; 1987 c 409 § 1; 1984 c 158 § 2.]

**Short title—2000 c 207:** "This act shall be known and cited as the Fred Mills act." [2000 c 207 § 1.]

**74.41.030 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(2008 Ed.)

(1) "Family caregiver long-term care information and support services" means providing long-term care information and support services to unpaid family and other unpaid caregivers of adults with functional disabilities, including but not limited to providing: (a) Information about available public and private long-term care support services; (b) assistance in gaining access to an array of appropriate long-term care family caregiver services; (c) promotion and implementation of support groups; (d) caregiver training to assist the nonpaid caregivers in making decisions and solving challenges relating to their caregiving roles; (e) respite care services; and (f) additional supportive long-term care services that may include but not be limited to translating/interpreter services, specialized transportation, coordination of health care services, help purchasing needed supplies, durable goods, or equipment, and other forms of information and support necessary to maintain the unpaid caregiving activity.

(2) "Respite care services" means relief care for families or other caregivers of adults with functional disabilities, eligibility for which shall be determined by the department by rule. The services provide temporary care or supervision of adults with functional disabilities in substitution for the caregiver. The term includes adult day services.

(3) "Eligible participant for family caregiver long-term care information and support services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and may be at risk of placement into a long-term care facility.

(4) "Eligible participant for respite care services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and is also assessed as requiring placement into a long-term care facility in the absence of an unpaid family or other unpaid caregiver.

(5) "Unpaid caregiver" means a spouse, relative, or friend who has primary responsibility for the care of an adult with a functional disability and who does not receive financial compensation for the care. To be eligible for respite care and for family caregiver support services, the caregiver is considered the client.

(6) "Adult day services" means nonmedical services to persons who live with their families, cannot be left unsupervised, and are at risk of being placed in a twenty-four-hour care facility if their families do not receive some relief from constant care.

(7) "Department" means the department of social and health services. [2000 c 207 § 3; 1987 c 409 § 2; 1984 c 158 § 3.]

**Short title—2000 c 207:** See note following RCW 74.41.020.

**74.41.040 Administration—Rules—Program standards.** The department shall administer this chapter and shall establish such rules and standards as the department deems necessary in carrying out this chapter. The department shall not require the development of plans of care or discharge plans by nursing homes or adult family homes providing respite care service under this chapter. Boarding homes providing respite care services shall comply with the assessment and plan of care provisions of RCW 18.20.350.

The department shall develop standards for the respite program in conjunction with the selected area agencies on

aging. The program standards shall serve as the basis for soliciting bids, entering into subcontracts, and developing sliding fee scales to be used in determining the ability of eligible participants to participate in paying for respite care. [2008 c 146 § 2; 1987 c 409 § 3; 1984 c 158 § 4.]

**Findings—Intent—2008 c 146:** "The legislature finds that Washingtonians sixty-five years of age and older will nearly double in the next twenty years, from eleven percent of our population today to almost twenty percent of our population in 2025. Younger people with disabilities will also require supportive long-term care services. Nationally, young people with a disability account for thirty-seven percent of the total number of people who need long-term care.

The legislature further finds that to address this increasing need, the long-term care system should support autonomy and self-determination, and support the role of informal caregivers and families. It should promote personal planning and savings combined with public support, when needed. It should also include culturally appropriate, high quality information, services, and supports delivered in a cost-effective and efficient manner.

The legislature further finds that more than fifteen percent of adults over age sixty-five in Washington state have diabetes. Current nurse delegation statutes limit the ability of elderly and disabled persons with diabetes to remain in their own homes or in other home-like long-term care settings. It is the intent of the legislature to modify nurse delegation statutes to enable elderly persons and persons with disabilities who have diabetes to continue to reside in their own home or other home-like settings.

The legislature further finds that the long-term care system should utilize evidence-based practices for the prevention and management of chronic disease to improve the general health of Washingtonians over their lifetime and reduce health care and long-term care costs related to ineffective chronic care management." [2008 c 146 § 1.]

**Severability—2008 c 146:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 146 § 14.]

**74.41.050 Family caregiver long-term care information and support services—Respite services, evaluation of need, caregiver abilities.** The department shall contract with area agencies on aging or other appropriate agencies to conduct family caregiver long-term care information and support services to the extent of available funding. The responsibilities of the agencies shall include but not be limited to: (1) Administering a program of family caregiver long-term care information and support services; (2) negotiating rates of payment, administering sliding-fee scales to enable eligible participants to participate in paying for respite care, and arranging for respite care information, training, and other support services; and (3) developing an evidence-based tailored caregiver assessment and referral tool. In evaluating the need for respite services, consideration shall be given to the mental and physical ability of the caregiver to perform necessary caregiver functions. [2008 c 146 § 4; 2000 c 207 § 4; 1989 c 427 § 8; 1987 c 409 § 4; 1984 c 158 § 5.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**Short title—2000 c 207:** See note following RCW 74.41.020.

**Severability—1989 c 427:** See RCW 74.39.900.

**74.41.060 Respite care program—Criteria.** The department shall insure that the respite care program is designed to meet the following criteria:

- (1) Make maximum use of services which provide care to the greatest number of eligible participants with the fewest number of staff consistent with adequate care;
- (2) Provide for use of one-on-one care when necessary;
- (3) Provide for both day care and overnight care;

(4) Provide personal care to continue at the same level which the caregiver ordinarily provides to the eligible participant; and

(5) Provide for the utilization of family home settings. [1984 c 158 § 6.]

**74.41.070 Family caregiver long-term care information and support services—Data.** The area agencies on aging administering family caregiver long-term care information and support services shall maintain data which indicates demand for family caregiver long-term care information and support services. [2000 c 207 § 5; 1998 c 245 § 151; 1987 c 409 § 5; 1984 c 158 § 7.]

**Short title—2000 c 207:** See note following RCW 74.41.020.

**74.41.080 Health care practitioners and facilities not impaired.** Nothing in this chapter shall impair the practice of any licensed health care practitioner or licensed health care facility. [1984 c 158 § 8.]

**74.41.090 Entitlement not created.** Nothing in this chapter creates or provides any individual with an entitlement to services or benefits. It is the intent of the legislature that services under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [1987 c 409 § 6.]

## Chapter 74.42 RCW

### NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

#### Sections

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**Effective date—Chapter 74.42 RCW:** See RCW 74.42.920.

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

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(6) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) A mental retardation professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or

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working with the mentally retarded or developmentally disabled.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(7) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(8) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010.

(9) "Physician assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(10) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW. [1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Section captions—Severability—Effective date—1993 c 508:** See RCW 74.39A.900 through 74.39A.903.

**74.42.020 Minimum standards.** The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities licensed under chapter 18.51 RCW: PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520, 74.42.530, 74.42.540, 74.42.570, and 74.42.580 shall not apply to any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or for any nursing home or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. [1995 1st sp.s. c 18 § 68; 1982 c 120 § 1; 1980 c 184 § 6; 1979 ex.s. c 211 § 2.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.42.030 Resident to receive statement of rights, rules, services, and charges.** Each resident or guardian or legal representative, if any, shall be fully informed and receive in writing, in a language the resident or his or her representative understands, the following information:

(1) The resident's rights and responsibilities in the facility;

(2) Rules governing resident conduct;

(3) Services, items, and activities available in the facility; and

(4) Charges for services, items, and activities, including those not included in the facility's basic daily rate or not paid by Medicaid.

The facility shall provide this information before admission, or at the time of admission in case of emergency, and as

changes occur during the resident's stay. The resident and his or her representative must be informed in writing in advance of changes in the availability or charges for services, items, or activities, or of changes in the facility's rules. Except in unusual circumstances, thirty days' advance notice must be given prior to the change. The resident or legal guardian or representative shall acknowledge in writing receipt of this information.

The written information provided by the facility pursuant to this section, and the terms of any admission contract executed between the facility and an individual seeking admission to the facility, must be consistent with the requirements of this chapter and chapter 18.51 RCW and, for facilities certified under medicaid or medicare, with the applicable federal requirements. [1997 c 392 § 212; 1979 ex.s. c 211 § 3.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**74.42.040 Resident's rights regarding medical condition, care, and treatment.** The facility shall insure that each resident and guardian, if any:

- (1) Is fully informed by a physician about his or her health and medical condition unless the physician decides that informing the resident is medically contraindicated and the physician documents this decision in the resident's record;
- (2) Has the opportunity to participate in his or her total care and treatment;
- (3) Has the opportunity to refuse treatment; and
- (4) Gives informed, written consent before participating in experimental research. [1979 ex.s. c 211 § 4.]

**74.42.050 Residents to be treated with consideration, respect—Complaints.** (1) Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality. Residents shall be encouraged and assisted in the exercise of their rights as residents of the facility and as citizens.

(2) A resident or guardian, if any, may submit complaints or recommendations concerning the policies of the facility to the staff and to outside representatives of the resident's choice. No facility may restrain, interfere, coerce, discriminate, or retaliate in any manner against a resident who submits a complaint or recommendation. [1979 ex.s. c 211 § 5.]

**74.42.055 Discrimination against medicaid recipients prohibited.** (1) The purpose of this section is to prohibit discrimination against medicaid recipients by nursing homes which have contracted with the department to provide skilled or intermediate nursing care services to medicaid recipients.

(2) A nursing facility shall readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

- (a) Requires the services provided by the facility; and
  - (b) Is eligible for medicaid nursing facility services.
- (3) It shall be unlawful for any nursing home which has a medicaid contract with the department:

(a) To require, as a condition of admission, assurance from the patient or any other person that the patient is not eligible for or will not apply for medicaid;

(b) To deny or delay admission or readmission of a person to a nursing home because of his or her status as a medicaid recipient;

(c) To transfer a patient, except from a private room to another room within the nursing home, because of his or her status as a medicaid recipient;

(d) To transfer a patient to another nursing home because of his or her status as a medicaid recipient;

(e) To discharge a patient from a nursing home because of his or her status as a medicaid recipient; or

(f) To charge any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation permitted by the department pursuant to RCW 18.51.070.

(4) Any nursing home which has a medicaid contract with the department shall maintain one list of names of persons seeking admission to the facility, which is ordered by the date of request for admission. This information shall be retained for one year from the month admission was requested. However, except as provided in subsection (2) of this section, a nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home, licensed under chapter 18.20 RCW, or from independent retirement housing, provided the nursing facility is owned by the same entity that owns the boarding home or independent housing which are located within the same proximate geographic area; and provided further, the purpose of such preferential admission is to allow continued provision of: (a) Culturally or faith-based services, or (b) services provided by a continuing care retirement community as defined in RCW 70.38.025.

(5) The department may assess monetary penalties of a civil nature, not to exceed three thousand dollars for each violation of this section.

(6) Because it is a matter of great public importance to protect senior citizens who need medicaid services from discriminatory treatment in obtaining long-term health care, any violation of this section shall be construed for purposes of the application of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

(7) It is not an act of discrimination under this chapter to refuse to admit a patient if admitting that patient would prevent the needs of the other patients residing in that facility from being met at that facility, or if the facility's refusal is consistent with subsection (4) of this section. [2004 c 34 § 1; 1987 c 476 § 30; 1985 c 284 § 3.]

**Effective date—2004 c 34:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 34 § 2.]

**74.42.056 Department assessment of medicaid eligible individuals—Requirements.** A nursing facility shall not admit any individual who is medicaid eligible unless that individual has been assessed by the department. Appropriate hospital discharge shall not be delayed pending the assessment.

To ensure timely hospital discharge of medicaid eligible persons, the date of the request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of the initial service and payment authorization. The department shall respond promptly to such requests.

A nursing facility admitting an individual without a request for a department assessment shall not be reimbursed by the department and shall not be allowed to collect payment from a medicaid eligible individual for any care rendered before the date the facility makes a request to the department for an assessment. The date on which a nursing facility makes a request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of initial service and payment authorization for admissions regardless of the source of referral.

A medicaid eligible individual residing in a nursing facility who is transferred to an acute care hospital shall not be required to have a department assessment under this section prior to returning to the same or another nursing facility. [1995 1st sp.s. c 18 § 7.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.42.057 Notification regarding resident likely to become medicaid eligible.** If a nursing facility has reason to know that a resident is likely to become financially eligible for medicaid benefits within one hundred eighty days, the nursing facility shall notify the patient or his or her representative and the department. The department may:

(1) Assess any such resident to determine if the resident prefers and could live appropriately at home or in some other community-based setting; and

(2) Provide case management services to the resident. [1995 1st sp.s. c 18 § 8.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.42.058 Department case management services.**

(1) To the extent of available funding, the department shall provide case management services to assist nursing facility residents, in conjunction and partnership with nursing facility staff. The purpose of the case management services is to assist residents and their families to assess the appropriateness and availability of home and community services that could meet the resident's needs so that the resident and family can make informed choices.

(2) To the extent of available funding, the department shall provide case management services to nursing facility residents who are:

(a) Medicaid funded;

(b) Dually medicaid and medicare eligible;

(c) Medicaid applicants; and

(d) Likely to become financially eligible for medicaid within one hundred eighty days, pursuant to RCW 74.42.057. [1995 1st sp.s. c 18 § 9.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

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**74.42.060 Management of residents' financial affairs.** The facility shall allow a resident or the resident's guardian to manage the resident's financial affairs. The facility may assist a resident in the management of his or her financial affairs if the resident requests assistance in writing and the facility complies with the record-keeping requirements of RCW 74.42.130 and the provisions of \*chapter . . . (Senate Bill No. 2335), Laws of 1979. [1979 ex.s. c 211 § 6.]

**\*Reviser's note:** Senate Bill No. 2335 was not enacted during the 1979 legislative sessions. A similar bill was enacted in 1980 and became 1980 c 177, which is codified primarily in chapter 74.46 RCW.

**74.42.070 Privacy.** Residents shall be given privacy during treatment and care of personal needs. Residents who are spouses or domestic partners shall be given privacy during visits with their spouses or their domestic partners. If both spouses or both domestic partners are residents of the facility, the facility shall permit the spouses or domestic partners to share a room, unless medically contraindicated. [2008 c 6 § 305; 1979 ex.s. c 211 § 7.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**74.42.080 Confidentiality of records.** Residents' records, including information in an automatic data bank, shall be treated confidentially. The facility shall not release information from a resident's record to a person not otherwise authorized by law to receive the information without the resident's or the resident's guardian's written consent. [1979 ex.s. c 211 § 8.]

**74.42.090 Work tasks by residents.** No resident may be required to perform services for the facility; except that a resident may be required to perform work tasks specified or included in the comprehensive plan of care. [1979 ex.s. c 211 § 9.]

**74.42.100 Personal mail.** The facility shall not open the personal mail that residents send or receive. [1979 ex.s. c 211 § 10.]

**74.42.110 Freedom of association—Limits.** Residents shall be allowed to communicate, associate, meet privately with individuals of their choice, and participate in social, religious, and community group activities unless this infringes on the rights of other residents. [1979 ex.s. c 211 § 11.]

**74.42.120 Personal possessions.** The facility shall allow residents to have personal possessions as space or security permits. [1979 ex.s. c 211 § 12.]

**74.42.130 Individual financial records.** The facility shall keep a current, written financial record for each resident. The record shall include written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or for the resident. The resident or guardian and the resident's family shall have access to the financial record. [1979 ex.s. c 211 § 13.]

**74.42.140 Prescribed plan of care—Treatment, medication, diet services.** The facility shall care for residents by providing residents with authorized medical services which shall include treatment, medication, and diet services, and any other services contained in the comprehensive plan of care or otherwise prescribed by the attending physician. [1979 ex.s. c 211 § 14.]

**74.42.150 Plan of care—Goals—Program—Responsibilities—Review.** (1) Under the attending physician's instructions, qualified facility staff will establish and maintain a comprehensive plan of care for each resident which shall be kept on file by the facility and be evaluated through review and assessment by the department. The comprehensive plan contains:

- (a) Goals for each resident to accomplish;
- (b) An integrated program of treatment, therapies and activities to help each resident achieve those goals; and
- (c) The persons responsible for carrying out the programs in the plan.

(2) Qualified facility staff shall review the comprehensive plan of care at least quarterly. [1980 c 184 § 7; 1979 ex.s. c 211 § 15.]

**74.42.160 Nursing care.** The facility shall provide the nursing care required for the classification given each resident. The nursing care shall help each resident to achieve and maintain the highest possible degree of function, self-care, and independence to the extent medically possible. [1979 ex.s. c 211 § 16.]

**74.42.170 Rehabilitative services.** (1) The facility shall provide rehabilitative services itself or arrange for the provision of rehabilitative services with qualified outside resources for each resident whose comprehensive plan of care requires the provision of rehabilitative services.

(2) The rehabilitative service personnel shall be qualified therapists, qualified therapists' assistants, or mental health professionals. Other support personnel under appropriate supervision may perform the duties of rehabilitative service personnel.

(3) The rehabilitative services shall be designed to maintain and improve the resident's ability to function independently; prevent, as much as possible, advancement of progressive disabilities; and restore maximum function. [1979 ex.s. c 211 § 17.]

**74.42.180 Social services.** (1) The facility shall provide social services, or arrange for the provision of social services with qualified outside resources, for each resident whose comprehensive plan of care requires the provision of social services.

(2) The facility shall designate one staff member qualified by training or experience to be responsible for arranging for social services in the facility or with qualified outside resources and integrating social services with other elements of the plan of care. [1979 ex.s. c 211 § 18.]

**74.42.190 Activities program—Recreation areas, equipment.** The facility shall have an activities program

designed to encourage each resident to maintain normal activity and help each resident return to self care. A staff member qualified by experience or training in directing group activities shall be responsible for the activities program. The facility shall provide adequate recreation areas with sufficient equipment and materials to support the program. [1979 ex.s. c 211 § 19.]

**74.42.200 Supervision of health care by physician—When required.** The health care of each resident shall be under the continuing supervision of a physician: PROVIDED, That a resident of a facility licensed pursuant to chapter 18.51 RCW but not certified by the federal government under Title XVIII or Title XIX of the Social Security Act as now or hereafter amended shall not be required to receive the continuing supervision of a health care practitioner licensed pursuant to chapter 18.22, 18.25, 18.32, 18.57, 18.71, and 18.83 RCW, nor shall the state of Washington require such continuing supervision as a condition of licensing. The physician shall see the resident whenever necessary, and as required and/or consistent with state and federal regulations. [1980 c 184 § 8; 1979 ex.s. c 211 § 20.]

**74.42.210 Pharmacist services.** The facility shall either employ a licensed pharmacist responsible for operating the facility's pharmacy or have a written agreement with a licensed pharmacist who will advise the facility on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals. [1979 ex.s. c 211 § 21.]

**74.42.220 Contracts for professional services from outside the agency.** (1) If the facility does not employ a qualified professional to furnish required services, the facility shall have a written contract with a qualified professional or agency outside the facility to furnish the required services. The terms of the contract, including terms about responsibilities, functions, and objectives, shall be specified. The contract shall be signed by the administrator, or the administrator's representative, and the qualified professional.

(2) All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met. [1980 c 184 § 9; 1979 ex.s. c 211 § 22.]

**74.42.225 Self-medication programs for residents—Educational program—Implementation.** The department shall develop an educational program for attending and staff physicians and patients on self-medication. The department shall actively encourage the implementation of such self-medication programs for residents. [1980 c 184 § 18.]

**74.42.230 Physician or authorized practitioner to prescribe medication.** (1) The resident's attending or staff physician or authorized practitioner approved by the attending physician shall order all medications for the resident. The order may be oral or written and shall be limited by time. An "authorized practitioner," as used in this section, is a registered nurse under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, or a physi-

cian assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(2) An oral order shall be given only to a licensed nurse, pharmacist, or another physician. The oral order shall be recorded and signed immediately by the person receiving the order. The attending physician shall sign the record of the oral order in a manner consistent with good medical practice. [1994 sp.s. c 9 § 751; 1982 c 120 § 2; 1979 ex.s. c 211 § 23.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**74.42.240 Administering medication.** (1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted thereunder.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered. [1994 sp.s. c 9 § 752; 1989 c 372 § 5; 1979 ex.s. c 211 § 24.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**74.42.250 Medication stop orders—Procedure for developmentally disabled.** (1) When the physician's order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician that the medication will be stopped at a date certain unless the medication is ordered continued by the physician. The facility shall so notify the physician every thirty days.

(2) A facility for the developmentally disabled shall have an automatic stop order on all drugs, unless such stoppage will place the patient in jeopardy. [1979 ex.s. c 211 § 25.]

**74.42.260 Drug storage, security, inventory.** (1) The facility shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations. When medication is stored in a refrigerator containing other items, the medication shall be kept in a separate compartment with proper security. All drugs shall be kept under lock and key unless an authorized individual is in attendance.

(2) The facility shall meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies, and living units.

(3) If there is a drug storeroom separate from the pharmacy, the facility shall keep a perpetual inventory of receipts and issues of all drugs from that storeroom. [1979 ex.s. c 211 § 26.]

**74.42.270 Drug disposal.** Any drug that is discontinued or outdated and any container with a worn, illegible, or missing label shall be properly disposed. [1979 ex.s. c 211 § 27.]

(2008 Ed.)

**74.42.280 Adverse drug reaction.** Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. The facility shall report adverse drug reactions consistent with good medical practice. [1979 ex.s. c 211 § 28.]

**74.42.285 Immunizations—Rules.** (1) Long-term care facilities shall:

(a) Provide access on-site or make available elsewhere for all residents to obtain the influenza virus immunization on an annual basis;

(b) Require that each resident, or the resident's legal representative, upon admission to the facility, be informed verbally and in writing of the benefits of receiving the influenza virus immunization and, if not previously immunized against pneumococcal disease, the benefits of the pneumococcal immunization.

(2) As used in this section, "long-term care facility" is limited to nursing homes licensed under chapter 18.51 RCW.

(3) The department of social and health services shall adopt rules to implement this section.

(4) This section and rules adopted under this section shall not apply to nursing homes conducted for those who rely exclusively upon treatment by nonmedical religious healing methods, including prayer. [2002 c 256 § 2.]

**Intent—Findings—2002 c 256:** "It is the intent of the legislature to ensure that long-term care facilities are safe.

(1) The long-term care resident immunization act is intended to:

(a) Prevent and reduce the occurrence and severity of the influenza virus and pneumococcal disease by increasing the use of immunizations licensed by the food and drug administration;

(b) Avoid pain, suffering, and deaths that may result from the influenza virus and pneumococcal disease;

(c) Improve the well-being and quality of life of residents of long-term care facilities; and

(d) Reduce avoidable costs associated with treating the influenza virus and pneumococcal disease.

(2) The legislature finds that:

(a) Recent studies show that it is important to immunize older citizens against the influenza virus and pneumococcal disease;

(b) The centers for disease control and prevention recommend individuals living in long-term care facilities and those over age sixty-five receive immunizations against the influenza virus and pneumococcal disease;

(c) The influenza virus and pneumococcal disease have been identified as leading causes of death for citizens over age sixty-five; and

(d) Immunizations licensed by the food and drug administration are readily available and effective in reducing and preventing the severity of the influenza virus and pneumococcal disease." [2002 c 256 § 1.]

**Short title—2002 c 256:** "This act may be known and cited as the long-term care resident immunization act of 2002." [2002 c 256 § 3.]

**74.42.290 Meal intervals—Food handling—Utensils—Disposal.** (1) The facility shall serve at least three meals, or their equivalent, daily at regular times with not more than fourteen hours between a substantial evening meal and breakfast on the following day and not less than ten hours between breakfast and a substantial evening meal on the same day.

(2) Food shall be procured, stored, transported, and prepared under sanitary conditions in compliance with state and local regulations.

(3) Food of an appropriate quantity at an appropriate temperature shall be served in a form consistent with the needs of the resident;

(4) Special eating equipment and utensils shall be provided for residents who need them; and

(5) Food served and uneaten shall be discarded. [1979 ex.s. c 211 § 29.]

**74.42.300 Nutritionist—Menus, special diets.** (1) The facility shall have a staff member trained or experienced in food management and nutrition responsible for planning menus that meet the requirements of subsection (2) of this section and supervising meal preparation and service to insure that the menu plan is followed.

(2) The menu plans shall follow the orders of the resident's physician.

(3) The facility shall:

(a) Meet the nutritional needs of each resident;

(b) Have menus written in advance;

(c) Provide a variety of foods at each meal;

(d) Provide daily and weekly variations in the menus; and

(e) Adjust the menus for seasonal changes.

(4) If the facility has residents who require medically prescribed special diets, the menus for those residents shall be planned by a professionally qualified dietitian or reviewed and approved by the attending physician. The preparation and serving of meals shall be supervised to insure that the resident accepts the special diet. [1979 ex.s. c 211 § 30.]

**74.42.310 Staff duties at meals.** (1) A facility shall have sufficient personnel to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables. [1980 c 184 § 10; 1979 ex.s. c 211 § 31.]

**74.42.320 Sanitary procedures for food preparation.** Facilities shall have effective sanitary procedures for the food preparation staff including procedures for cleaning food preparation equipment and food preparation areas. [1979 ex.s. c 211 § 32.]

**74.42.330 Food storage.** The facility shall store dry or staple food items at an appropriate height above the floor in a ventilated room not subject to sewage or waste water back-flow or contamination by condensation, leakage, rodents or vermin. Perishable foods shall be stored at proper temperatures to conserve nutritive values. [1979 ex.s. c 211 § 33.]

**74.42.340 Administrative support—Purchasing—Inventory control.** (1) The facility shall provide adequate administrative support to efficiently meet the needs of residents and facilitate attainment of the facility's goals and objectives.

(2) The facility shall:

(a) Document the purchasing process;

(b) Adequately operate the inventory control system and stockroom;

(c) Have appropriate storage facilities for all supplies and surplus equipment; and

(d) Train and assist personnel to do purchase, supply, and property control functions. [1980 c 184 § 11; 1979 ex.s. c 211 § 34.]

**74.42.350 Organization chart.** The facility shall have and keep current an organization chart showing:

(1) The major operating programs of the facility;

(2) The staff divisions of the facility;

(3) The administrative personnel in charge of the programs and divisions; and

(4) The lines of authority, responsibility, and communication of administrative personnel. [1979 ex.s. c 211 § 35.]

**74.42.360 Adequate staff.** The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility. [1979 ex.s. c 211 § 36.]

**74.42.370 Licensed administrator.** The facility shall have an administrator who is a licensed nursing home administrator under chapter 18.52 RCW. The administrator is responsible for managing the facility and implementing established policies and procedures. [1979 ex.s. c 211 § 37.]

**74.42.380 Director of nursing services.** (1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse or an advanced registered nurse practitioner.

(2) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Permitting only licensed personnel to administer medications: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted under it: PROVIDED FURTHER, That nothing herein shall be construed as prohibiting persons certified under chapter 18.135 RCW from practicing pursuant to the delegation and supervision requirements of chapter 18.135 RCW and rules adopted under it; and

(c) Insuring that the licensed practical nurses and the registered nurses comply with chapter 18.79 RCW, and persons certified under chapter 18.135 RCW comply with the provisions of that chapter and rules adopted under it. [1994 sp.s. c 9 § 753; 1989 c 372 § 6; 1985 c 284 § 2; 1979 ex.s. c 211 § 38.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**74.42.390 Communication system.** The facility shall have a communication system, including telephone service, that insures prompt contact of on-duty personnel and prompt notification of responsible personnel in an emergency. [1979 ex.s. c 211 § 39.]

**74.42.400 Engineering and maintenance personnel.** The facility shall have sufficient trained and experienced personnel for necessary engineering and maintenance functions. [1979 ex.s. c 211 § 40.]

**74.42.410 Laundry services.** The facility shall manage laundry services to meet the residents' daily clothing and linen needs. The facility shall have available at all times enough linen for the proper care and comfort of the residents. [1979 ex.s. c 211 § 41.]

**74.42.420 Resident record system.** The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

- (1) Identification information;
- (2) Admission information, including the resident's medical and social history;
- (3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;
- (4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;
- (5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;
- (6) Information about all illnesses and injuries including information about the date, time, and action taken; and
- (7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300. [1979 ex.s. c 211 § 42.]

**74.42.430 Written policy guidelines.** The facility shall develop written guidelines governing:

- (1) All services provided by the facility;
- (2) Admission, transfer or discharge;
- (3) The use of chemical and physical restraints, the personnel authorized to administer restraints in an emergency, and procedures for monitoring and controlling the use of the restraints;
- (4) Procedures for receiving and responding to residents' complaints and recommendations;
- (5) Access to, duplication of, and dissemination of information from the resident's record;
- (6) Residents' rights, privileges, and duties;
- (7) Procedures if the resident is adjudicated incompetent or incapable of understanding his or her rights and responsibilities;
- (8) When to recommend initiation of guardianship proceedings under chapter 11.88 RCW; and
- (9) Emergencies;
- (10) Procedures for isolation of residents with infectious diseases;
- (11) Procedures for residents to refuse treatment and for the facility to document informed refusal.

The written guidelines shall be made available to the staff, residents, members of residents' families, and the public. [1980 c 184 § 12; 1979 ex.s. c 211 § 43.]

**74.42.440 Facility rated capacity not to be exceeded.** The facility may only admit individuals when the facility's rated capacity will not be exceeded and when the facility has

the capability to provide adequate treatment, therapy, and activities. [1979 ex.s. c 211 § 44.]

**74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation.** (1) The facility shall admit as residents only those individuals whose needs can be met by:

- (a) The facility;
  - (b) The facility cooperating with community resources;
- or
- (c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program.

(4) If a resident chooses to remain in the nursing facility, the department shall respect that choice, provided that if the resident is a medicaid recipient, the resident continues to require a nursing facility level of care.

(5) If the department determines that a resident no longer requires a nursing facility level of care, the resident shall not be discharged from the nursing facility until at least thirty days after written notice is given to the resident, the resident's surrogate decision maker and, if appropriate, a family member or the resident's representative. A form for requesting a hearing to appeal the discharge decision shall be attached to the written notice. The written notice shall include at least the following:

- (a) The reason for the discharge;
- (b) A statement that the resident has the right to appeal the discharge; and
- (c) The name, address, and telephone number of the state long-term care ombudsman.

(6) If the resident appeals a department discharge decision, the resident shall not be discharged without the resident's consent until at least thirty days after a final order is entered upholding the decision to discharge the resident.

(7) Before the facility transfers or discharges a resident, the facility must first attempt through reasonable accommodations to avoid the transfer or discharge unless the transfer or discharge is agreed to by the resident. The facility shall admit or retain only individuals whose needs it can safely and appropriately serve in the facility with available staff or through the provision of reasonable accommodations required by state or federal law. "Reasonable accommodations" has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec.

12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 216; 1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.42.460 Organization plan and procedures.** The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. [1979 ex.s. c 211 § 46.]

**74.42.470 Infected employees.** No employee with symptoms of a communicable disease may work in a facility. The facility shall have written guidelines that will help enforce this section. [1979 ex.s. c 211 § 47.]

**74.42.480 Living areas.** The facility shall design and equip the resident living areas for the comfort and privacy of each resident. [1979 ex.s. c 211 § 48.]

**74.42.490 Room requirements—Waiver.** Each resident's room shall:

- (1) Be equipped with or conveniently located near toilet and bathing facilities;
- (2) Be at or above grade level;
- (3) Contain a suitable bed for each resident and other appropriate furniture;
- (4) Have closet space that provides security and privacy for clothing and personal belongings;
- (5) Contain no more than four beds;
- (6) Have adequate space for each resident; and
- (7) Be equipped with a device for calling the staff member on duty.

The department may waive the space, occupancy, and certain equipment requirements of this section for an existing building constructed prior to January 1, 1980, or space and certain equipment for new intermediate care facilities for the mentally retarded for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents. [1980 c 184 § 13; 1979 ex.s. c 211 § 49.]

**74.42.500 Toilet and bathing facilities.** Toilet and bathing facilities shall be located in or near residents' rooms and shall be appropriate in number, size, and design to meet the needs of the residents. The facility shall provide an adequate supply of hot water at all times for resident use. Plumbing shall be equipped with control valves that automatically regulate the temperature of the hot water used by residents. [1979 ex.s. c 211 § 50.]

**74.42.510 Room for dining, recreation, social activities—Waiver.** The facility shall provide one or more areas

not used for corridor traffic for dining, recreation, and social activities. A multipurpose room may be used if it is large enough to accommodate all of the activities without the activities interfering with each other: PROVIDED, That the department may waive the provisions of this section for facilities constructed prior to January 1, 1980. [1979 ex.s. c 211 § 51.]

**74.42.520 Therapy area.** The facility's therapy area shall be large enough and designed to accommodate the necessary equipment, conduct an examination, and provide treatment: PROVIDED, That developmentally disabled facilities shall not be subject to the provisions of this section if therapeutic services are obtained by contract with other facilities. [1979 ex.s. c 211 § 52.]

**74.42.530 Isolation areas.** The facility shall have isolation areas for residents with infectious diseases or make other provisions for isolating these residents. [1979 ex.s. c 211 § 53.]

**74.42.540 Building requirements.** (1) The facility shall be accessible to and usable by all residents, personnel, and the public, including individuals with disabilities: PROVIDED, That no substantial structural changes shall be required in any facilities constructed prior to January 1, 1980.

(2) The facility shall meet the requirements of American National Standards Institute (ANSI) standard No. A117.1 (1961), or, if applicable, the requirements of chapter 70.92 RCW if the requirements are stricter than ANSI standard No. A117.1 (1961), unless the department waives the requirements of ANSI standard No. A117.1 (1961) under subsection (3) of this section.

(3) The department may waive, for as long as the department considers appropriate, provisions of ANSI standard No. A117.1 (1961) if:

(a) The construction plans for the facility or a part of the facility were approved by the department before March 18, 1974;

(b) The provisions would result in unreasonable hardship on the facility if strictly enforced; and

(c) The waiver does not adversely affect the health and safety of the residents. [1979 ex.s. c 211 § 54.]

**74.42.550 Handrails.** The facility shall have handrails that are firmly attached to the walls in all corridors used by residents: PROVIDED, That the department may waive the provisions of this section in developmentally disabled facilities. [1979 ex.s. c 211 § 55.]

**74.42.560 Emergency lighting for facilities housing developmentally disabled persons.** If a living unit of a facility for the developmentally disabled houses more than fifteen residents, the living unit shall have emergency lighting with automatic switches for stairs and exits. [1979 ex.s. c 211 § 56.]

**74.42.570 Health and safety requirements.** The facility shall meet state and local laws, rules, regulations, and

codes pertaining to health and safety. [1980 c 184 § 14; 1979 ex.s. c 211 § 57.]

**74.42.580 Penalties for violation of standards.** The department may deny, suspend, revoke, or refuse to renew a license or provisional license, assess monetary penalties of a civil nature, deny payment, seek receivership, order stop placement, appoint temporary management, order emergency closure, or order emergency transfer as provided in RCW 18.51.054 and 18.51.060 for violations of requirements of this chapter or, in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, or rules adopted thereunder. Chapter 34.05 RCW shall apply to any such actions, except for receivership, and except that stop placement, appointment of temporary management, emergency closure, emergency transfer, and summary license suspension shall be effective pending any hearing, and except that denial of payment shall be effective pending any hearing when the department determines deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. [1989 c 372 § 13; 1987 c 476 § 27; 1980 c 184 § 15; 1979 ex.s. c 211 § 58.]

**74.42.600 Department inspections—Notice of non-compliance—Penalties—Coordination with department of health.** (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the department may impose penalties in accordance with RCW 18.51.060.

(3) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of health when inspecting medicaid-certified or medicare-certified, or both, long-term care beds in hospitals for compliance with Title XVIII or XIX of the social security act. [1995 c 282 § 5; 1987 c 476 § 28; 1982 c 120 § 3; 1980 c 184 § 17; 1979 ex.s. c 211 § 60.]

**74.42.620 Departmental rules.** The department shall adopt rules pursuant to chapter 34.05 RCW necessary to carry out the policies and provisions of RCW 74.42.010 through 74.42.570. The department shall amend or repeal any rules that are in conflict with RCW 74.42.010 through 74.42.570. [1979 ex.s. c 211 § 62.]

**74.42.630 Conflict with federal requirements.** If any part of chapter 184, Laws of 1980 shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of

this act; the rules and regulations under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1980 c 184 § 21.]

**74.42.640 Quality assurance committee.** (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, each facility may maintain a quality assurance committee that, at a minimum, includes:

- (a) The director of nursing services;
- (b) A physician designated by the facility; and
- (c) Three other members from the staff of the facility.

(2) When established, the quality assurance committee shall meet at least quarterly to identify issues that may adversely affect quality of care and services to residents and to develop and implement plans of action to correct identified quality concerns or deficiencies in the quality of care provided to residents.

(3) To promote quality of care through self-review without the fear of reprisal, and to enhance the objectivity of the review process, the department shall not require, and the long-term care ombudsman program shall not request, disclosure of any quality assurance committee records or reports, unless the disclosure is related to the committee's compliance with this section, if:

(a) The records or reports are not maintained pursuant to statutory or regulatory mandate; and

(b) The records or reports are created for and collected and maintained by the committee.

(4) The department may request only information related to the quality assurance committee that may be necessary to determine whether a facility has a quality assurance committee and that it is operating in compliance with this section.

(5) Good faith attempts by the committee to identify and correct quality deficiencies shall not be used as a basis for imposing sanctions.

(6) If the facility offers the department documents generated by, or for, the quality assurance committee as evidence of compliance with nursing facility requirements, the documents are protected as quality assurance committee documents under subsections (7) and (9) of this section when in the possession of the department. The department is not liable for an inadvertent disclosure, a disclosure related to a required federal or state audit, or disclosure of documents incorrectly marked as quality assurance committee documents by the facility.

(7) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the care that is the basis of the civil action whose involvement was independent of any quality improvement committee activity; and (b) in any civil action, the testi-

mony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of their participation in the quality assurance committee activities.

(8) A quality assurance committee under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 may share information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, the committee, with one or more other quality assurance committees created under subsection (1) of this section, RCW 18.20.390, 70.41.200, 4.24.250, or 43.70.510 for the improvement of the quality of care and services rendered to nursing facility residents. Information and documents disclosed by one quality assurance committee to another quality assurance committee and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsections (7) and (9) of this section, RCW 18.20.390 (6) and (8), 43.70.510(4), 70.41.200(3), and 4.24.250(1). The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws.

(9) Information and documents, including the analysis of complaints and incident reports, created specifically for, and collected and maintained by, a quality assurance committee are exempt from disclosure under chapter 42.56 RCW.

(10) Notwithstanding any records created for the quality assurance committee, the facility shall fully set forth in the resident's records, available to the resident, the department, and others as permitted by law, the facts concerning any incident of injury or loss to the resident, the steps taken by the facility to address the resident's needs, and the resident outcome.

(11) A facility operated as part of a hospital licensed under chapter 70.41 RCW may maintain a quality assurance committee in accordance with this section which shall be subject to the provisions of subsections (1) through (10) of this section or may conduct quality improvement activities for the facility through a quality improvement committee under RCW 70.41.200 which shall be subject to the provisions of RCW 70.41.200(9). [2006 c 209 § 13; 2005 c 33 § 3.]

**Effective date—2006 c 209:** See RCW 42.56.903.

**Findings—2005 c 33:** See note following RCW 18.20.390.

**74.42.900 Severability—1979 ex.s. c 211.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 211 § 69.]

**74.42.910 Construction—Conflict with federal requirements.** If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to

the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1979 ex.s. c 211 § 70.]

**74.42.920 Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981.** Chapter 74.42 RCW shall be suspended immediately, and its effective date delayed so that it shall take effect on January 1, 1981. [1980 c 184 § 19; 1979 ex.s. c 211 § 72.]

**Effective date—1980 c 184 § 19:** "Section 19 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 4, 1980]." [1980 c 184 § 22.]

## Chapter 74.46 RCW NURSING FACILITY MEDICAID PAYMENT SYSTEM

(Formerly: Nursing home auditing and cost reimbursement act of 1980)

### Sections

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**74.46.010 Short title—Purpose.** This chapter may be known and cited as the "nursing facility medicaid payment system."

The purposes of this chapter are to specify the manner by which legislative appropriations for medicaid nursing facility services are to be allocated as payment rates among nursing facilities, and to set forth auditing, billing, and other administrative standards associated with payments to nursing home facilities. [1998 c 322 § 1; 1980 c 177 § 1.]

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(3) "Arm’s-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm’s-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm’s-length transaction for purposes of this chapter.

(4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor’s financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the pur-

pose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in (c)(i), (ii), or (iii) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(8) "Capitalization" means the recording of an expenditure as an asset.

(9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Certificate of capital authorization" means a certification from the department for an allocation from the biennial capital financing authorization for all new or replacement building construction, or for major renovation projects, receiving a certificate of need or a certificate of need exemption under chapter 70.38 RCW after July 1, 2001.

(13) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(14) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(15) "Department" means the department of social and health services (DSHS) and its employees.

(16) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(17) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(18) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(19) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(20) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(21) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(22) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(23) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(24) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(25) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(26) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

(27) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(28) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the median allowable facili-

ity cost per case mix unit among all other urban counties, excluding that county.

(29) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(30) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(31) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(32) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(33) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(34) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(35) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(36) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(37) "Net book value" means the historical cost of an asset less accumulated depreciation.

(38) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(39) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(40) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(41) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and benefi-

cial interest holders of five percent or more of a corporation's outstanding stock.

(42) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(43) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(44) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(45) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) A mental retardation professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(46) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in part E of this chapter.

(47) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(48) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(49) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all

general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(50) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(51) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(52) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(53) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(54) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(55) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(56) "Secretary" means the secretary of the department of social and health services.

(57) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(58) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(59) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(60) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(61) "Vital local provider" means a facility that meets the following qualifications:

(a) It reports a home office with an address located in Washington state; and

(b) The sum of medicaid days for all Washington facilities reporting that home office as their home office was greater than two hundred fifteen thousand in 2003; and

(c) The facility was recognized as a "vital local provider" by the department as of April 1, 2007.

The definition of "vital local provider" shall expire, and have no force or effect, after June 30, 2007. After that date, no facility's payments under this chapter shall in any way be affected by its prior determination or recognition as a vital local provider. [2007 c 508 § 7; 2006 c 258 § 1; 2001 1st sp.s. c 8 § 1; 1999 c 353 § 1; 1998 c 322 § 2; 1995 1st sp.s. c 18 § 90; 1993 sp.s. c 13 § 1; 1991 sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

**Effective date—2007 c 508:** See note following RCW 74.46.410.

**Effective date—2006 c 258:** "This act takes effect July 1, 2006." [2006 c 258 § 8.]

**Severability—2001 1st sp.s. c 8:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 1st sp.s. c 8 § 21.]

**Effective dates—2001 1st sp.s. c 8:** "(1) Sections 1 through 19 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2001.

(2) Section 20 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 29, 2001." [2001 1st sp.s. c 8 § 22.]

**Effective dates—1999 c 353:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Section 11 of this act takes effect immediately [May 17, 1999], and sections 1 through 10 and 12 through 17 take effect July 1, 1999." [1999 c 353 § 18.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective date—1993 sp.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 13 § 21.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Savings—1985 c 361:** "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

## PART A REPORTING

**74.46.030 Principles of reporting requirements.** The principle inherent within RCW 74.46.040 through 74.46.090 is that the department shall receive complete, annual reporting of costs and financial condition of the contractor prepared and presented in a standardized manner. [1980 c 177 § 3.]

**74.46.040 Due dates for cost reports.** (1) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(2) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(3) Two extensions of not more than thirty days each may be granted by the department upon receipt of a written request setting forth the circumstances which prohibit the contractor from compliance with a report due date; except, that the department shall establish the grounds for extension

in rule. Such request must be received by the department at least ten days prior to the due date. [1998 c 322 § 3; 1985 c 361 § 4; 1983 1st ex.s. c 67 § 1; 1980 c 177 § 4.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.050 Improperly completed or late cost report—Fines—Adverse rate actions—Rules.** (1) If the cost report is not properly completed or if it is not received by the due date, all or part of any payments due under the contract may be withheld by the department until such time as the required cost report is properly completed and received.

(2) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date. The department is authorized to adopt rules addressing fines and adverse rate actions including procedures, conditions, and the magnitude and frequency of fines. [1998 c 322 § 4; 1985 c 361 § 5; 1980 c 177 § 5.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.060 Completing cost reports and maintaining records.** (1) Cost reports shall be prepared in a standard manner and form, as determined by the department. Costs reported shall be determined in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules established by the department. In the event of conflict, rules adopted and instructions issued by the department take precedence over generally accepted accounting principles.

(2) The records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those portions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due. [1998 c 322 § 5; 1985 c 361 § 6; 1983 1st ex.s. c 67 § 2; 1980 c 177 § 6.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.080 Requirements for retention of records by the contractor.** (1) All records supporting the required cost reports, as well as trust funds established by RCW 74.46.700, shall be retained by the contractor for a period of four years following the filing of such reports at a location in the state of Washington specified by the contractor.

(2) The department may direct supporting records to be retained for a longer period if there remain unresolved questions on the cost reports. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the United States department of health and human services.

(3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records

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within the state of Washington are assured. [1998 c 322 § 6; 1985 c 361 § 7; 1983 1st ex.s. c 67 § 3; 1980 c 177 § 8.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.090 Retention of cost reports and resident assessment information by the department.** The department will retain the required cost reports for a period of one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided elsewhere in statute or by department rule. [1998 c 322 § 7; 1985 c 361 § 8; 1980 c 177 § 9.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

## PART B AUDIT

**74.46.100 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions.**

(1) The purposes of department audits under this chapter are to ascertain, through department audit of the financial and statistical records of the contractor's nursing facility operation, that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles; and

(d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and rules as the department may adopt. The department shall determine the scope of the examination.

(3) If the examination finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under RCW 74.46.165 (3) and (4) or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review if desired by the contractor under the appeals or exception procedure established by the department.

(4) Examinations of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and rules adopted by the department.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with (i) applicable federal income and federal and state payroll tax returns; and (ii) the records for the period covered by the cost report;

(c) Make available to the department's auditor an individual or individuals to respond to questions and requests for information from the auditor. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

(10) Part B of this chapter, and rules adopted by the department pursuant thereto prior to January 1, 1998, shall continue to govern the medicaid nursing facility audit process for periods prior to January 1, 1997, as if these statutes and rules remained in full force and effect. [1998 c 322 § 8; 1985 c 361 § 9; 1983 1st ex.s. c 67 § 4; 1980 c 177 § 10.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

## PART C SETTLEMENT

**74.46.155 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds.** (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for the preceding calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department, determined by the process of reconciliation, by the process of settlement at the lower of cost or rate in direct

care, therapy care, and support services component rate allocations, as authorized in this chapter, within sixty days after notification and demand for payment is sent to the contractor.

(3) The department shall make any payment due the contractor within sixty days after it determines the underpayment exists and notification is sent to the contractor.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification is sent to the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department is authorized to withhold funds from the contractor's payment for services, and to take all other actions authorized by law, to recover amounts due and payable from the contractor, including any accrued interest. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish in rule, nor commencement of judicial review as may be available to the contractor in law, to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor. [1998 c 322 § 9.]

**74.46.165 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates.** (1) Contractors shall be required to submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and issue a revised settlement report if needed.

(2) Contractors shall not be required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the audit and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed 1.0% of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time, during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each component rate, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in

determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and those rules as the department may adopt, shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(6) \*RCW 74.46.150 through 74.46.180, and rules adopted by the department prior to July 1, 1998, shall continue to govern the medicaid settlement process for periods prior to October 1, 1998, as if these statutes and rules remained in full force and effect.

(7) For calendar year 1998, the department shall calculate split settlements covering January 1, 1998, through September 30, 1998, and October 1, 1998, through December 31, 1998. For the period beginning October 1, 1998, rules specified in this chapter shall apply. The department shall, by rule, determine the division of calendar year 1998 adjusted costs for settlement purposes. [2001 1st sp.s. c 8 § 2; 1998 c 322 § 10.]

\*Reviser's note: RCW 74.46.150 through 74.46.180 were repealed by 1998 c 322 § 52, effective July 1, 1998.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

#### PART D ALLOWABLE COSTS

**74.46.190 Principles of allowable costs.** (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable under this chapter or department rule, are to be allowable. Costs of providing therapy care are allowable, subject to any applicable limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(3) The payment for property usage is to be independent of ownership structure and financing arrangements.

(4) Allowable costs shall not include costs reported by a contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

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(5) Any costs deemed allowable under this chapter are subject to the provisions of RCW 74.46.421. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost. [1998 c 322 § 11; 1995 1st sp.s. c 18 § 96; 1983 1st ex.s. c 67 § 12; 1980 c 177 § 19.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

**74.46.200 Offset of miscellaneous revenues.** (1) Allowable costs shall be reduced by the contractor whenever the item, service, or activity covered by such costs generates revenue or financial benefits other than through the contractor's normal billing for care services; except that, unrestricted grants, gifts, and endowments, and interest therefrom, will not be deducted from the allowable costs of a nonprofit facility.

(2) Where goods or services are sold, the amount of the reduction shall be the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it shall be the full amount of the revenue received. Where financial benefits such as purchase discounts or rebates are received, the amount of the reduction shall be the amount of the discount or rebate. [1980 c 177 § 20.]

**74.46.220 Payments to related organizations—Limits—Documentation.** (1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented. [1998 c 322 § 12; 1980 c 177 § 22.]

**74.46.230 Initial cost of operation.** (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the operations cost center if

they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care. [1998 c 322 § 13; 1993 sp.s. c 13 § 3; 1980 c 177 § 23.]

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**74.46.240 Education and training.** (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. [1980 c 177 § 24.]

**74.46.250 Owner or relative—Compensation.** (1) Total compensation of an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed limits set out in this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation. [1980 c 177 § 25.]

**74.46.270 Disclosure and approval or rejection of cost allocation.** (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs which represent allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) Such disclosure shall demonstrate that:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) Such disclosure shall be made not later than September 30th for the following calendar year; except that a new contractor shall submit the first year's disclosure at least sixty days prior to the date the new contract becomes effective.

(4) The department shall by December 31st, for all disclosures that are complete and timely submitted, either approve or reject the disclosure. The department may request additional information or clarification.

(5) Acceptance of a disclosure or approval of a joint cost methodology by the department may not be construed as a determination that the allocated costs are allowable in whole or in part. However, joint facility costs not disclosed, allocated, and reported in conformity with this section and department rules are unallowable.

(6) An approved methodology may be revised or amended subject to approval as provided in rules and regulations adopted by the department. [1998 c 322 § 14; 1983 1st ex.s. c 67 § 13; 1980 c 177 § 27.]

**74.46.280 Management fees, agreements—Limitation on scope of services.** (1) Management fees will be allowed only if:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the services contracted for were actually delivered.

(2) To be allowable, fees must be for necessary, non-duplicative services.

(3) A management fee paid to or for the benefit of a related organization will be allowable to the extent it does not exceed the lower of the actual cost to the related organization of providing necessary services related to patient care under the agreement or the cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with RCW 74.46.270.

(4) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must also be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a management agreement and more than thirty days prior to submitting an amendment.

(5) The scope of services to be performed under a management agreement cannot be so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility. [1998 c 322 § 15; 1993 sp.s. c 13 § 4; 1980 c 177 § 28.]

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**74.46.290 Expense for construction interest.** (1) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to RCW 74.46.360. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care.

(2) For the purposes of this chapter, the period provided for in subsection (1) of this section shall not exceed the project certificate of need time period pursuant to RCW 70.38.125. [1980 c 177 § 29.]

**74.46.300 Operating leases of office equipment—Rules.** Rental or lease costs under arm's-length operating leases of office equipment shall be allowable to the extent the cost is necessary and ordinary. The department may adopt rules to limit the allowability of office equipment leasing expenses. [1998 c 322 § 16; 1980 c 177 § 30.]

**Effective dates—1980 c 177:** See RCW 74.46.901.

**74.46.310 Capitalization.** The following costs shall be capitalized:

(1) Expenses for facilities or equipment with historical cost in excess of seven hundred fifty dollars per unit and a

useful life of more than one year from the date of purchase; and

(2) Expenses for equipment with historical cost of seven hundred fifty dollars or less per unit if either:

(a) The item was acquired in a group purchase where the total cost exceeded seven hundred fifty dollars; or

(b) The item was part of the initial stock of the facility.

(3) Dollar limits in this section may be adjusted for economic trends and conditions by the department as established by rule and regulation. [1983 1st ex.s. c 67 § 16; 1980 c 177 § 31.]

**74.46.320 Depreciation expense.** Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter. [1980 c 177 § 32.]

**74.46.330 Depreciable assets.** Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building - the basic structure or shell and additions thereto;

(2) Building fixed equipment - attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed;

(3) Major movable equipment including, but not limited to, beds, wheelchairs, desks, and X-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year;

(4) Minor equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as directed in RCW 74.46.310. The general characteristics of minor equipment are:

(a) In general, no fixed location and subject to use by various departments;

(b) Small in size and unit cost;

(c) Subject to inventory control;

(d) Large number in use; and

(e) Generally, a useful life of one to three years;

(5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and

(6) Leasehold improvements - betterments and additions made by the lessee to the leased property, which become the

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property of the lessor after the expiration of the lease. [1980 c 177 § 33.]

**74.46.340 Land, improvements—Depreciation.** Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor. [1980 c 177 § 34.]

**74.46.350 Methods of depreciation.** (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed. Major-minor equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on major-minor equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to RCW 74.46.360. [1999 c 353 § 13; 1980 c 177 § 35.]

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.360 Cost basis of land and depreciation base of depreciable assets.** (1) For all partial or whole rate periods after December 31, 1984, the cost basis of land and depreciation base of depreciable assets shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation, if applicable, which has been incurred during periods that the assets have been used in or as a facility by any contractor, such accumulated depreciation to be measured in accordance with subsections (4), (5), and (6) of this section and \*RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The cost basis of land and depreciation base of depreciable assets will not exceed such fair market value.

(2) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of

the additional land acquired for the replacement construction or building additions to be the lesser of:

(a) The contractor's or lessor's actual cost per square foot; or

(b) The square foot land value as established by an appraisal that meets the latest publication of the Uniform Standards of Professional Appraisal Practice (USPAP) and the financial institutions reform, recovery, and enhancement act (FIRREA).

(3) Subject to the provisions of subsection (2) of this section, if, in the course of financing a project, an arm's-length lender has ordered a Uniform Standards of Professional Appraisal Practice appraisal on the land that meets financial institutions reform, recovery, and enhancement act standards and the arm's-length lender has accepted the ordered appraisal, the department shall accept the appraisal value as allowable land costs for calculation of payment.

If the contractor or lessor is unable or unwilling to provide or cause to be provided to the department, or the department is unable to obtain from the arm's-length lender, a lender-approved appraisal that meets the standards of the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act, the department shall order such an appraisal and accept the appraisal as the allowable land costs. If the department orders the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act appraisal, the contractor shall immediately reimburse the department for the costs incurred.

(4) The historical cost of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, shall be the lesser of:

(a) Fair market value at the date of donation or death; or

(b) The historical cost base of the owner last contracting with the department, if any.

(5) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(6)(a) For facilities, other than those described under subsection (2) of this section, operating prior to July 1, 1997, where land or depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the cost basis or depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new cost basis or depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair

market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. For all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, depreciable or nondepreciable, occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: PROVIDED, HOWEVER, That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: PROVIDED FURTHER, That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the cost basis of allowable land and the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost-reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and financing allowance calculated pursuant to this chapter based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

(d) For all rate periods past or future where land or depreciable assets are acquired from a related organization, the contractor's cost basis and depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

(e) Where the land or depreciable asset is a donation or distribution between related organizations, the cost basis or depreciation base shall be the lesser of (i) fair market value, less salvage value, or (ii) the cost basis or depreciation base the related organization had or would have had for the asset under a contract with the department. [1999 c 353 § 2; 1997 c 277 § 1; 1991 sp.s. c 8 § 18; 1989 c 372 § 14. Prior: 1988 c 221 § 1; 1988 c 208 § 1; 1986 c 175 § 1; 1980 c 177 § 36.]

\*Reviser's note: RCW 74.46.350 and 74.46.370 were repealed by 1999 c 353 § 17, effective June 30, 2001.

Effective dates—1999 c 353: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1980 c 177: See RCW 74.46.901.

**74.46.370 Lives of assets.** (1) Except for new buildings, major remodels, and major repair projects, as defined in subsection (2) of this section, the contractor shall use lives which reflect the estimated actual useful life of the asset and which shall be no shorter than guideline lives as established by the department. Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition of the asset, whichever is more recent. In cases where RCW 74.46.360(6)(a) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) Effective July 1, 1997, for asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of Estimated Useful Lives of Depreciable Hospital Assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings receiving certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, is forty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(3) Building improvements, other than major remodels and major repairs, shall be depreciated over the remaining useful life of the building, as modified by the improvement.

(4) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

(5) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

(6) For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed. [1999 c 353 § 14; 1997 c 277 § 2; 1980 c 177 § 37.]

Effective dates—1999 c 353: See note following RCW 74.46.020.

**74.46.380 Depreciable assets.** (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, or fire or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken. [1993 sp.s. c 13 § 5; 1991 sp.s. c 8 § 12; 1980 c 177 § 38.]

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

**74.46.390 Gains and losses upon replacement of depreciable assets.** If the retired asset is replaced, the gain or loss shall be applied against or added to the cost of the replacement asset, provided that a loss will only be so applied if the contractor has made a reasonable effort to recover at least the outstanding book value of the asset. [1980 c 177 § 39.]

**74.46.410 Unallowable costs.** (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in the medicaid per-resident day payment rate established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound

business judgment established that there was no likelihood of recovery at any time in the future;

- (k) Charity and courtesy allowances;
- (l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;
- (m) Vending machine expenses;
- (n) Expenses for barber or beautician services not included in routine care;
- (o) Funeral and burial expenses;
- (p) Costs of gift shop operations and inventory;
- (q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;
- (r) Fund-raising expenses, except those directly related to the patient activity program;
- (s) Penalties and fines;
- (t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;
- (u) Televisions acquired prior to July 1, 2001;
- (v) Federal, state, and other income taxes;
- (w) Costs of special care services except where authorized by the department;
- (x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;
- (y) Expenses of profit-sharing plans;
- (z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;
- (aa) Personal expenses and allowances of owners or relatives;
- (bb) All expenses of maintaining professional licenses or membership in professional organizations;
- (cc) Costs related to agreements not to compete;
- (dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;
- (ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;
- (ff) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;
- (gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;
- (hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;
- (ii) All rental or lease costs other than those provided in RCW 74.46.300 on and after January 1, 1985;
- (jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(ww) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(xx) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period;

(yy) Tax expenses that a nursing facility has never incurred; and

(zz) Effective July 1, 2007, and for all future rate settings, any costs associated with the quality maintenance fee repealed by chapter 241, Laws of 2006. [2007 c 508 § 1; 2001 1st sp.s. c 8 § 3; 1998 c 322 § 17; 1995 1st sp.s. c 18 §

97; 1993 sp.s. c 13 § 6; 1991 sp.s. c 8 § 15; 1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

**Effective date—2007 c 508:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 508 § 8.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective date—1993 sp.s. c 13:** See note following RCW 74.46.020.

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**Effective date—1989 c 372 § 2:** "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.]

## PART E RATE SETTING

**74.46.421 Purpose of part E—Nursing facility medic-aid payment rates.** (1) The purpose of part E of this chapter is to determine nursing facility medicaid payment rates that, in the aggregate for all participating nursing facilities, are in accordance with the biennial appropriations act.

(2)(a) The department shall use the nursing facility medicaid payment rate methodologies described in this chapter to determine initial component rate allocations for each medicaid nursing facility.

(b) The initial component rate allocations shall be subject to adjustment as provided in this section in order to assure that the statewide average payment rate to nursing facilities is less than or equal to the statewide average payment rate specified in the biennial appropriations act.

(3) Nothing in this chapter shall be construed as creating a legal right or entitlement to any payment that (a) has not been adjusted under this section or (b) would cause the statewide average payment rate to exceed the statewide average payment rate specified in the biennial appropriations act.

(4)(a) The statewide average payment rate for any state fiscal year under the nursing facility payment system, weighted by patient days, shall not exceed the annual statewide weighted average nursing facility payment rate identified for that fiscal year in the biennial appropriations act.

(b) If the department determines that the weighted average nursing facility payment rate calculated in accordance with this chapter is likely to exceed the weighted average nursing facility payment rate identified in the biennial appropriations act, then the department shall adjust all nursing facility payment rates proportional to the amount by which the weighted average rate allocations would otherwise exceed the budgeted rate amount. Any such adjustments for the current fiscal year shall only be made prospectively, not retrospectively, and shall be applied proportionately to each component rate allocation for each facility.

(c) If any final order or final judgment, including a final order or final judgment resulting from an adjudicative proceeding or judicial review permitted by chapter 34.05 RCW, would result in an increase to a nursing facility's payment rate for a prior fiscal year or years, the department shall consider whether the increased rate for that facility would result in the statewide weighted average payment rate for all facili-

ties for such fiscal year or years to be exceeded. If the increased rate would result in the statewide average payment rate for such year or years being exceeded, the department shall increase that nursing facility's payment rate to meet the final order or judgment only to the extent that it does not result in an increase to the statewide weighted average payment rate for all facilities. [2008 c 263 § 1; 2001 1st sp.s. c 8 § 4; 1999 c 353 § 3; 1998 c 322 § 18.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules.** (1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) Component rate allocations in therapy care, support services, variable return, operations, property, and financing allowance for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, and variable return shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use. For all facilities, effective July 1, 2006, the component rate allocation in direct care shall be based upon actual facility occupancy. The median cost limits used to set component rate allocations shall be based on the applicable minimum occupancy percentage. In determining each facility's therapy care component rate allocation under RCW 74.46.511, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy costs per adjusted resident day. In determining each facility's support services component rate allocation under RCW 74.46.515(3), the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted support services costs per adjusted resident day. In determining each facility's operations component rate allocation under RCW 74.46.521(3), the department shall apply the minimum facility occupancy adjustment before creating the array of facilities' adjusted general operations costs per adjusted resident day.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be

substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2006, direct care component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, direct care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, direct care component rate allocations. Effective July 1, 2009, the direct care component rate allocation shall be rebased biennially, and thereafter for each odd-numbered year beginning July 1st, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(d) Direct care component rate allocations based on 2003 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.506(5)(i).

(e) Direct care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, therapy care component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, therapy care component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the therapy care component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

ally, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations. Adjusted cost report data from 1999 will continue to be used for July 1, 2005, through June 30, 2007, support services component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, support services component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the support services component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2006, operations component rate allocations. Adjusted cost report data from 2003 will be used for July 1, 2006, through June 30, 2007, operations component rate allocations. Adjusted cost report data from 2005 will be used for July 1, 2007, through June 30, 2009, operations component rate allocations. Effective July 1, 2009, and thereafter for each odd-numbered year beginning July 1st, the operations component rate allocation shall be cost rebased biennially, using the adjusted cost report data for the calendar year two years immediately preceding the rate rebase period, so that adjusted cost report data for calendar year 2007 is used for July 1, 2009, through June 30, 2011, and so forth.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose operations component rate is set equal to their adjusted June 30, 2006, rate, as provided in RCW 74.46.521(4).

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utiliz-

ing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medic-aid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medic-aid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medic-aid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medic-aid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medic-aid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates. The direct care component rate allocation shall be adjusted, without using the minimum occupancy assumption, for facilities that convert banked beds to active service, under chapter 70.38 RCW, beginning on July 1, 2006. Effective July 1, 2007, component rate allocations for direct care shall be based on actual patient days regardless of whether a facility has converted banked beds to active service.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2008 c 263 § 2; 2007 c 508 § 2; 2006 c 258 § 2; 2005 c 518 § 944; 2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

(2008 Ed.)

**Effective date—2007 c 508:** See note following RCW 74.46.410.

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.433 Variable return component rate allocation.** (1) The department shall establish for each medic-aid nursing facility a variable return component rate allocation. In determining the variable return allowance:

(a) Except as provided in (e) of this subsection, the variable return array and percentage shall be assigned whenever rebasing of noncapital rate allocations is scheduled under RCW 74.46.431 (4), (5), (6), and (7).

(b) To calculate the array of facilities for the July 1, 2001, rate setting, the department, without using peer groups, shall first rank all facilities in numerical order from highest to lowest according to each facility's examined and documented, but unlidged, combined direct care, therapy care, support services, and operations per resident day cost from the 1999 cost report period. However, before being combined with other per resident day costs and ranked, a facility's direct care cost per resident day shall be adjusted to reflect its facility average case mix index, to be averaged from the four calendar quarters of 1999, weighted by the facility's resident days from each quarter, under RCW 74.46.501(7)(b)(ii). The array shall then be divided into four quartiles, each containing, as nearly as possible, an equal number of facilities, and four percent shall be assigned to facilities in the lowest quartile, three percent to facilities in the next lowest quartile, two percent to facilities in the next highest quartile, and one percent to facilities in the highest quartile.

(c) The department shall, subject to (d) of this subsection, compute the variable return allowance by multiplying a facility's assigned percentage by the sum of the facility's direct care, therapy care, support services, and operations component rates determined in accordance with this chapter and rules adopted by the department.

(d) Effective July 1, 2001, if a facility's examined and documented direct care cost per resident day for the preceding report year is lower than its average direct care component rate weighted by medic-aid resident days for the same year, the facility's direct care cost shall be substituted for its July 1, 2001, direct care component rate, and its variable return component rate shall be determined or adjusted each July 1st by multiplying the facility's assigned percentage by the sum of the facility's July 1, 2001, therapy care, support services, and operations component rates, and its direct care cost per resident day for the preceding year.

(e) Effective July 1, 2006, the variable return component rate allocation for each facility shall be the facility's June 30, 2006, variable return component rate allocation.

(2) The variable return rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2006 c 258 § 3; 2001 1st sp.s. c 8 § 6; 1999 c 353 § 9.]

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.435 Property component rate allocation.** (1) Effective July 1, 2001, the property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on eighty-five percent facility occupancy. Effective July 1, 2002, the property component rate allocation for all facilities, except essential community providers, shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) Effective July 1, 2001, for the purpose of calculating a nursing facility's property component rate, if a contractor has elected to bank licensed beds prior to April 1, 2001, or elects to convert banked beds to active service at any time, under chapter 70.38 RCW, the department shall use the facility's new licensed bed capacity to recalculate minimum occupancy for rate setting and revise the property component rate, as needed, effective as of the date the beds are banked or converted to active service. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion. Effective July 1, 2002, in no case, other than essential community providers, shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after conversion.

(5) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 7; 1999 c 353 § 10; 1998 c 322 § 29.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.437 Financing allowance component rate allocation.** (1) Beginning July 1, 1999, the department shall establish for each medicaid nursing facility a financing allowance component rate allocation. The financing allowance component rate shall be rebased annually, effective July

1st, in accordance with the provisions of this section and this chapter.

(2) Effective July 1, 2001, the financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on eighty-five percent facility occupancy. Effective July 1, 2002, the financing allowance component rate allocation for all facilities, other than essential community providers, shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy. However, assets acquired on or after May 17, 1999, shall be grouped in a separate financing allowance calculation that shall be multiplied by .085. The financing allowance factor of .085 shall not be applied to the net invested funds pertaining to new construction or major renovations receiving certificate of need approval or an exemption from certificate of need requirements under chapter 70.38 RCW, or to working drawings that have been submitted to the department of health for construction review approval, prior to May 17, 1999. If a capitalized addition, renovation, replacement, or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing allowance shall be adjusted to the greater of the anticipated resident day level or eighty-five percent of the new licensed bed capacity. Effective July 1, 2002, for all facilities, other than essential community providers, the total resident days used to compute the financing allowance after a capitalized addition, renovation, replacement, or retirement of an asset shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy.

(3) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(4) Effective July 1, 2001, for the purpose of calculating a nursing facility's financing allowance component rate, if a contractor has elected to bank licensed beds prior to May 25, 2001, or elects to convert banked beds to active service at any time, under chapter 70.38 RCW, the department shall use the facility's new licensed bed capacity to recalculate minimum

occupancy for rate setting and revise the financing allowance component rate, as needed, effective as of the date the beds are banked or converted to active service. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion. Effective July 1, 2002, in no case, other than for essential community providers, shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after conversion.

(5) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 8; 1999 c 353 § 11.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.439 Facilities leased in arm's-length agreements—Recomputation of financing allowance—Reimbursement for annualized lease payments—Rate adjustment.** (1) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate allocation, is more than the sum of the financing allowance and the variable return rate determined according to this chapter, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such a determination is shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under (a) of this subsection and the variable return rate shall be compared to the annualized lease payment, plus any interest and depreciation associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate. The lesser of the two amounts shall be called the alternate return on investment rate.

(c) The sum of the financing allowance and variable return rate determined according to this chapter or the alternate return on investment rate, whichever is greater, shall be added to the prospective rates of the contractor.

(2) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended under a provision of the lease, the treatment provided in subsection (1) of this section shall be applied, except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2008 Ed.)

(3) The alternate return on investment component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [1999 c 353 § 12.]

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.441 Public disclosure of rate-setting information.** The department shall disclose to any member of the public all rate-setting information consistent with requirements of state and federal laws. [1998 c 322 § 20.]

**74.46.445 Contractors—Rate adjustments.** If a contractor experiences an increase in state or county property taxes as a result of new building construction, replacement building construction, or substantial building additions that require the acquisition of land, then the department shall adjust the contractor's prospective rates to cover the medicare share of the tax increase. The rate adjustments shall only apply to construction and additions completed on or after July 1, 1997. The rate adjustments authorized by this section are effective on the first day after July 1, 1999, on which the increased tax payment is due. Rate adjustments made under this section are subject to all applicable cost limitations contained in this chapter. [1999 c 353 § 15.]

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.475 Submitted cost report—Analysis and adjustment by department.** (1) The department shall analyze the submitted cost report or a portion thereof of each contractor for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and such rules as the department may adopt. If the analysis finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing payment rate allocations. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the adjustment. Adjustments shall be subject to review and appeal as provided in this chapter.

(2) The department shall accumulate data from properly completed cost reports, in addition to assessment data on each facility's resident population characteristics, for use in:

- (a) Exception profiling; and
- (b) Establishing rates.

(3) The department may further utilize such accumulated data for analytical, statistical, or informational purposes as necessary. [1998 c 322 § 21; 1985 c 361 § 13; 1983 1st ex.s. c 67 § 23.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.485 Case mix classification methodology.** (1) The department shall employ the resource utilization group III case mix classification methodology. The department shall use the forty-four group index maximizing model for the resource utilization group III grouper version 5.10, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements.

(2) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [1998 c 322 § 22.]

**74.46.496 Case mix weights—Determination—Revisions.** (1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the health care financing administration of the United States department of health and human services 1995 nursing facility staff time measurement study stemming from its multi-state nursing home case mix and quality demonstration project. Those minutes shall be weighted by statewide ratios of registered nurse to certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on 1995 cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group III classification system by multiplying the wage weight for each worker classification by the average number of minutes that classification of worker spends caring for a resident in that resource utilization group III classification group, and summing the products;

(c) Assign a case mix weight of 1.000 to the resource utilization group III classification group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the health care financing administration updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased as provided in RCW 74.46.431(4). [2006 c 258 § 4; 1998 c 322 § 23.]

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**74.46.501 Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index.** (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question based on the resident assessment instrument completed by the facility and the requirements and limitations for the instrument's completion and transmission (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4)(a) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as follows:

(i) If a resident's initial assessment for a first stay or a return stay in the nursing facility is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the later of either the first day of the quarter or the resident's facility admission or readmission date;

(ii) If a resident's significant change, quarterly, or annual assessment is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the date the assessment is completed;

(iii) If a resident's significant change, quarterly, or annual assessment is not timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the due date for the assessment.

(b) If state or federal rules require more frequent assessment, the same principles for determining the start date of a resident's classification in a particular case mix group set forth in subsection (4)(a) of this section shall apply.

(c) In calculating the number of days a resident is classified into a particular case mix group, the department shall determine an end date for calculating case mix grouping periods as follows:

(i) If a resident is discharged before the end of the applicable quarter, the end date shall be the day before discharge;

(ii) If a resident is not discharged before the end of the applicable quarter, the end date shall be the last day of the quarter;

(iii) If a new assessment is due for a resident or a new assessment is completed and transmitted to the department, the end date of the previous assessment shall be the earlier of either the day before the assessment is due or the day before the assessment is completed by the nursing facility.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6) A threshold of ninety percent, as described and calculated in this subsection, shall be used to determine the case mix index each quarter. The threshold shall also be used to determine which facilities' costs per case mix unit are included in determining the ceiling, floor, and price. For direct care component rate allocations established on and after July 1, 2006, the threshold of ninety percent shall be used to determine the case mix index each quarter and to determine which facilities' costs per case mix unit are included in determining the ceiling and price. If the facility does not meet the ninety percent threshold, the department may use an alternate case mix index to determine the facility average and medicaid average case mix indexes for the quarter. The threshold is a count of unique minimum data set assessments, and it shall include resident assessment instrument tracking forms for residents discharged prior to completing an initial assessment. The threshold is calculated by dividing a facility's count of residents being assessed by the average census for the facility. A daily census shall be reported by each nursing facility as it transmits assessment data to the department. The department shall compute a quarterly average census based on the daily census. If no census has been reported by a facility during a specified quarter, then the department shall use the facility's licensed beds as the denominator in computing the threshold.

(7)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the facility average case mix index will be used throughout the applicable cost-rebasing period in combination with cost report data as specified by RCW 74.46.431 and 74.46.506, to establish a facility's allowable cost per case mix unit. A facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate quarterly.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes.

(i) For October 1, 1998, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1997.

(ii) For July 1, 2001, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1999.

(iii) Beginning on July 1, 2006, when establishing the direct care component rates, the department shall use an average of facility case mix indexes from the four calendar quarters occurring during the cost report period used to rebase the direct care component rate allocations as specified in RCW 74.46.431.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate quarterly shall be from the calendar quarter commencing six months prior to the effective date of the quarterly rate. For example, October 1, 1998, through December 31, 1998, direct care component rates shall utilize case mix averages from the April 1, 1998, through June 30, 1998, calendar quarter, and so forth. [2006 c 258 § 5; 2001 1st sp.s. c 8 § 9; 1998 c 322 § 24.]

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**74.46.506 Direct care component rate allocations—Determination—Quarterly updates—Fines.** (1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be for rate periods as specified in RCW 74.46.431(4)(a).

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in RCW 74.46.431(4)(a) to reflect any department adjustments, and to eliminate reported resident therapy costs and adjust-

ments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day. However, effective July 1, 2006, each facility's allowable direct care costs shall be divided by its adjusted resident days without application of a minimum occupancy assumption;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in RCW 74.46.431(4) to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(7)(b) to derive the facility's allowable direct care cost per case mix unit;

(e) Effective for July 1, 2001, rate setting, divide nursing facilities into at least two and, if applicable, three peer groups: Those located in nonurban counties; those located in high labor-cost counties, if any; and those located in other urban counties;

(f) Array separately the allowable direct care cost per case mix unit for all facilities in nonurban counties; for all facilities in high labor-cost counties, if applicable; and for all facilities in other urban counties, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (i) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(h) Except as provided in (i) of this subsection, from July 1, 2000, through June 30, 2006, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(i)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on September 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in RCW 74.46.431. A facility shall receive the higher of the two rates.

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates. Between July 1, 2001, and June 30, 2002, if during any quarter a facility whose rate paid under (h) of this subsection is greater than either the direct care rate in effect on June 30, 2000, or than that facility's allowable direct care cost per case mix unit calculated in (d) of this subsection multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c), the facility shall be paid in that and each subsequent quarter pursuant to (h) of this subsection and shall not be entitled to the greater of the two rates.

(iii) Between July 1, 2002, and June 30, 2006, all direct care component rate allocations shall be as determined under (h) of this subsection.

(iv) Effective July 1, 2006, for all providers, except vital local providers as defined in this chapter, all direct care component rate allocations shall be as determined under (j) of this subsection.

(v) Effective July 1, 2006, through June 30, 2007, for vital local providers, as defined in this chapter, direct care component rate allocations shall be determined as follows:

(A) The department shall calculate:

(I) The sum of each facility's July 1, 2006, direct care component rate allocation calculated under (j) of this subsection

tion and July 1, 2006, operations component rate calculated under RCW 74.46.521; and

(II) The sum of each facility's June 30, 2006, direct care and operations component rates.

(B) If the sum calculated under (i)(v)(A)(I) of this subsection is less than the sum calculated under (i)(v)(A)(II) of this subsection, the facility shall have a direct care component rate allocation equal to the facility's June 30, 2006, direct care component rate allocation.

(C) If the sum calculated under (i)(v)(A)(I) of this subsection is greater than or equal to the sum calculated under (i)(v)(A)(II) of this subsection, the facility's direct care component rate shall be calculated under (j) of this subsection;

(j) Except as provided in (i) of this subsection, from July 1, 2006, forward, and for all future rate setting, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is greater than one hundred twelve percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred twelve percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is less than or equal to one hundred twelve percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c).

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) Costs related to payments resulting from increases in direct care component rates, granted under authority of RCW 74.46.508(1) for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid. Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department. [2007 c 508 § 3; 2006 c 258 § 6; 2001 1st sp.s. c 8 § 10. Prior: 1999 c 353 § 5; 1999 c 181 § 1; 1998 c 322 § 25.]

**Effective date—2007 c 508:** See note following RCW 74.46.410.

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.508 Direct care component rate allocation—Increases—Rules.** (1) The department is authorized to increase the direct care component rate allocation calculated under RCW 74.46.506(5) for residents who have unmet exceptional care needs as determined by the department in rule. The department may, by rule, establish criteria, patient categories, and methods of exceptional care payment.

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(2) The department may by July 1, 2003, adopt rules and implement a system of exceptional care payments for therapy care.

(a) Payments may be made on behalf of facility residents who are under age sixty-five, not eligible for medicare, and can achieve significant progress in their functional status if provided with intensive therapy care services.

(b) Payments may be made only after approval of a rehabilitation plan of care for each resident on whose behalf a payment is made under this subsection, and each resident's progress must be periodically monitored. [2003 1st sp.s. c 6 § 1; 1999 c 181 § 2.]

**74.46.511 Therapy care component rate allocation—Determination.** (1) The therapy care component rate allocation corresponds to the provision of medicaid one-on-one therapy provided by a qualified therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2007, shall be based on adjusted therapy costs and days from calendar year 1999. Effective July 1, 2007, the therapy care component rate allocation shall be based on adjusted therapy costs and days as described in RCW 74.46.431(5). The therapy care component rate shall be adjusted for economic trends and conditions as specified in RCW 74.46.431(5), and shall be determined in accordance with this section. In determining each facility's therapy care component rate allocation, the department shall apply the applicable minimum facility occupancy adjustment before creating the array of facilities' adjusted therapy care costs per adjusted resident day.

(2) In rebasing, as provided in RCW 74.46.431(5)(a), the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within urban counties; and

(b) Those located within nonurban counties.

The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of ther-

apy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) The total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) The therapy care component rate shall be suspended for medicaid residents in qualified nursing facilities designated by the department who are receiving therapy paid by the department outside the facility daily rate under RCW 74.46.508(2). [2008 c 263 § 3; 2007 c 508 § 4; 2001 1st sp.s. c 8 § 11. Prior: 1999 c 353 § 6; 1999 c 181 § 3; 1998 c 322 § 26.]

**Effective date—2007 c 508:** See note following RCW 74.46.410.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.515 Support services component rate allocation—Determination—Emergency situations.** (1) The support services component rate allocation corresponds to the provision of food, food preparation, dietary, housekeeping, and laundry services for one resident for one day.

(2) Beginning October 1, 1998, the department shall determine each medicaid nursing facility's support services component rate allocation using cost report data specified by RCW 74.46.431(6).

(3) To determine each facility's support services component rate allocation, the department shall:

(a) Array facilities' adjusted support services costs per adjusted resident day, as determined by dividing each facility's total allowable support services costs by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy provided by RCW 74.46.431(2), for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties, and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's support services component rate at the lower of the facility's per resident day adjusted support services costs from the applicable cost report period or the adjusted median per resident day support services cost for that facility's peer group, either urban counties or nonurban counties, plus ten percent; and

(c) Adjust each facility's support services component rate for economic trends and conditions as provided in RCW 74.46.431(6).

(4) The support services component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2008 c 263 § 4; 2001 1st sp.s. c 8 § 12; 1999 c 353 § 7; 1998 c 322 § 27.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

**74.46.521 Operations component rate allocation—Determination.** (1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) Except as provided in subsection (4) of this section, beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Effective July 1, 2002, operations component rates for all facilities except essential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds, and no operations component rate shall be revised in response to beds banked on or after May 25, 2001, under chapter 70.38 RCW.

(3) Except as provided in subsection (4) of this section, to determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day, as determined by dividing each facility's total allowable operations cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of ninety percent; that is, the greater of actual or imputed occupancy at ninety percent of licensed beds, for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary to a minimum occupancy of eighty-five percent of licensed beds before July 1, 2002, and ninety percent effective July 1, 2002; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or nonurban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4)(a) Effective July 1, 2006, through June 30, 2007, for any facility whose direct care component rate allocation is set equal to its June 30, 2006, direct care component rate allocation, as provided in RCW 74.46.506(5), the facility's operations component rate allocation shall also be set equal to the facility's June 30, 2006, operations component rate allocation.

(b) The operations component rate allocation for facilities whose operations component rate is set equal to their June 30, 2006, operations component rate, shall be adjusted for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(5) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2007 c 508 § 5; 2006 c 258 § 7; 2001 1st sp.s. c 8 § 13; 1999 c 353 § 8; 1998 c 322 § 28.]

**Effective date—2007 c 508:** See note following RCW 74.46.410.

**Effective date—2006 c 258:** See note following RCW 74.46.020.

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Effective dates—1999 c 353:** See note following RCW 74.46.020.

#### **74.46.531 Department may adjust component rates—Contractor may request—Errors or omissions.**

(1) The department may adjust component rates for errors or omissions made in establishing component rates and determine amounts either overpaid to the contractor or underpaid by the department.

(2) A contractor may request the department to adjust its component rates because of:

(a) An error or omission the contractor made in completing a cost report; or

(b) An alleged error or omission made by the department in determining one or more of the contractor's component rates.

(3) A request for a rate adjustment made on incorrect cost reporting must be accompanied by the amended cost report pages prepared in accordance with the department's written instructions and by a written explanation of the error or omission and the necessity for the amended cost report pages and the rate adjustment.

(4) The department shall review a contractor's request for a rate adjustment because of an alleged error or omission, even if the time period has expired in which the contractor must appeal the rate when initially issued, pursuant to rules adopted by the department under RCW 74.46.780. If the request is received after this time period, the department has the authority to correct the rate if it agrees an error or omission

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was committed. However, if the request is denied, the contractor shall not be entitled to any appeals or exception review procedure that the department may adopt under RCW 74.46.780.

(5) The department shall notify the contractor of the amount of the overpayment to be recovered or additional payment to be made to the contractor reflecting a rate adjustment to correct an error or omission. The recovery from the contractor of the overpayment or the additional payment to the contractor shall be governed by the reconciliation, settlement, security, and recovery processes set forth in this chapter and by rules adopted by the department in accordance with this chapter.

(6) Component rate adjustments approved in accordance with this section are subject to the provisions of RCW 74.46.421. [1998 c 322 § 31.]

**74.46.533 Combined and estimated rebased rates—Determination—Hold harmless provision.** (1) For the purposes of comparison, the department shall determine the following during the rate-setting periods for fiscal years 2008 and 2009:

(a) Each facility's June 30, 2007, combined rate for the direct care, support services, therapy, and operations components, less the quality maintenance fee; and

(b) Each facility's estimated rebased rates for the July 1, 2007, and July 1, 2008, rate-setting periods, for the direct care, support services, therapy, and operations rate components, less the quality maintenance fee, adjusted for economic trends and conditions under the 2007-2009 biennial appropriations act.

(2) For the 2007-2009 fiscal biennium, the department shall include a "hold harmless" provision after rebasing to 2005 costs for the July 1, 2007, through June 30, 2008, rate-setting period and the July 1, 2008, through June 30, 2009, rate-setting period. This "hold harmless" provision shall apply to facilities that meet both of the following conditions:

(a) Facilities whose estimated rebased rates calculated under subsection (1)(b) of this section are less than their June 30, 2007, rates calculated under subsection (1)(a) of this section; and

(b) Facilities whose combined adjusted costs per adjusted resident day in the direct care, support services, therapy, and operations cost centers were greater than the combined per resident day reimbursement rates for these cost centers in either calendar years 2004 or 2005.

For those facilities that meet the conditions in this subsection, the "hold harmless" provision shall ensure that for the July 1, 2007, through June 30, 2008, rate-setting period and for the July 1, 2008, through June 30, 2009, rate-setting period, the department shall set each facility's component rates in direct care, support services, therapy, and operations to the facility's June 30, 2007, rate, less the quality maintenance fee, adjusted for economic trends and conditions specified in the 2007-2009 biennial appropriations act. [2007 c 508 § 6.]

**Effective date—2007 c 508:** See note following RCW 74.46.410.

PART F  
BILLING/PAYMENT

**74.46.600 Billing period.** A contractor shall bill the department for care provided to medical care recipients from the first through the last day of each calendar month. [1980 c 177 § 60.]

**74.46.610 Billing procedure—Rules.** (1) A contractor shall bill the department each month by completing and returning a facility billing statement as provided by the department. The statement shall be completed and filed in accordance with rules established by the department.

(2) A facility shall not bill the department for service provided to a recipient until an award letter of eligibility of such recipient under rules established under chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

(3) Billing shall cover the patient days of care. [1998 c 322 § 32; 1983 1st ex.s. c 67 § 33; 1980 c 177 § 61.]

**74.46.620 Payment.** (1) The department will pay a contractor for service rendered under the facility contract and billed in accordance with RCW 74.46.610.

(2) The amount paid will be computed using the appropriate rates assigned to the contractor.

(3) For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by RCW 74.46.630. [1998 c 322 § 33; 1980 c 177 § 62.]

**74.46.625 Supplemental payments.** To the extent the federal government approves such payments under the state's plan for medical assistance, and only to the extent that funds are specifically appropriated for this purpose in the biennial appropriations act, the department shall make supplemental payments to nursing facilities operated by public hospital districts. The payments shall be calculated and distributed in accordance with the terms and conditions specified in the biennial appropriations act. The payments shall be supplemental to the component rate allocations calculated in accordance with part E of this chapter, and neither the provisions of part E of this chapter nor the provisions of part C of this chapter apply to these supplemental payments. [1999 c 392 § 1.]

**74.46.630 Charges to patients.** (1) The department will notify a contractor of the amount each medical care recipient is required to pay for care provided under the contract and the effective date of such required contribution. It is the contractor's responsibility to collect that portion of the cost of care from the patient, and to account for any authorized reduction from his or her contribution in accordance with rules established by the department.

(2) If a contractor receives documentation showing a change in the income or resources of a recipient which will mean a change in his or her contribution toward the cost of care, this shall be reported in writing to the department within seventy-two hours and in a manner specified by rules established by the department. If necessary, appropriate corrections will be made in the next facility statement, and a copy of documentation supporting the change will be attached. If increased funds for a recipient are received by a contractor, an amount determined by the department shall be allowed for clothing and personal and incidental expense, and the balance applied to the cost of care.

(3) The contractor shall accept the payment rates established by the department as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services. [1998 c 322 § 34; 1980 c 177 § 63.]

**74.46.640 Suspension of payments.** (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding, except that neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish by rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment. [1998

c 322 § 35; 1995 1st sp.s. c 18 § 112; 1983 1st ex.s. c 67 § 34; 1980 c 177 § 64.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.46.650 Termination of payments.** All payments to a contractor will end no later than sixty days after any of the following occurs:

- (1) A contract is terminated, assigned, or is not renewed;
- (2) A facility license is revoked; or
- (3) A facility is decertified as a Title XIX facility; except that, in situations where the department determines that residents must remain in such facility for a longer period because of the resident's health or safety, payments for such residents shall continue. [1998 c 322 § 36; 1980 c 177 § 65.]

## PART G ADMINISTRATION

**74.46.660 Conditions of participation.** In order to participate in the nursing facility medicaid payment system established by this chapter, the person or legal entity responsible for operation of a facility shall:

- (1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;
- (2) Hold the appropriate current license;
- (3) Hold current Title XIX certification;
- (4) Hold a current contract to provide services under this chapter;
- (5) Comply with all provisions of the contract and all applicable regulations, including but not limited to the provisions of this chapter; and
- (6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds. [1998 c 322 § 37; 1992 c 215 § 1; 1991 sp.s. c 8 § 13; 1980 c 177 § 66.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**74.46.680 Change of ownership—Assignment of department's contract.** (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless: (a) The new owner does not desire to participate in medicaid as a nursing facility provider; (b) the department elects not to continue the contract with the new owner for good cause; or (c) the new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions

specified in RCW 74.46.660. The facility contract with the new owner shall be effective as of the date of the change of ownership. [1998 c 322 § 38; 1985 c 361 § 2; 1980 c 177 § 68.]

**Effective date—1998 c 322 §§ 38 and 39:** "Sections 38 and 39 of this act take effect October 1, 1998." [1998 c 322 § 59.]

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.690 Change of ownership—Final reports—Settlement.** (1) When there is a change of ownership for any reason, final reports shall be submitted as required by RCW 74.46.040.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports filed after December 31, 1997, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

- (a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;
- (b) An assignment of funds to the department;
- (c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;
- (d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;
- (e) A promissory note secured by a deed of trust; or
- (f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

- (a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and
- (b) Provide that an amount equal to any recovery the department determines is due from the contractor from any source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection

(3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with the requirements of RCW 74.46.040, which shall be examined by the department in accordance with the requirements of RCW 74.46.100.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department. [1998 c 322 § 39; 1995 1st sp.s. c 18 § 113; 1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

**Effective date—1998 c 322 §§ 38 and 39:** See note following RCW 74.46.680.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Savings—1985 c 361:** See note following RCW 74.46.020.

## PART H PATIENT TRUST FUNDS

**74.46.700 Resident personal funds—Records—Rules.** Each nursing home shall establish and maintain, as a service to the resident, a bookkeeping system incorporated into the business records for all resident moneys entrusted to the contractor and received by the facility for the resident.

The department shall adopt rules to ensure that resident personal funds handled by the facility are maintained by each nursing home in a manner that is, at a minimum, consistent with federal requirements. [1991 sp.s. c 8 § 19; 1980 c 177 § 70.]

**Effective date—1991 sp.s. c 8:** See note following RCW 18.51.050.

**74.46.711 Resident personal funds—Conveyance upon death of resident.** Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within thirty days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid in whole or in part by the department, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [2001 1st sp.s. c 8 § 14; 1995 1st sp.s. c 18 § 69.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

## PART I MISCELLANEOUS

**74.46.770 Contractor appeals—Challenges of laws, rules, or contract provisions—Challenge based on federal law.** (1) If a contractor wishes to contest the way in which a rule relating to the medicaid payment system was applied to the contractor by the department, it shall pursue any appeals or exception procedure that the department may establish in rule authorized by RCW 74.46.780.

(2) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, any appeals or exception procedure that the department may establish in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. [1998 c 322 § 40; 1995 1st sp.s. c 18 § 114; 1983 1st ex.s. c 67 § 39; 1980 c 177 § 77.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**74.46.780 Appeals or exception procedure.** The department shall establish in rule, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing care providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate. [1998 c 322 § 41; 1995 1st sp.s. c 18 § 115; 1989 c 175 § 159; 1983 1st ex.s. c 67 § 40; 1980 c 177 § 78.]

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**74.46.790 Denial, suspension, or revocation of license or provisional license—Penalties.** The department is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(1) Failed or refused to comply with the requirements of this chapter or the rules and regulations established hereunder; or

(2) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or

(3) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home; or

(4) Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter; or

(5) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or the rules and regulations promulgated hereunder. [1980 c 177 § 79.]

**74.46.800 Rule-making authority.** (1) The department shall have authority to adopt, amend, and rescind such administrative rules and definitions as it deems necessary to carry out the policies and purposes of this chapter and to resolve issues and develop procedures that it deems necessary to implement, update, and improve the case mix elements of the nursing facility medicaid payment system.

(2) Nothing in this chapter shall be construed to require the department to adopt or employ any calculations, steps, tests, methodologies, alternate methodologies, indexes, formulas, mathematical or statistical models, concepts, or procedures for medicaid rate setting or payment that are not expressly called for in this chapter. [1998 c 322 § 42; 1980 c 177 § 80.]

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**74.46.803 Certificate of capital authorization—Rules—Emergency situations.** (1) The department shall establish rules for issuing a certificate of capital authorization. The rules shall address the following subjects, among others:

(a) The period of time during which applications for certificates of capital authorization will be accepted;

(b) The period of time for which a certificate of capital authorization will be valid; and

(c) The prioritization of applications for certificates of capital authorization, consistent with the principles set out in this section.

(2) The rules for a certificate of capital authorization shall be consistent with the following principles:

(a) A certificate of capital authorization is only required for capital expenditures exceeding the expenditure minimum as defined in RCW 70.38.025.

(b) Certificate of capital authorization applications must be filed with the department by the end of the previous calendar year to be considered for priority assignment the following state fiscal year beginning July 1. For example, a facility requesting a certificate of capital authorization for state fiscal year July 1, 2009, through June 30, 2010, must file a request for capital authorization no later than December 31, 2008. Within ninety days of receipt of an application, the department shall either reject the application as unacceptable or act upon it.

(c) In processing and approving certificates of capital authorization filed with the department in accordance with (b) of this subsection, the department shall give priority approval in the following order:

(i) First priority shall be given to applications for renovation or replacement on existing facilities that incorporate innovative building designs that create more home-like settings. Of these applications, preference shall be given to the greatest length of time since the last major renovation or construction.

(ii) Second priority shall be given to renovations of existing facilities with the greatest length of time since their last major renovation or construction.

(iii) Third priority shall be given to replacements of existing facilities with the greatest length of time since their last major renovation or construction.

(iv) Last priority shall be given to new facilities and shall be processed on a first-come, first-served basis.

(d) Within the priorities established by this section, applications for certificates of capital authorization that do not receive approval in one state fiscal year because that year's authorization limit has been reached shall have priority the following fiscal year if the applications are resubmitted.

(3) The department shall have the authority to give first priority for a project that is necessitated by an emergency situation even if the project is not submitted in a timely fashion. Projects shall be considered on an emergency basis if the construction or renovation must be completed as soon as possible to:

(a) Retain a facility's license or certification;

(b) Protect the health or safety of the facility's residents; or

(c) Avoid closure.

(4) The department shall establish deadlines for progress and the department shall have the authority to withdraw the certificate of capital authorization where the holder of the certificate has not complied with those deadlines in a good faith manner. [2008 c 255 § 1; 2001 1st sp.s. c 8 § 16.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**74.46.807 Capital authorization—Determination.**

The total capital authorization available for any state fiscal year shall be specified in the biennial appropriations act and shall be calculated on an annual basis. [2008 c 255 § 2; 2001 1st sp.s. c 8 § 15.]

**Severability—Effective dates—2001 1st sp.s. c 8:** See notes following RCW 74.46.020.

**74.46.820 Public disclosure.** (1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter 42.56 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof. [2005 c 274 § 356; 1998 c 322 § 43; 1985 c 361 § 14; 1983 1st ex.s. c 67 § 41; 1980 c 177 § 82.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Savings—1985 c 361:** See note following RCW 74.46.020.

**74.46.835 AIDS pilot nursing facility—Payment for direct care.** (1) Payment for direct care at the pilot nursing facility in King county designed to meet the service needs of residents living with AIDS, as defined in RCW 70.24.017, and as specifically authorized for this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be exempt from case mix methods of rate determination set forth in this chapter and shall be exempt from the direct care metropolitan statistical area peer group cost limitation set forth in this chapter.

(2) Direct care component rates at the AIDS pilot facility shall be based on direct care reported costs at the pilot facility, utilizing the same three-year, rate-setting cycle prescribed for other nursing facilities, and as supported by a staffing benchmark based upon a department-approved acuity measurement system.

(3) The provisions of RCW 74.46.421 and all other rate-setting principles, cost lids, and limits, including settlement as provided in RCW 74.46.165 shall apply to the AIDS pilot facility.

(4) This section applies only to the AIDS pilot nursing facility. [1998 c 322 § 46.]

**74.46.840 Conflict with federal requirements.** If any part of this chapter or RCW 18.51.145 or 74.09.120 is found by an agency of the federal government to be in conflict with

federal requirements that are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter or RCW 18.51.145 or 74.09.120 is declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter or RCW 18.51.145 or 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter or RCW 18.51.145 or 74.09.120 is found to be in conflict with federal requirements that are a prescribed condition to the receipt of federal funds, the secretary, to the extent that the secretary finds it to be consistent with the general policies and intent of chapters 18.51, 74.09, and 74.46 RCW, may adopt such rules as to resolve a specific conflict and that do meet minimum federal requirements. In addition, the secretary shall submit to the next regular session of the legislature a summary of the specific rule changes made and recommendations for statutory resolution of the conflict. [1998 c 322 § 44; 1983 1st ex.s. c 67 § 42; 1980 c 177 § 92.]

**74.46.900 Severability—1980 c 177.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 177 § 93.]

**74.46.901 Effective dates—1983 1st ex.s. c 67; 1980 c 177.** (1) Sections 2, 7, 83, 85, 86, and 91 of chapter 177, Laws of 1980 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on April 4, 1980.

(2) Section 27 of chapter 177, Laws of 1980 shall take effect on July 1, 1980.

(3) RCW 74.46.300, 74.46.360, \*74.46.510, and \*74.46.530 shall take effect on January 1, 1985.

(4) All other sections of chapter 74.46 RCW, except those which took effect before July 1, 1983, shall take effect on July 1, 1983, which shall be "the effective date of this act" where that term is used in chapter 177, Laws of 1980. [1983 1st ex.s. c 67 § 49; 1981 1st ex.s. c 2 § 10; 1980 c 177 § 94.]

**\*Reviser's note:** RCW 74.46.510 and 74.46.530 were repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

**Effective dates—1983 1st ex.s. c 67:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1983, with the exception of section 28 of this act, which shall take effect on January 1, 1985." [1983 1st ex.s. c 67 § 51.]

**Severability—Effective dates—1981 1st ex.s. c 2:** See notes following RCW 18.51.010.

**74.46.902 Section captions—1980 c 177.** Section captions as used in this act do not constitute any part of the law. [1980 c 177 § 89.]

**74.46.905 Severability—1983 1st ex.s. c 67.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 67 § 43.]

**74.46.906 Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54.** Sections 1 through 37, 40 through 49, and 52 through 54 of this act take effect July 1, 1998. [1998 c 322 § 55.]

**74.46.907 Severability—1998 c 322.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 322 § 56.]

**74.46.909 Retrospective application—Clarification of chapter 8, Laws of 2001 1st sp. sess.—2008 c 263.** The legislature clarifies the enactment of \*chapter 8, Laws of 2001 1st sp. sess. and intends this act be curative, remedial, and retrospectively applicable to July 1, 1998. [2008 c 263 § 5.]

**\*Reviser's note:** For codification of chapter 8, Laws of 2001 1st sp. sess., see Codification Tables, Volume 0.

### Chapter 74.50 RCW

#### ALCOHOLISM AND DRUG ADDICTION TREATMENT AND SUPPORT

##### Sections

74.50.010	Legislative findings.
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*Alcoholism, intoxication, and drug addiction treatment: Chapters 70.96 and 70.96A RCW.*

*Applicability of chapter 74.08 RCW: RCW 74.08.900.*

**74.50.010 Legislative findings.** The legislature finds:

- (1) There is a need for reevaluation of state policies and programs regarding indigent alcoholics and drug addicts;
- (2) The practice of providing a cash grant may be causing rapid caseload growth and attracting transients to the state;
- (3) Many chronic public inebriates have been recycled through county detoxification centers repeatedly without apparent improvement;
- (4) The assumption that all individuals will recover through treatment has not been substantiated;
- (5) The state must modify its policies and programs for alcoholics and drug addicts and redirect its resources in the interests of these individuals, the community, and the taxpayers; and
- (6) Treatment resources should be focused on persons willing to commit to rehabilitation; and
- (7) It is the intent of the legislature that, to the extent possible, shelter services be developed under this chapter that do not result in the displacement of existing emergency shelter beds. To the extent that shelter operators do not object, it is the intent of the legislature that any vacant shelter beds contracted for under this chapter be made available to provide

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emergency temporary shelter to homeless individuals. [1988 c 163 § 1; 1987 c 406 § 2.]

**74.50.011 Additional legislative findings.** The legislature recognizes that alcoholism and drug addiction are treatable diseases and that most persons with this illness can recover. For this reason, this chapter provides a range of substance abuse treatment services. In addition, the legislature recognizes that when these diseases have progressed to the stage where a person's alcoholism or drug addiction has resulted in physiological or organic damage or cognitive impairment, shelter services may be appropriate. The legislature further recognizes that distinguishing alcoholics and drug addicts from persons incapacitated due to physical disability or mental illness is necessary in order to provide an incentive for alcoholics and drug addicts to seek appropriate treatment and in order to avoid use of programs that are not oriented toward their conditions. [1989 1st ex.s. c 18 § 1.]

**Study and report—1989 1st ex.s. c 18:** "The department of social and health services shall:

- (1) Collect and maintain relevant demographic data regarding persons receiving or awaiting treatment services under this chapter;
- (2) Collect and maintain utilization data on inpatient treatment, outpatient treatment, shelter services, and medical services;
- (3) Monitor contracted service providers to ensure conformance with the omnibus appropriations act and the treatment priorities established in this chapter;
- (4) Report the results of the data collection and monitoring provided for in this section to appropriate committees of the legislature on or before December 1, 1989, and December 1, 1990." [1989 1st ex.s. c 18 § 7.]

**Severability—1989 1st ex.s. c 18:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 18 § 9.]

**Effective date—1989 1st ex.s. c 18:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 18 § 10.]

**74.50.035 Shelter services—Eligibility.** A person is eligible for shelter services under this chapter only if he or she:

- (1) Meets the financial eligibility requirements contained in RCW 74.04.005;
- (2) Is incapacitated from gainful employment due to a condition contained in subsection (3) of this section, which incapacity will likely continue for a minimum of sixty days; and
- (3)(a) Suffers from active addiction to alcohol or drugs manifested by physiological or organic damage resulting in functional limitation, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding; or
  - (b) Suffers from active addiction to alcohol or drugs to the extent that impairment of the applicant's cognitive ability will not dissipate with sobriety or detoxification, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding. [1989 1st ex.s. c 18 § 2.]

**Study and report—Severability—Effective date—1989 1st ex.s. c 18:** See notes following RCW 74.50.011.

**74.50.040 Client assessment, treatment, and support services.** (1) The department shall provide client assessment, treatment, and support services. The assessment services shall include diagnostic evaluation and arranging for admission into treatment or supported living programs.

(2) The department shall assist clients in making application for supplemental security benefits and in obtaining the necessary documentation required by the federal social security administration for such benefits. [1987 c 406 § 5.]

**74.50.050 Treatment services.** (1) The department shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this chapter. The treatment services may include but are not limited to:

- (a) Intensive inpatient treatment services;
- (b) Recovery house treatment;

(c) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobriety as a condition of residence. The living allowance shall be administered on the clients' behalf by the outpatient treatment facility or other social service agency designated by the department. The department is authorized to pay the facility a fee for administering this allowance.

(2) The department may require an applicant or recipient selecting treatment to complete inpatient and recovery house treatment when, in the judgment of a designated assessment center, such treatment is necessary prior to providing the outpatient program. [2002 c 64 § 1; 1989 1st ex.s. c 18 § 5; 1988 c 163 § 3; 1987 c 406 § 6.]

**Study and report—Severability—Effective date—1989 1st ex.s. c 18:** See notes following RCW 74.50.011.

**74.50.055 Treatment services—Eligibility.** (1) A person shall not be eligible for treatment services under this chapter unless he or she:

(a) Meets the financial eligibility requirements contained in RCW 74.04.005; and

(b) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of sixty days.

(2) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.

(3) In order to rationally allocate treatment services, the department may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services. [1989 1st ex.s. c 18 § 4.]

**Study and report—Severability—Effective date—1989 1st ex.s. c 18:** See notes following RCW 74.50.011.

**74.50.060 Shelter assistance program.** (1) The department shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this chapter. "Shelter," "shelter support," or "shelter assistance" means a facility under contract to the department providing room and board in a supervised living arrangement, normally

in a group or dormitory setting, to eligible recipients under this chapter. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the department shall allow the consumption of alcoholic beverages on the premises. The department may contract with counties and cities for such shelter services. To the extent possible, the department shall not displace existing emergency shelter beds for use as shelter under this chapter. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the department may provide shelter through an intensive protective payee program, unless the department grants an exception on an individual basis for less intense supervision.

(2) Persons continuously eligible for the general assistance—unemployable program since July 25, 1987, who transfer to the program established by this chapter, have the option to continue their present living situation, but only through a protective payee. [1989 1st ex.s. c 18 § 3; 1988 c 163 § 4; 1987 c 406 § 7.]

**Study and report—Severability—Effective date—1989 1st ex.s. c 18:** See notes following RCW 74.50.011.

**74.50.070 County multipurpose diagnostic center or detention center.** (1) If a county elects to establish a multipurpose diagnostic center or detention center, the alcoholism and drug addiction assessment service under RCW 74.50.040 may be integrated into the services provided by such a center.

(2) The center may be financed from funds made available by the department for alcoholism and drug addiction assessments under this chapter and funds contained in the department's budget for detoxification, involuntary detention, and involuntary treatment under chapters 70.96A and 71.05 RCW. The center may be operated by the county or pursuant to contract between the county and a qualified organization. [1987 c 406 § 8.]

**74.50.080 Rules—Discontinuance of service.** The department by rule may establish procedures for the administration of the services provided by this chapter. Any rules shall be consistent with any conditions or limitations on appropriations provided for these services. If funds provided for any service under this chapter have been fully expended, the department shall immediately discontinue that service. [1989 1st ex.s. c 18 § 6; 1989 c 3 § 2.]

**Study and report—Severability—Effective date—1989 1st ex.s. c 18:** See notes following RCW 74.50.011.

**74.50.900 Short title.** This chapter may be cited as the alcoholism and drug addiction treatment and support act. [1987 c 406 § 1.]

## Chapter 74.55 RCW

### CHILDREN'S SYSTEM OF CARE

#### Sections

74.55.010	Demonstration sites—Selection criteria—Definition.
74.55.020	Goals.
74.55.030	Collaboration contract or memorandum of understanding.
74.55.050	Funding—Report.

**74.55.010 Demonstration sites—Selection criteria—**

**Definition.** (1) The secretary shall establish demonstration sites for statewide implementation of a children's system of care. The demonstration sites shall be selected using the following criteria:

(a) The system administrator must be the recipient of funding by the federal center for mental health services for the purpose of developing a system of care for children with emotional and behavioral disorders;

(b) The system administrator must have established a process for ongoing input and coordination from the public health and safety network or networks established in the catchment area of the project; and

(c) The system administrator may be a project site under a Title IV-E waiver.

(2) For the purposes of this section, "children's system of care" means a centralized community care coordination system representing a philosophy about the way services should be delivered to children and their families, using existing resources of various child-serving agencies addressing the problems of children with emotional and behavioral disorders. The agencies represented may include providers of mental health services, drug and alcohol services, services for the developmentally disabled, county juvenile justice and state juvenile rehabilitation, child welfare, and special education. [2002 c 309 § 1.]

**74.55.020 Goals.** The goals of the children's system of care are to:

(1) Maintain a multiagency collaborative planning and system management mechanism at the state and local levels through the establishment of an oversight committee at the local level in accordance with the principles and program requirements associated with the federal center for children's mental health services;

(2) Recommend and make necessary financing changes to support individualized and flexible home and community-based services and supports that are child centered, family driven, strength based, and culturally competent;

(3) Support a common screening tool and integrated care coordination system;

(4) Recommend and make necessary changes in contracting to support integrated service delivery;

(5) Promote and increase the expansion of system capacity for children and their families in each demonstration site community;

(6) Develop the capacity of family members to provide support for one another and to strengthen the family voice in system implementation through the utilization of a citizens' advisory board as described in \*RCW 74.55.040 and through other outreach activities;

(7) Conduct research and draw on outside consultation to identify best practices to inform system development and refinement; and

(8) Demonstrate cost-effectiveness by creating system efficiencies that generate savings from the current level of expenditures for children being served by the participating agencies. These savings must be used to provide more services to the children involved in the project, or to serve more children. [2002 c 309 § 2.]

\*Reviser's note: RCW 74.55.040 expired January 1, 2004.

(2008 Ed.)

**74.55.030 Collaboration contract or memorandum of understanding.** The secretary shall assure collaboration with each demonstration site by child-serving entities operated directly by the department or by departmental contractors. A collaboration contract or memorandum of understanding shall be developed by the demonstration site and the secretary for that purpose. [2002 c 309 § 3.]

**74.55.050 Funding—Report.** Funding for children's system of care projects following the expiration of the federal grant shall be determined using the process established in RCW 74.14A.060 and funded children's system of care projects shall be included in the annual report required by that section. [2002 c 309 § 5.]

## Chapter 74.98 RCW CONSTRUCTION

### Sections

74.98.010	Continuation of existing law.
74.98.020	Title, chapter, section headings not part of law.
74.98.030	Invalidity of part of title not to affect remainder.
74.98.040	Purpose—1959 c 26.
74.98.050	Repeals and saving.
74.98.060	Emergency—1959 c 26.

**74.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

**74.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

**74.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

**74.98.040 Purpose—1959 c 26.** It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

**74.98.050 Repeals and saving.** See 1959 c 26 § 74.98.050.

**74.98.060 Emergency—1959 c 26.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 26 § 74.98.060.]



# Title 76

## FORESTS AND FOREST PRODUCTS

### Chapters

- 76.01** General provisions.
- 76.04** Forest protection.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.10** Surface mining.
- 76.13** Stewardship of nonindustrial forests and woodlands.
- 76.14** Forest rehabilitation.
- 76.15** Community and urban forestry.
- 76.36** Marks and brands.
- 76.42** Wood debris—Removal from navigable waters.
- 76.44** Institute of forest resources.
- 76.48** Specialized forest products.
- 76.52** Cooperative forest management services act.
- 76.56** Center for international trade in forest products.

*Access roads to public and state forest lands: Chapter 79.38 RCW.*

*County timber: Chapter 36.34 RCW.*

*Easements over public lands: Chapter 79.36 RCW.*

*Exchange of state lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.17.010.*

*Excise tax on conveyance of standing timber: Chapter 82.45 RCW.*

*Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.*

*Forest roads, county: RCW 36.82.140.*

*Infractions: Chapter 7.84 RCW.*

*Lien for labor and services on timber and lumber: Chapter 60.24 RCW.*

*Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.*

*Logging railroads: Title 81 RCW.*

*Logging trucks, special permits for use of roads and highways: RCW 46.44.047.*

*Logs on county highways and bridges: RCW 36.86.090.*

*Measurement of timber and wood products, fraud, penalty: RCW 9.45.122 through 9.45.126.*

*Motor vehicle size, weight and load: Chapter 46.44 RCW.*

*National forests, jurisdiction: Chapter 37.08 RCW.*

*Pest control compact: Chapter 17.34 RCW.*

*Reservation of timber on sale of county tax-title lands: RCW 36.35.120.*

*Safety supervisor: RCW 43.22.040.*

*Sustained yield plan and cooperative agreements: Chapter 79.10 RCW.*

*Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.*

*Transportation of forest products, applicability of public utility tax: RCW 82.16.020.*

*University demonstration forest and experiment station: RCW 79.17.030.*

### Chapter 76.01 RCW GENERAL PROVISIONS

#### Sections

- 76.01.080 Lacey compound—Light industrial facilities/land—Sale or exchange.
- 76.01.090 Proposal for exchange or sale—Lacey compound site.

(2008 Ed.)

**76.01.080 Lacey compound—Light industrial facilities/land—Sale or exchange.** Except as provided in RCW 76.01.090, the department of natural resources may sell or exchange the light industrial facilities and land in Thurston county, known as the Lacey compound, which was acquired as an administrative site. This land and the facilities may be sold or exchanged for other lands and facilities in Thurston county, or counties adjacent to Thurston county, for use as an administrative site. The property may be exchanged for public or private property. The department is authorized to accept cash or expend cash from appropriated funds in order to balance a proposed exchange. Alternatively, the department may sell the Lacey compound at public auction or under \*RCW 79.01.009. The sale or exchange must be for at least market value. Transactions involving the construction of improvements must be conducted pursuant to Title 39 RCW, as applicable, and must comply with all other applicable laws and rules. Proceeds received from the sale or exchange of the Lacey compound must be deposited into the park land trust revolving fund to be used to acquire a replacement administrative site. Funds received from the exchange or sale that are not used to either replace or construct, or both, the administrative site must be deposited pursuant to \*\*RCW 76.01.030 or into the appropriate trust account as determined by the department. [2001 c 189 § 1.]

**Reviser's note:** \*(1) RCW 79.01.009 was recodified as RCW 79.17.200 pursuant to 2003 c 334 § 560.

\*\* (2) RCW 76.01.030 was repealed by 2003 c 334 § 235.

**76.01.090 Proposal for exchange or sale—Lacey compound site.** Before proceeding with an exchange or sale of the Lacey compound site, the department of natural resources shall submit a proposal for an exchange or sale to the office of financial management for review and approval. The proposal shall include:

- (1) A determination of the ownership by trust of the Lacey compound site;
- (2) A determination of the market value of the Lacey compound site;
- (3) A determination of prospective proportional use of the future site based on function and an assessment of the financial responsibility for the new site based on the functional analysis; and
- (4) A financing plan for the future site based on prospective use.

The location of a future site is subject to the approval of the board of natural resources and the state capitol committee.

Any additional funding requirements shall be submitted for approval by the legislature by January 1, 2002. [2001 c 189 § 2.]

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**Chapter 76.04 RCW**  
**FOREST PROTECTION**

## Sections

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76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.  
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76.04.025 Federal funds.  
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*Treble damages for removal of trees: RCW 64.12.030 and 79.02.320.*

## ADMINISTRATION

**76.04.005 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state:

(a) Covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property; or

(b) When, due to the effects of disturbance agents, broken, down, dead, or dying trees exist on forest land in sufficient quantity to be likely to further the spread of fire within areas covered by a forest health hazard warning or order issued by the commissioner of public lands under RCW 76.06.180. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(6) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(7) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(8) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(9) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas

supporting tree growth. Forest land, for protection purposes, does not include structures.

(10) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(11) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(12) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(13) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(14) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(15) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(16) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(17) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [2007 c 480 § 12; 1992 c 52 § 24; 1986 c 100 § 1.]

**76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.** (1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

- (a) Enforce all laws within this chapter;
- (b) Be empowered to take charge of and direct the work of suppressing forest fires;
- (c) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or con-

trol of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if: (i) The evidence is used by the owner in conducting a business or in providing an electric utility service; and (ii) the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this paragraph does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and

any county, town, corporation, individual, or Indian tribe within the state of Washington in forest fire fighting and patrol. [1993 c 196 § 3; 1986 c 100 § 2.]

**76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.** The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner. [1993 c 196 § 1.]

**76.04.025 Federal funds.** The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests. [1986 c 100 § 3.]

**76.04.035 Wardens—Appointment—Duties.** (1) The department may appoint any of its employees as wardens, at the times and localities as it considers the public welfare demands, within any area of the state where there is forest land requiring protection.

(2) The duties of wardens shall be:

- (a) To provide forest fire prevention and protection information to the public;
- (b) To investigate discovered or reported fires on forest lands and take appropriate action;
- (c) To patrol their areas as necessary;
- (d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;
- (e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;
- (f) To see that operations or activities on forest land have all required fire prevention and suppression equipment or devices as required by law;
- (g) To extinguish wildfires;
- (h) To set back-fires to control fires;
- (i) To summons, impress, and employ help in controlling wildfires;
- (j) To see that all laws for the protection of forests are enforced;
- (k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and

(l) To perform all other duties as prescribed by law and as the department directs.

(3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how

employed, the area visited, expenses incurred, and other information as required by the department.

(4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.

(5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.

(6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state. [1986 c 100 § 4.]

**76.04.045 Rangers—Appointment—Ex officio rangers—Compensation.** (1) All Washington state patrol officers, fish and wildlife officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.

(2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens as specified in this chapter and as directed by the department.

(3) Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: PROVIDED, That rangers actually engaged in extinguishing or preventing the spread of fire on forest land or elsewhere that may endanger forest land shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.

(4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office. [2001 c 253 § 9; 1986 c 100 § 5.]

**76.04.055 Service of notices.** Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

**76.04.065 Arrests without warrants.** Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

**76.04.075 Rules—Penalty.** Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

**76.04.085 Penalty for violations.** Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

**76.04.095 Cooperative protection.** When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

**76.04.105 Contracts for protection and development.** The department may enter into contracts and undertakings with private corporations for the protection and development of the forest lands within the state, subject to the provisions of this chapter. [1986 c 100 § 11.]

**76.04.115 Articles of incorporation—Requirements.** Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department. [1986 c 100 § 12.]

**76.04.125 Requisites of contract.** Any undertaking for the protection and development of the forest lands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forest lands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corpo-

ration for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105. [1986 c 100 § 13.]

**76.04.135 Cooperative agreements—Public agencies.** (1) For the purpose of promoting and facilitating cooperation between fire protection agencies and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands. [1986 c 100 § 14.]

**76.04.145 Forest fire advisory board.** (1) There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at the commissioner's pleasure, without compensation.

(2) The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to:

(a) Reviewing forest fire prevention and suppression policies of the department;

(b) Monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account;

(c) Recommending appropriate assessments and allocations for establishment and replenishment of the account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington;

(d) Recommending to the department appropriate rules or amendments to existing rules and reviewing nonemergency rules affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards.

(3) Except where an emergency exists, all rules concerning matters listed in subsection (2)(d) of this section shall be adopted by the department after consultation with the forest fire advisory board. [1986 c 100 § 15.]

**76.04.155 Fire fighting—Employment—Assistance.** (1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department

shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire. [1986 c 100 § 16.]

**76.04.165 Legislative declaration—Forest protection zones.** (1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that, based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1995 c 151 § 2; 1988 c 273 § 2.]

**76.04.167 Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression.** (1) The legislature hereby finds and declares that:

(a) Forest wild fires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, economic and employment opportunities, structures, and other improvements;

(b) Forest landowners and the public have a shared interest in protecting forests and forest resources by preventing and suppressing forest wild fires;

(c) A recent independent analysis of the state fire program considered it imperative to restore a more equitable split between the general fund and forest protection assessments;

(d) Without a substantial increase in forest protection funds, the state's citizens will be paying much more money for emergency fire suppression; and

(e) It is therefore the intent of the legislature that the costs of fire protection be equitably shared between the forest protection assessment account and state contributions to ensure that there will be sufficient firefighters who are equipped and trained to respond quickly to fires in order to keep fires small and manage those large fires that do occur. In recognition of increases in landowner assessments, the legislature declares its intent that increases in the state's share for forest protection should be provided to stabilize the funding for the forest protection program, and that sufficient state funds should be committed to the forest protection program so that the recommendations contained in the 1997 tridata report can be implemented on an equitable basis.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wild fires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wild fires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wild fires by maintaining healthy forests and eliminating sources of fuel. [2001 c 279 § 1; 1995 c 151 § 1.]

**76.04.175 Fire suppression equipment—Comparison of costs.** (1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires. [1995 c 113 § 2.]

**Finding—Intent—1995 c 113:** "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient." [1995 c 113 § 1.]

**76.04.177 Fire suppression equipment—Requirement to utilize private equipment.** Before constructing or purchasing any equipment listed in RCW 76.04.175(1) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with

the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder. [1995 c 113 § 3.]

**Finding—Intent—1995 c 113:** See note following RCW 76.04.175.

#### PERMITS

**76.04.205 Burning permits.** (1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forest lands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality and [the department] may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to fire fighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done in compliance with air quality standards established by chapter 70.94 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter 70.94 RCW. [1986 c 100 § 17.]

**76.04.215 Burning mill wood waste—Arresters.** (1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks. [1986 c 100 § 18.]

**76.04.235 Dumping mill waste, forest debris—Penalty.** (1) No person may dump mill waste from forest production

products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forest lands located in this state without first obtaining a written permit issued by the department on such terms and conditions determined by the department pursuant to rules enacted to protect forest lands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped. [1986 c 100 § 19.]

**76.04.246 Use of blasting fuse.** It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1986 c 100 § 20.]

#### CLOSURES/SUSPENSIONS

**76.04.305 Closed to entry—Designation.** (1) When, in the opinion of the department, any forest land is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard-CLOSED TO ENTRY-except as provided by RCW 76.04.305" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section. [1986 c 100 § 21.]

**76.04.315 Suspension of burning permits/privileges.** In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW 76.04.205 and may prohibit absolutely the use of fire in such locations. [1986 c 100 § 22.]

**76.04.325 Closure of forest operations or forest lands.** (1) When in the opinion of the department weather

conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forest lands may be endangered, the department may issue an order restricting access to and activities on forest lands. The order shall describe the regions and extent of restrictions necessary to protect forest lands. During the period in which the order is in effect, all persons may be excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense. [1986 c 100 § 23.]

#### FIRE PROTECTION REGULATION

**76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.** It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forest land or in any place where, in the opinion of the department, fire could spread to forest land, without first complying with the requirements as may be established by the department by rule pursuant to this chapter. [1986 c 100 § 24.]

**76.04.415 Penalty for violations—Work stoppage notice.** (1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.215, 76.04.305, 76.04.405, or 76.04.650 or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. [1986 c 100 § 25.]

**76.04.425 Unauthorized entry into sealed fire tool box.** It is unlawful to enter into a sealed fire tool box without authorization. [1986 c 100 § 26.]

**76.04.435 Deposit of fire or live coals.** No person operating a railroad may permit to be deposited by any employee, and no one may deposit fire or live coals, upon the right-of-way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished. [1986 c 100 § 27.]

**76.04.445 Reports of fire.** (1) Any person engaged in any activity on forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forest lands.

(2) Railroad companies and other public carriers operating on or through forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right-of-way or route. [1986 c 100 § 28.]

**76.04.455 Lighted material, etc.—Receptacles in conveyances.** (1) It is unlawful during the closed season for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material or to discharge any tracer or incendiary ammunition in any forest, brush, range, or grain areas.

(2) It is unlawful during the closed season for any individual to smoke any flammable material when in forest or brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(3) Every conveyance operated through or above forest, range, brush, or grain areas shall be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation. [1986 c 100 § 29.]

**76.04.465 Certain snags to be felled currently with logging.** Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

**76.04.475 Reimbursement for costs of suppression action.** Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right-of-way clearing, or a land-owner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reason-

ably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right-of-way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

**76.04.486 Escaped slash burns—Obligations.** (1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forest lands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forest lands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

(2008 Ed.)

**76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.** (1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1993 c 196 § 2; 1986 c 100 § 33.]

#### ASSESSMENTS, OBLIGATIONS, FUNDS

**76.04.600 Owners to protect forests.** Every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

**76.04.610 Forest fire protection assessment.** (1)(a) If any owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (i) A flat fee assessment of seventeen dollars and fifty cents; and (ii) twenty-seven cents on each acre exceeding fifty acres.

(b) Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) seventeen dollars, (ii) twenty-seven cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. Property owners with the following number of parcels may apply to the department in the year indicated:

Year	Number of Parcels
2002	10 or more parcels
2003	8 or more parcels
2004 and thereafter	6 or more parcels

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forest lands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the

records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, is liable for the costs of suppression incurred by the department or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [2007 c 110 § 1; 2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

**Effective date—1993 c 36:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [April 15, 1993]." [1993 c 36 § 3.]

**76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.** Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer. [1986 c 100 § 36.]

**76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.** There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in

the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [1993 c 36 § 2; 1991 sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

**Effective date—1993 c 36:** See note following RCW 76.04.610.

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

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## HAZARD ABATEMENT

**76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.** Everyone clearing land or clearing right-of-way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right-of-way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right-of-way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right-of-way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1986 c 100 § 38.]

**76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs—Inspection of property.**

(1) The owner of land on which there is an additional fire hazard, when the hazard is the result of a landowner operation or the land is within an area covered by a forest health hazard warning issued under RCW 76.06.180, shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) An extreme fire hazard shall exist within areas covered by a forest health hazard order issued by the commissioner of public lands under RCW 76.06.180 in which there is an additional fire hazard caused by disturbance agents and the landowner has failed to take such action as required by the forest health hazard order. The duties and liability of such landowner under this chapter are as described in subsections (5), (6), and (7) of this section.

(3) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(4) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(5) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(6) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(7) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(8) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence.

(9) A landowner or manager may make a written request to the department to inspect their property and provide a written notice that they have complied with a forest health hazard warning or forest health hazard order, or otherwise adequately abated, isolated, or reduced an additional or extreme fire hazard. An additional or extreme fire hazard shall be considered to continue to exist unless and until the department, in its sole discretion, issues such notice. [2007 c 480 § 13; 1986 c 100 § 39.]

#### FIRE REGULATION

**76.04.700 Failure to extinguish campfire.** It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire. [1986 c 100 § 40.]

**76.04.710 Wilful setting of fire.** It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forest lands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree. [1986 c 100 § 41.]

**76.04.720 Removal of notices.** It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter. [1986 c 100 § 42.]

**76.04.730 Negligent fire—Spread.** It is unlawful for any person to negligently allow fire originating on the person's own property to spread to the property of another. [1986 c 100 § 43.]

**76.04.740 Reckless burning.** (1) It is unlawful to knowingly cause a fire or explosion and thereby place forest lands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.

(3) Terms used in this section shall have the meanings given to them in Title 9A RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021. [1986 c 100 § 44.]

**76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.** Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forest lands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forest land within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the

fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right-of-way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority has been granted in writing by the department. [1988 c 273 § 4; 1986 c 100 § 45.]

**76.04.900 Captions—1986 c 100.** As used in this act subchapter and section captions constitute no part of the law. [1986 c 100 § 60.]

**Chapter 76.06 RCW**

**FOREST INSECT AND DISEASE CONTROL**

Sections

76.06.010	Forest insects and tree diseases are public nuisance.
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76.06.160	Forest health issues—Tiered system.
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76.06.190	Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW.
76.06.900	Severability.

**76.06.010 Forest insects and tree diseases are public nuisance.** The legislature finds and declares that:

(1) Forest insects and forest tree diseases which threaten the permanent timber production of the forested areas of the state of Washington are a public nuisance.

(2) Exotic forest insects or diseases, even in small numbers, can constitute serious threats to native forests. Native tree species may lack natural immunity. There are often no natural control agents such as diseases, predators, or parasites to limit populations of exotic forest insects or diseases. Exotic forest insects or diseases can also outcompete, displace, or destroy habitat of native species. It is in the public interest to identify, control, and eradicate outbreaks of exotic forest insects or diseases that threaten the diversity, abundance, and survivability of native forest trees and the environment. [2003 c 314 § 1; 1951 c 233 § 1.]

**Findings—2003 c 314:** See note following RCW 17.24.220.

**76.06.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Commissioner" means the commissioner of public lands.

(3) "Department" means the department of natural resources.

(4) "Disturbance agent" means those forces that damage or kill significant numbers of forest trees, such as insects, diseases, wind storms, ice storms, and fires.

(5) "Exotic" means not native to forest lands in Washington state.

(6) "Forest health" means, for the purposes of this chapter, the condition of a forest being sound in ecological function, sustainable, resilient, and resistant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

(7) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

(8) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

(9) "Forest land" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the spread of forest insect or forest disease outbreaks that could be detrimental to forest health.

(10) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(11) "Native" means having populated Washington's forested lands prior to European settlement.

(12) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

(13) "Owner" means and includes persons or their agents.

(14) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature.

(15) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(16) "Uncharacteristic" means ecologically atypical for a forest or vegetation type or plant association and refers to fire, insect, or disease events that are not within a natural range of variability. [2007 c 480 § 2; 2003 c 314 § 2; 2000 c 11 § 2; 1988 c 128 § 15; 1951 c 233 § 2.]

**Findings—2003 c 314:** See note following RCW 17.24.220.

**76.06.030 Administration—Comprehensive forest health program—Limited liability.** (1) This chapter shall be administered by the department.

(2) The department has the lead role in developing a comprehensive forest health program to achieve the goals of chapter 480, Laws of 2007. Within available funding, the department shall:

(a) Develop, gather, and disseminate information on forest health conditions, monitor forest health conditions and changes over time, and coordinate and enter agreements with interested and affected parties;

(b) Coordinate with universities, university extension services, federal and state agencies, private, public, and tribal forest landowners, consulting foresters, and forest managers to monitor forest fuel buildup, forest insect and disease outbreaks, and wind and ice storm events; and

(c) Coordinate with universities, university extension services, and state and federal agencies to provide education and technical assistance to private, public, and tribal forest landowners on silvicultural and forest management science, techniques, and technology to maintain forests in conditions that are resilient and resistant to disturbance agents.

(3) The department may implement a technical committee to advise on subjects and procedures for monitoring forest health conditions and program activities.

(4) The department may coordinate, support, and assist in establishing cooperative forest health projects to address outbreaks of insects or diseases. Priority for assistance authorized under this section shall be given to areas under forest health hazard warnings and areas where forest health decline has resulted in increased risk to public safety from fire.

(5) The state and its officers and employees are not liable for damages to a person or their property to the extent that liability is asserted to arise from providing or failing to provide assistance under chapter 480, Laws of 2007. [2007 c 480 § 3; 1988 c 128 § 16; 1951 c 233 § 3.]

**76.06.040 Maintenance of forest lands in healthy condition.** Landowners and managers are encouraged to maintain their forest lands in a healthy condition in order to meet their individual ownership objectives, protect public resources as defined in chapter 76.09 RCW, and avoid contributing to forest insect or disease outbreaks or increasing the risk of uncharacteristic fire. [2007 c 480 § 4; 1951 c 233 § 4.]

**76.06.130 Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency.** The department is authorized to contribute resources and expertise to assist the department of agriculture in control or eradication efforts authorized under chapter 17.24 RCW in order to protect forest lands of the state.

If either the department of agriculture has not taken action under chapter 17.24 RCW or the commissioner finds that additional efforts are required to control or prevent an outbreak of an exotic forest insect or disease which has not become so habituated that it can no longer be eradicated and

that poses an imminent danger of damage to the forested environment by threatening the diversity, abundance, and survivability of native tree species, or both, the commissioner may declare a forest health emergency.

Upon declaration of a forest health emergency, the department must delineate the area at risk and determine the most appropriate integrated pest management methods to control the outbreak, in consultation with other interested agencies, affected tribes, and affected forest landowners. The department must notify affected forest landowners of its intent to conduct control operations.

Upon declaration of a forest health emergency by the commissioner, the department is authorized to enter into agreements with forest landowners, companies, individuals, tribal entities, and federal, state, and local agencies to accomplish control of exotic forest insects or diseases on any affected forest lands using such funds as have been, or may be, made available.

The department must proceed with the control of the exotic forest insects or diseases on affected nonfederal and nontribal forest lands with or without the cooperation of the owner. The department may reimburse cooperating forest landowners and agencies for actual cost of equipment, labor, and materials utilized in cooperative exotic forest insect or disease control projects, as agreed to by the department.

A forest health emergency no longer exists when the department finds that the exotic forest insect or disease has been controlled or eradicated, that the imminent threat no longer exists, or that there is no longer good likelihood of effective control.

Nothing under this chapter diminishes the authority and responsibility of the department of agriculture under chapter 17.24 RCW. [2003 c 314 § 3.]

**Findings—2003 c 314:** See note following RCW 17.24.220.

**76.06.140 Forest health problems—Findings.** The legislature finds as follows:

(1) Washington faces serious forest health problems, primarily in eastern Washington, where forests are overcrowded or trees lack sufficient resilience to insects, diseases, wind, ice storms, and fire. The causes of and contributions to these conditions include fire suppression, past timber harvesting and silvicultural practices, altered species composition and stand structure, and the amplified risks that occur when the urban interface penetrates forest land.

(2) There is a private and public interest in addressing uncharacteristic outbreaks of native, naturalized, and nonnative insects and diseases, and reducing the risk of significant loss due to ice storms, wind storms, and uncharacteristic fire. The public interest is in protecting forest productivity on forests managed for commodity production; restoring and maintaining forest ecosystem vitality and natural forest processes and functions; reducing the cost of fire suppression and the resulting public expenditures; protecting, restoring, and enhancing fish and wildlife habitat, including the habitat of threatened or endangered species; and protecting drinking water supplies and water quality.

(3) Well managed forests are the first line of defense in reducing the likelihood of uncharacteristic fire, insect, and disease events, and supporting conservation and restoration

of desired plants and animals. Active management of forests, consistent with landowner objectives and the protection of public resources, is the most economical and effective way to promote forest health and protect communities. Fire, native insects, and diseases perform important ecological functions when their occurrence does not present a material threat to long-term forest productivity and increase the likelihood of uncharacteristic fire.

(4) Forest health problems may exist on forest land regardless of ownership, and the state should pursue collaboration with the federal government to address common health deficiencies. [2007 c 480 § 1; 2004 c 218 § 1.]

**Effective date—2004 c 218:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2004]." [2004 c 218 § 11.]

**76.06.150 Forest health—Commissioner of public lands designated as state's lead—Report to legislature.**

(1) The commissioner of public lands is designated as the state of Washington's lead for all forest health issues.

(2) The commissioner of public lands shall strive to promote communications between the state and the federal government regarding forest land management decisions that potentially affect the health of forests in Washington and will allow the state to have an influence on the management of federally owned land in Washington. Such government-to-government cooperation is vital if the condition of the state's public and private forest lands are to be protected. These activities may include, when deemed by the commissioner to be in the best interest of the state:

(a) Representing the state's interest before all appropriate local, state, and federal agencies;

(b) Assuming the lead state role for developing formal comments on federal forest management plans that may have an impact on the health of forests in Washington; and

(c) Pursuing in an expedited manner any available and appropriate cooperative agreements, including cooperating agency status designation, with the United States forest service and the United States bureau of land management that allow for meaningful participation in any federal land management plans that could affect the department's strategic plan for healthy forests and effective fire prevention and suppression, including the pursuit of any options available for giving effect to the cooperative philosophy contained within the national environmental policy act of 1969 (42 U.S.C. Sec. 4331).

(3) The commissioner of public lands shall report to the chairs of the appropriate standing committees of the legislature every year on progress under this section, including the identification, if deemed appropriate by the commissioner, of any needed statutory changes, policy issues, or funding needs. [2004 c 218 § 2.]

**Effective date—2004 c 218:** See note following RCW 76.06.140.

**76.06.160 Forest health issues—Tiered system.** Forest health issues shall be addressed by a tiered system.

(1) The first tier is intended to maintain forest health and protect forests from disturbance agents through the voluntary efforts of landowners. Tier 1 is the desired status. Consistent with landowner objectives and the protection of public

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resources, forests should be managed in ways that create, restore, or maintain healthy forest ecosystems so that disturbance agents occur or exist at nonepidemic levels. To the extent of available funding, information and technical assistance will be made available to forest landowners so they can plan for and implement necessary forest health maintenance and restoration activities.

(2) The second tier is intended to manage the development of threats to forest health, or address existing threats to forest health, due to disturbance agents. Actions by landowners to address such threats to forest health are voluntary except as required under chapter 76.04 RCW to reduce the danger of the spread of fire. Actions suggested to reduce threats to forest health are specified in forest health hazard warnings issued by the commissioner of public lands under RCW 76.06.180. Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department.

(3) The third tier is intended to address significant threats to forest health due to disturbance agents that have spread to multiple forest ownerships or increased forest fuel that is likely to further the spread of fire. Actions required to reduce significant threats to forest health are specified in forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180(5). Within available funding, site-specific information, technical assistance, and project coordination services shall be offered as determined appropriate by the department. Landowners who are provided notice of a forest health hazard order under RCW 76.06.180(5) and fail to take the action required under such order may be subject to increased liability for the spread of fire as described in RCW 76.04.495 and 76.04.660. However, a private landowner need not take actions required under the third tier, and may not be held liable for the failure to take such actions, where the disturbance agents on the private landowner's land spread from state or federal lands or where the presence of disturbance agents on state or federal lands would limit the effectiveness of actions required on the private landowner's land under the third tier. [2007 c 480 § 5.]

**76.06.170 Forest health technical advisory committee.**

(1) The commissioner of public lands may appoint a forest health technical advisory committee when the commissioner determines that forest lands in any area of the state appear to be threatened by a forest health condition of such a nature, extent, or timing that action to reduce the threat may be necessary.

(a) The committee shall consist of one scientist chosen for expertise in forest ecology, one scientist chosen for expertise in aquatic ecology, one scientist chosen for expertise in wildlife biology, two scientists chosen for expertise relative to the attendant risk, one specialist in wildfire protection, one specialist in fuels management, one forester with extensive silvicultural experience in the affected forest type, and a chairperson who shall represent the commissioner. The departments of fish and wildlife, ecology, and natural resources shall provide technical assistance to the committee in the areas of fish and wildlife, water quality, and forest practices, but shall not be members of the committee. The

director of forest health protection of region 6 of the United States department of agriculture forest service or their named designee shall be invited to be an ex officio member of the committee. In the event the area affected contains substantial acreage of tribal or federally owned lands, representatives of the affected agencies and tribes shall be invited to participate in the proceedings of the committee.

(b) The commissioner may disband the committee when he or she deems appropriate.

(2) The committee shall evaluate the threat to forest health and make a timely report to the commissioner on its nature, extent, and location.

(a) In its deliberations, the committee shall consider the need for action to reduce the threat and alternative methods of achieving the desired results, including the environmental risks associated with the alternatives and the risks associated with taking no action.

(b) The committee shall also recommend potential approaches to achieve the desired results for forest land ownerships of fewer than ten acres and for forests owned for scientific, study, recreational, or other uses not compatible with active management.

(c) The committee shall recommend to the commissioner whether a forest health hazard warning or forest health hazard order is warranted based on the factors in RCW 76.06.180(2) or when otherwise determined by the committee to be warranted.

(d) When the commissioner issues a forest health hazard warning or forest health hazard order, the committee shall monitor the progress and results of activities to address the hazard, and periodically report its findings to the commissioner.

(3) The exercise by forest health technical advisory committee members of their authority under this section shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the committee may be paid from the general fund appropriation made available to the department of natural resources for fire suppression. [2007 c 480 § 6.]

**76.06.180 Forest health hazard warning—Forest health hazard order—Notice—Appeal.** (1) Prior to issuing a forest health hazard warning or forest health hazard order, the commissioner shall consider the findings and recommendations of the forest health technical advisory committee and shall consult with county government officials, forest landowners and forest land managers, consulting foresters, and other interested parties to gather information on the threat, opportunities or constraints on treatment options, and other information they may provide. The commissioner, or a designee, shall conduct a public hearing in a county within the geographical area being considered.

(2) The commissioner of public lands may issue a forest health hazard warning when he or she deems such action is necessary to manage the development of a threat to forest health or address an existing threat to forest health. A decision to issue a forest health hazard warning may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has or is likely to (i) spread to multiple forest ownerships and cause extensive damage to forests; or (ii) significantly increase forest fuel that is likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause, there are (i) insect populations building up to large scale levels; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire; or

(c) When otherwise determined by the commissioner to be appropriate.

(3) The commissioner of public lands may issue a forest health hazard order when he or she deems such action is necessary to address a significant threat to forest health. A decision to issue a forest health hazard order may be based on existing forest stand conditions and:

(a) The presence of an uncharacteristic insect or disease outbreak that has (i) spread to multiple forest ownerships and has caused and is likely to continue to cause extensive damage to forests; or (ii) significantly increased forest fuels that are likely to further the spread of uncharacteristic fire;

(b) When, due to extensive physical damage from wind or ice storm or other cause (i) insect populations are causing extensive damage to forests; or (ii) significantly increased forest fuels are likely to further the spread of uncharacteristic fire;

(c) Insufficient landowner action under a forest health hazard warning; or

(d) When otherwise determined by the commissioner to be appropriate.

(4) A forest health hazard warning or forest health hazard order shall be issued by use of a commissioner's order. General notice of the commissioner's order shall be published in a newspaper of general circulation in each county within the area covered by the order and on the department's web site. The order shall specify the boundaries of the area affected, including federal and tribal lands, the forest stand conditions that would make a parcel subject to the provisions of the order, and the actions landowners or land managers should take to reduce the hazard.

(5) Written notice of a forest health hazard warning or forest health hazard order shall be provided to forest landowners of specifically affected property.

(a) The notice shall set forth:

(i) The reasons for the action;

(ii) The boundaries of the area affected, including federal and tribal lands;

(iii) Suggested actions that should be taken by the forest landowner under a forest health hazard warning or the actions that must be taken by a forest landowner under a forest health hazard order;

(iv) The time within which such actions should or must be taken;

(v) How to obtain information or technical assistance on forest health conditions and treatment options;

(vi) The right to request mitigation under subsection (6) of this section and appeal under subsection (7) of this section;

(vii) These requirements are advisory only for federal and tribal lands.

(b) The notice shall be served by personal service or by mail to the latest recorded real property owner, as shown by the records of the county recording officer as defined in RCW 65.08.060. Service by mail is effective on the date of mailing. Proof of service shall be by affidavit or declaration under penalty of perjury.

(6) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may apply to the department for the remission or mitigation of such order. The application shall be made to the department within fifteen days after notice of the order has been served. Upon receipt of the application, the department may remit or mitigate the order upon whatever terms the department in its discretion deems proper, provided the department deems the remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in such reasonable manner and under such rule as it deems proper.

(7) Forest landowners who have been issued a forest health hazard order under subsection (5) of this section may appeal the order to the forest practices appeals board.

(a) The appeal shall be filed within thirty days after notice of the order has been served, unless application for mitigation has been made to the department. When such an application for mitigation is made, such appeal shall be filed within thirty days after notice of the disposition of the application for mitigation has been served.

(b) The appeal must set forth:

- (i) The name and mailing address of the appellant;
- (ii) The name and mailing address of the appellant's attorney, if any;
- (iii) A duplicate copy of the forest health hazard order;
- (iv) A separate and concise statement of each error alleged to have been committed;
- (v) A concise statement of facts upon which the appellant relies to sustain the statement of error; and
- (vi) A statement of the relief requested.

(8) A forest health hazard order issued under subsection (5) of this section is effective thirty days after date of service unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, the order is effective thirty days after notice setting forth the disposition of the application is served unless an appeal is filed from such disposition. Whenever an appeal of the order is filed, the order shall become effective only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the order in whole or in part.

(9) Upon written request, the department may certify as adequate a forest health management plan developed by a forest landowner, before or in response to a forest health hazard warning or forest health hazard order, if the plan is likely to achieve the desired result and the terms of the plan are being diligently followed by the forest landowner. The certification of adequacy shall be determined by the department in its sole discretion, and be provided to the requestor in writing. [2007 c 480 § 7.]

**76.06.190 Chapter 480, Laws of 2007 subject to the provisions of chapter 76.09 RCW.** Nothing in chapter 480, Laws of 2007 shall exempt actions specified under the

authority of chapter 480, Laws of 2007 from the application of the provisions of chapter 76.09 RCW and rules adopted thereunder which govern forest practices. [2007 c 480 § 9.]

**76.06.900 Severability.** If any part of this chapter or requirements imposed upon landowners pursuant to this chapter are found to conflict with requirements of other statutes or rules, the conflicting part of this chapter or requirements imposed pursuant to this chapter shall be inoperative solely to the extent of the conflict. The finding or determination shall not affect the operation of the remainder of this chapter or such requirements. [2007 c 480 § 10.]

## Chapter 76.09 RCW FOREST PRACTICES

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### 76.09.010 Legislative finding and declaration. (1)

The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive statewide system of laws and forest practices rules which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of

commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such rules;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations;

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state; and

(j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practices permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources. [1999 sp.s. c 4 § 901; 1993 c 443 § 1; 1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**Effective date—1993 c 443:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 443 § 6.]

**76.09.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's

salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(4) "Commissioner" means the commissioner of public lands.

(5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common ownership divided by a road or other right-of-way shall be considered contiguous.

(6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(7) "Department" means the department of natural resources.

(8) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(9) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(10) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(11) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

(a) Road and trail construction;

(b) Harvesting, final and intermediate;

(c) Precommercial thinning;

(d) Reforestation;

(e) Fertilization;

(f) Prevention and suppression of diseases and insects;

(g) Salvage of trees; and

(h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(12) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(13) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(14) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(15) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(16) "Application" means the application required pursuant to RCW 76.09.050.

(17) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(18) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(19) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(20) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(21) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(22) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(23) "Board" means the forest practices board created in RCW 76.09.030.

(24) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex floodplain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2003 c 311 § 3; 2002 c 17 § 1. Prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

**Findings—2003 c 311:** "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations

presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forest landowners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate financial hardship on small forest landowners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forest landowners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forest landowners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forest landowners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forest land holdings." [2003 c 311 § 1.]

**Effective date—2003 c 311:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 311 § 13.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.** (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of community, trade, and economic development or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official;

(g) One member representing a timber products union, appointed by the governor from a list of three names submitted by a timber labor coalition affiliated with a statewide labor organization that represents a majority of the timber product unions in the state; and

(h) Six members of the general public appointed by the governor, one of whom shall be a small forest landowner who actively manages his or her land, and one of whom shall be an independent logging contractor.

(2) The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW.

Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chair of the board.

(4) The board shall meet at such times and places as shall be designated by the chair or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [2008 c 46 § 1; 2003 c 39 § 32; 1999 sp.s. c 4 § 1001; 1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

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

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

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

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

**76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Riparian open space program.** (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(c) Set forth necessary administrative provisions;

(d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(e) Allow for the development of watershed analyses.

Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the director's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices rules. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

Prior to initiating the rule making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices rules relating to problems existing within such county. The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3) The board shall establish by rule a riparian open space program that includes acquisition of a fee interest in, or at the landowner's option, a conservation easement on lands within unconfined avulsing channel migration zones. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for

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ecological protection or fisheries enhancement. Because there are few, if any, comparable sales of forest land within unconfined avulsing channel migration zones, separate from the other lands or assets, these lands are likely to be extraordinarily difficult to appraise and the cost of a conventional appraisal often would be unreasonable in relation to the value of the land involved. Therefore, for the purposes of voluntary sales under this section, the legislature declares that these lands are presumed to have a value equal to: (a) The acreage in the sale multiplied by the average value of commercial forest land in the region under the land value tables used for property tax purposes under \*RCW 84.33.120; plus (b) the cruised volume of any timber located within the channel migration multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091. For purposes of this section, there shall be an eastside region and a westside region as defined in the forests and fish report as defined in RCW 76.09.020.

(4) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department is directed to purchase a fee interest or, at the owner's option, a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined avulsing channel migration zone. Lands acquired under this section shall become riparian open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(6) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space. [2000 c 11 § 3; 1999 sp.s. c 4 § 701; 1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

\*Reviser's note: RCW 84.33.120 was amended by 2001 c 305 § 1 and by 2001 c 185 § 3 and also repealed by 2001 c 249 § 16. RCW 84.33.120 was subsequently repealed by 2003 c 170 § 7.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 443: See note following RCW 76.09.010.

**76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.** (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin

five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.021;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public

lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after

such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or

modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2005 c 146 § 1003; 2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—2003 c 314:** See note following RCW 17.24.220.

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

#### **76.09.055 Findings—Emergency rule making authorized.**

(1) The legislature finds that the levels of fish stocks throughout much of the state require immediate action to be taken to help these fish runs where possible. The legislature also recognizes that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a)(i) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (ii) that the rules adopted under RCW 76.09.420(5) must remain in effect until permanent rules are adopted; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting emergency rules consistent with this section, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. Except as provided in RCW 76.09.420, the forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section. [2003 c 311 § 5; 2000 c 11 § 4; 1999 sp.s. c 4 § 201.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**Effective date—1999 sp.s. c 4 §§ 201, 202, and 203:** "Sections 201, 202, and 203 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 1999]." [1999 sp.s. c 4 § 1405.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.060 Form and contents of notification and application—Reforestation requirements—Conversion of forest land to other use—New applications—Approval—Emergencies.** (1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. Activities conducted by the department or a contractor under the direction of the department under the provisions of RCW 76.04.660, shall be exempt from the landowner signature requirement on any forest practice application required to be filed. The application or notification shall be delivered in person to the department, sent by first-class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.56 RCW. The information required may include, but is not limited to:

- (a) Name and address of the forest landowner, timber owner, and operator;
- (b) Description of the proposed forest practice or practices to be conducted;
- (c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;
- (d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;
- (e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;
- (f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;
- (g) Soil, geological, and hydrological data with respect to forest practices;
- (h) The expected dates of commencement and completion of all forest practices specified in the application;
- (i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;
- (j) An affirmation that the statements contained in the notification or application are true; and
- (k) All necessary application or notification fees.

(2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a forest practice is subject to the reforestation requirement of RCW 76.09.070.

(a) If the application states that any land will be or is intended to be converted:

(i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070;

(ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;

(iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the landowner harvests without an approved application or notification or the landowner does not state that any land covered by the application or notification will be or is intended to be converted, and the department or the county, city, town, or regional governmental entity becomes aware of conversion activities to a use other than commercial timber operations, as that term is defined in RCW 76.09.020, then the department shall send to the department of ecology and the appropriate county, city, town, and regional governmental entities the following documents:

- (i) A notice of a conversion to nonforestry use;
- (ii) A copy of the applicable forest practices application or notification, if any; and
- (iii) Copies of any applicable outstanding final orders or decisions issued by the department related to the forest practices application or notification.

(c) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes.

(d) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices application or notification without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had stated an intent to convert.

(e) Land that is the subject of a notice of conversion to a nonforestry use produced by the department and sent to the department of ecology and a local government under this subsection is subject to the development prohibition and conditions provided in RCW 76.09.460.

(f) Landowners who have not stated an intent to convert the land covered by an application or notification and who decide to convert the land to a nonforestry use within six years of receiving an approved application or notification must do so in a manner consistent with RCW 76.09.470.

(g) The application or notification must include a statement requiring an acknowledgment by the forest landowner of his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

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(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2007 c 480 § 11; 2007 c 106 § 1; 2005 c 274 § 357; 2003 c 314 § 5. Prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

**Reviser's note:** This section was amended by 2007 c 106 § 1 and by 2007 c 480 § 11, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Findings—2003 c 314:** See note following RCW 17.24.220.

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**Effective date—1992 c 52 § 22:** "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**76.09.063 Forest practices permit—Habitat incentives agreement.** When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in \*RCW 77.55.300, the department shall comply with the terms of that agreement when evaluating the permit application. [2003 c 39 § 33; 1997 c 425 § 5.]

**\*Reviser's note:** RCW 77.55.300 was recodified as RCW 77.55.121 pursuant to 2005 c 146 § 1001.

**Finding—Intent—1997 c 425:** See note following RCW 77.55.121.

**76.09.065 Forest practices application or notification—Fee.** (1) Effective July 1, 1997, an applicant shall pay an application fee and a recording fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) For applications and notifications submitted to the department, the application fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

(a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(b) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

All money collected from fees under this subsection shall be deposited in the state general fund.

(3) For applications submitted to the local governmental entity, the fee shall be five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided by the local governmental entity.

(4) Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department. [2000 c 11 § 5; 1997 c 173 § 4; 1993 c 443 § 5.]

**Effective date—1993 c 443:** See note following RCW 76.09.010.

**76.09.067 Application for forest practices—Owner of perpetual timber rights.** Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1) and 76.09.060, where timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign the forest practices application or notification. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application or notification has been received by the forest landowner. [2007 c 106 § 5; 1998 c 100 § 1.]

**76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer.** (1) After the completion of a logging operation, satisfactory reforestation, as defined by the rules and regulations promulgated by the board, shall be completed within three years. However:

(a) A longer period may be authorized if seed or seedlings are not available;

(b) A period of up to five years may be allowed where a natural regeneration plan is approved by the department; and

(c) The department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration.

(2)(a) Upon the completion of a reforestation operation a report on such operation shall be filed with the department of natural resources.

(b) Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

(3) Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

(4)(a) Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation or to a notice of conversion to a nonforestry use issued under RCW 76.09.060, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice indicating the buyer's knowledge of all obligations.

(b) The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights.

(c) If the seller fails to notify the buyer about the reforestation obligation or the notice of conversion to a nonforestry use, the seller shall pay the buyer's costs related to reforestation or mitigation under RCW 76.09.470, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation or mitigation requirements against the seller.

(d) Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation or mitigation, that the seller did not notify the buyer of the reforestation obligation or potential mitigation requirements prior to sale.

(5) The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands. However, such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [2007 c 106 § 4; 1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

**Effective date—1982 c 173:** "This act shall take effect July 1, 1982." [1982 c 173 § 2.]

**76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals.** (1) The department shall have the

authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1989 c 175 § 163; 1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions.** If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

**76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition.** If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were

conducted pursuant to an approval or directive of the department of natural resources. [1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

**76.09.110 Final orders or final decisions binding upon all parties.** Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

**76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien.** If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

**76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs.** When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

**76.09.140 Enforcement.** (1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170, for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer.

For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent. While the notice of intent to disapprove is in effect, the violator may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to: Seeking penalties, interest, costs, and attorneys' fees; enforcing final orders or decisions; and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices rules or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

(4)(a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(iii) Failed to pay any civil or criminal penalty.

(b) The department may deny any application for failure to submit financial assurances as required. [2000 c 11 § 6; 1999 sp.s. c 4 § 801; 1993 c 482 § 1; 1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.150 Inspection—Right of entry.** (1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited. [2000 c 11 § 7; 1999 sp.s. c 4 § 802; 1974 ex.s. c 137 § 15.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

#### **76.09.160 Right of entry by department of ecology.**

Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

**76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.** (1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

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(2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:

(a) Previous violation history;

(b) Severity of the impact on public resources;

(c) Whether the violation of this chapter or its rules was intentional;

(d) Cooperation with the department;

(e) Repairability of the adverse effect from the violation; and

(f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and has not received substantial economic benefits from the violation.

(3) The penalty in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal the penalty to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, inter-

est, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(8) Any person incurring a penalty imposed under this section is also responsible for the payment of all costs and attorneys' fees incurred in connection with the penalty and interest accruing on the unpaid penalty amount. [1999 sp.s. c 4 § 803; 1993 c 482 § 2; 1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**Effective date—1993 c 482 § 2(1) and (3) through (7):** "The following portions of this act shall take effect on January 1, 1994: Subsections (1) and (3) through (7) of section 2 of this act." [1993 c 482 § 3.]

**76.09.180 Disposition of moneys received as penalties, reimbursement for damages.** All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of fish and wildlife, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1994 c 264 § 50; 1988 c 36 § 48; 1974 ex.s. c 137 § 18.]

**76.09.190 Additional penalty, gross misdemeanor.** In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 ex.s. c 137 § 19.]

**76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal.** (1) There is hereby created within the environmental hearings

office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.

(2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1979 ex.s. c 47 § 4; 1974 ex.s. c 137 § 21.]

**Intent—1979 ex.s. c 47:** See note following RCW 43.21B.005.

**76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review.** (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in

accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may, except as otherwise provided in chapter 43.21L RCW, seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings.

(9) The forest practices appeals board shall have exclusive jurisdiction to hear appeals of forest health hazard orders issued by the commissioner under RCW 76.06.180(5). Such proceedings are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2007 c 480 § 8; 2003 c 393 § 20; 1999 sp.s. c 4 § 902; 1999 c 90 § 1. Prior: 1997 c 423 § 2; 1997 c 290 § 5; 1989 c 175

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§ 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**Finding—1997 c 423:** "The legislature finds that the functions of the forest practices appeals board have overriding sensitivity and are of importance to the public welfare and operation of state government." [1997 c 423 § 1.]

**Effective date—1997 c 423:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 423 § 3.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

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

**Intent—1979 ex.s. c 47:** See note following RCW 43.21B.005.

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

**76.09.230 Forest practices appeals board—Mediation—Appeal procedure—Judicial review.** (1) In all appeals over which the appeals board has jurisdiction, upon request of one or more parties and with the consent of all parties, the appeals board shall promptly schedule a conference for the purpose of attempting to mediate the case. The mediation conference shall be held prior to the hearing on not less than seven days' advance written notice to all parties. All other proceedings pertaining to the appeal shall be stayed until completion of mediation, which shall continue so long as all parties consent: PROVIDED, That this shall not prevent the appeals board from deciding motions filed by the parties while mediation is ongoing: PROVIDED, FURTHER, That discovery may be conducted while mediation is ongoing if agreed to by all parties. Mediation shall be conducted by an administrative appeals judge or other duly authorized agent of the appeals board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the appeals board. A person who mediates in a particular appeal shall not participate in a hearing on that appeal or in writing the decision and order in the appeal. Documentary and other physical evidence presented and evidence of conduct or statements made during the course of mediation shall be treated by the mediator and the parties in a confidential manner and shall not be admissible in subsequent proceedings in the appeal except in accordance with the provisions of the Washington rules of evidence pertaining to compromise negotiations.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(3) In all appeals the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(4) All proceedings before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The

appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1994 c 253 § 9; 1992 c 52 § 23; 1989 c 175 § 165; 1974 ex.s. c 137 § 23.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**76.09.240 Forest practices—County, city, or town to regulate—When—Adoption of development regulations—Enforcement—Technical assistance—Exceptions and limitations—Verification that land not subject to a notice of conversion to nonforestry uses—Reporting of information to the department of revenue.** (1) On or before December 31, 2008:

(a) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, where more than a total of twenty-five Class IV forest practices applications, as defined in RCW 76.09.050(1) Class IV (a) through (d), have been filed with the department between January 1, 2003, and December 31, 2005, shall adopt and enforce ordinances or regulations as provided in subsection (2) of this section for the following:

(i) Forest practices classified as Class I, II, III, and IV that are within urban growth areas designated under RCW 36.70A.110, except for forest practices on ownerships of contiguous forest land equal to or greater than twenty acres where the forest landowner provides, to the department and the county, a written statement of intent, signed by the forest landowner, not to convert to a use other than growing commercial timber for ten years. This statement must be accompanied by either:

(A) A written forest management plan acceptable to the department; or

(B) Documentation that the land is enrolled as forest land of long-term commercial significance under the provisions of chapter 84.33 RCW; and

(ii) Forest practices classified as Class IV, outside urban growth areas designated under RCW 36.70A.110, involving either timber harvest or road construction, or both on:

(A) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(B) Lands that have or are being converted to another use; or

(C) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development;

(b) Counties planning under RCW 36.70A.040, and the cities and towns within those counties, not included in (a) of this subsection, may adopt and enforce ordinances or regulations as provided in (a) of this subsection; and

(c) Counties not planning under RCW 36.70A.040, and the cities and towns within those counties, may adopt and enforce ordinances or regulations as provided in subsection (2) of this section for forest practices classified as Class IV involving either timber harvest or road construction, or both on:

(i) Lands platted after January 1, 1960, as provided in chapter 58.17 RCW;

(ii) Lands that have or are being converted to another use; or

(iii) Lands which, under RCW 76.09.070, are not to be reforested because of the likelihood of future conversion to urban development.

(2) Before a county, city, or town may regulate forest practices under subsection (1) of this section, it shall ensure that its critical areas and development regulations are in compliance with RCW 36.70A.130 and, if applicable, RCW 36.70A.215. The county, city, or town shall notify the department and the department of ecology in writing sixty days prior to adoption of the development regulations required in this section. The transfer of jurisdiction shall not occur until the county, city, or town has notified the department, the department of revenue, and the department of ecology in writing of the effective date of the regulations. Ordinances and regulations adopted under subsection (1) of this section and this subsection must be consistent with or supplement development regulations that protect critical areas pursuant to RCW 36.70A.060, and shall at a minimum include:

(a) Provisions that require appropriate approvals for all phases of the conversion of forest lands, including land clearing and grading; and

(b) Procedures for the collection and administration of permit and recording fees.

(3) Activities regulated by counties, cities, or towns as provided in subsections (1) and (2) of this section shall be administered and enforced by those counties, cities, or towns. The department shall not regulate these activities under this chapter.

(4) The board shall continue to adopt rules and the department shall continue to administer and enforce those rules in each county, city, or town for all forest practices as provided in this chapter until such a time as the county, city, or town has updated its development regulations as required by RCW 36.70A.130 and, if applicable, RCW 36.70A.215, and has adopted ordinances or regulations under subsections (1) and (2) of this section. However, counties, cities, and towns that have adopted ordinances or regulations regarding forest practices prior to July 22, 2007, are not required to readopt their ordinances or regulations in order to satisfy the requirements of this section.

(5) Upon request, the department shall provide technical assistance to all counties, cities, and towns while they are in the process of adopting the regulations required by this section, and after the regulations become effective.

(6) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more

stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971."

(7) All counties and cities adopting or enforcing regulations or ordinances under this section shall include in the regulation or ordinance a requirement that a verification accompany every permit issued for forest land by that county or city associated with the conversion to a use other than commercial timber operation, as that term is defined in RCW 76.09.020, that verifies that the land in question is not or has not been subject to a notice of conversion to nonforestry uses under RCW 76.09.060 during the six-year period prior to the submission of a permit application.

(8) To improve the administration of the forest excise tax created in chapter 84.33 RCW, a county, city, or town that regulates forest practices under this section shall report permit information to the department of revenue for all approved forest practices permits. The permit information shall be reported to the department of revenue no later than sixty days after the date the permit was approved and shall be in a form and manner agreed to by the county, city, or town and the department of revenue. Permit information includes the landowner's legal name, address, telephone number, and parcel number. [2007 c 236 § 1; 2007 c 106 § 6; 2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

**Reviser's note:** This section was amended by 2007 c 106 § 6 and by 2007 c 236 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**76.09.250 Policy for continuing program of orientation and training.** The board shall establish a policy for a continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

**76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts.** The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

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**76.09.270 Annual determination of state's research needs—Recommendations.** The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

**76.09.280 Removal of log and debris jams from streams.** Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

**76.09.285 Water quality standards affected by forest practices.** See RCW 90.48.420.

**76.09.290 Inspection of lands—Reforestation.** The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation. [1986 c 100 § 49.]

**76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans.** (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on forest lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

(2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:

(a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: PROVIDED, That no liability shall attach to the state of Washington or the department for failure to identify such sites;

(b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;

(c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.

(3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.

(4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.

(5) Unless requested by a forest landowner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320. [1987 c 95 § 2.]

**76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses.** The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1987 c 95 § 3.]

**76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal.** (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county. [1987 c 95 § 4.]

**76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability.** (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

(2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed, arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed. The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 § 5.]

**76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.** (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [1987 c 95 § 6.]

**76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing.** The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forest landowners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages of any kind or character resulting from the trees being left. [1999 sp.s. c 4 § 602; 1992 c 52 § 5; 1987 c 95 § 7.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.340 Certain forest practices exempt from rules and policies under this chapter.** Forest practices consistent with a habitat conservation plan approved prior to March 25, 1996, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species,

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including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050.

Nothing in this section is intended to limit the board's rule-making authority under this chapter. [1996 c 136 § 1.]

**Effective date—1996 c 136:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 136 § 2.]

**76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.** The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area,

geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with \*RCW 77.55.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner

who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans. The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary. [2003 c 39 § 34; 1997 c 290 § 1.]

\*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006.

**76.09.360 Single multiyear permit.** The department together with the department of fish and wildlife, and the department of ecology relating to water quality protection, shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices in a single multiyear permit to be jointly issued by the departments and the departments shall report their findings to the legislature not later than December 31, 2000. [1997 c 290 § 2.]

**76.09.368 Intent—Small forest landowners—Alternate plan processes/alternate harvest restrictions—Report to the legislature.** The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the small forest landowner office advisory committee in developing these alternate approaches. By July 1, 2003, the forest practices board shall provide the legislature with a written report that describes the board's progress in developing alternate plan processes or alternate harvest restrictions, or both if necessary, that meet legislative intent.

As used in this section, "small forest landowner" has the same meaning as defined in RCW 76.13.120(2). [2002 c 120 § 4.]

**76.09.370 Findings—Forests and fish report—Adoption of rules.** (1) The legislature finds that the process that produced the forests and fish report was instigated by the forest practices board, the report is the product of considerable negotiations between several diverse interest groups, and the report has the support of key federal agencies. When adopting permanent rules under this section, the forest practices board is strongly encouraged to follow the recommendations of the forests and fish report, but may include other alternatives for protection of aquatic resources. If the forest practices board chooses to adopt rules under this section that are not consistent with the recommendations contained in the forests and fish report, the board must notify the appropriate legislative committees of the proposed deviations, the reasons for the proposed deviations, and whether the parties to the forests and fish report still support the agreement. The board shall defer final adoption of such rules for sixty days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.

(2) The forest practices board shall follow the regular rules adoption process contained in the administrative procedure act, chapter 34.05 RCW, when adopting permanent rules pertaining to forest practices and the protection of aquatic resources except as limited by subsection (1) of this section. The permanent rules must accomplish the policies stated in RCW 76.09.010 without jeopardizing the economic viability of the forest products industry.

(3) The rules adopted under this section should be as specific as reasonably possible while also allowing an applicant to propose alternate plans in response to site-specific physical features. Alternate plans should provide protection to public

resources at least equal in overall effectiveness by alternate means.

(4) Rule making under subsection (2) of this section shall be completed by June 30, 2001.

(5) The board should consider coordinating any environmental review process under chapter 43.21C RCW relating to the adoption of rules under subsection (2) of this section with any review of a related proposal under the national environmental policy act (42 U.S.C. Sec. 4321, et seq.).

(6) After the board has adopted permanent rules under subsection (2) of this section, changes to those rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.

(7) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. [1999 sp.s. c 4 § 204.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.380 Report to the legislature—Emergency rules—Permanent rules.** Prior to the adoption of permanent rules as required by chapter 4, Laws of 1999 sp. sess. and no later than January 1, 2000, the board shall report to the appropriate legislative committees regarding the substance of emergency rules that have been adopted under chapter 4, Laws of 1999 sp. sess. In addition, the report shall include information on changes made to the forests and fish report after April 29, 1999, and an update on the status of the adoption of permanent rules, including the anticipated substance of the rules and the anticipated date of final adoption. The board shall additionally provide a report to the appropriate legislative committees by January 1, 2001.

On January 1, 2006, the board shall provide a summary to the appropriate legislative committees regarding modifications made to the forests and fish report made after January 1, 2000, and to the permanent rules according to the adaptive management process as set forth in the forests and fish report. [1999 sp.s. c 4 § 205.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.**

(1) Except as provided in subsection (2) of this section, prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the forest practices rules adopted under RCW 76.09.370, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forest land obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forest land obligation, the seller shall pay the buyer's costs related to such continuing forest land obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale.

(2) Subsection (1) of this section does not apply to checklist road maintenance and abandonment plans created by RCW 76.09.420. [2003 c 311 § 6; 1999 sp.s. c 4 § 707.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.400 Forests and fish account—Created.** The forests and fish account is created in the state treasury. Receipts from appropriations, federal grants, and gifts from private organizations and individuals or other sources may be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the establishment and operation of the small forest landowner office under RCW 76.13.110, the purchase of easements under RCW 76.13.120, the purchase of lands under RCW 76.09.040, or other activities necessary to implement chapter 4, Laws of 1999 sp. sess. [1999 sp.s. c 4 § 1402.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.09.405 Forest and fish support account—Created.**

The forest and fish support account is hereby created in the state treasury. Receipts from appropriations, the surcharge imposed under RCW 82.04.261, and other sources must be deposited into the account. Expenditures from the account shall be used for activities pursuant to the state's implementation of the forests and fish report as defined in this chapter and related activities including, but not limited to, adaptive management, monitoring, and participation grants to tribes, state and local agencies, and not-for-profit public interest organizations. Expenditures from the account may be made only after appropriation by the legislature. [2007 c 54 § 3; 2007 c 48 § 1; 2006 c 300 § 3.]

**Reviser's note:** This section was amended by 2007 c 48 § 1 and by 2007 c 54 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**76.09.410 Road maintenance and abandonment plans—Fish passage barriers.** (1) The state may not require a small forest landowner to invest in upgrades, replacements, or other engineering of a forest road, and any fish passage barriers that are a part of the road, that do not threaten public resources or create a barrier to the passage of fish.

(2) Participation in the forests and fish agreement provides a benefit to both the landowner in terms of federal assurances, and the public in terms of aquatic habitat preservation and water quality enhancement; therefore, if conditions do threaten public resources or create a fish passage barrier, the road maintenance and abandonment planning process may not require a small forest landowner to take a positive action that will result in high cost without a significant portion of that cost being shared by the public.

(3) Some fish passage barriers are more of a threat to public resources than others; therefore, no small forest landowner should be required to repair a fish passage barrier until higher priority fish passage barriers on other lands in the watershed have been repaired.

(4) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in \*RCW 76.13.150, one hundred percent public funding shall be provided.

(5) The preparation of a road maintenance and abandonment plan can require technical expertise that may require large expenditures before the time that the landowner plans to conduct any revenue-generating operations on his or her land; therefore, small forest landowners should be allowed to complete a simplified road maintenance and abandonment plan checklist, that does not require professional engineering or forestry expertise to complete, and that does not need to be submitted until the time that the landowner submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. Chapter 311, Laws of 2003 is intended to provide an alternate way for small forest landowners to comply with the road maintenance and abandonment plan goals identified in the forest practices rules. [2003 c 311 § 2.]

**\*Reviser's note:** The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules.** (1) The board must amend the forest practices rules relating to road maintenance and abandonment plans that exist on May 14, 2003, to reflect the following:

(a) A forest landowner who owns a total of eighty acres or less of forest land in Washington is not required to submit a road maintenance and abandonment plan for any block of forest land that is twenty contiguous acres or less in area;

(b) A landowner who satisfies the definition of a small forest landowner, but who does not qualify under (a) of this subsection, is only required to submit a checklist road maintenance and abandonment plan with the abbreviated content requirements provided for in subsection (3) of this section, and is not required to comply with annual reporting and review requirements; and

(c) Existing forest roads must be maintained only to the extent necessary to prevent damage to public resources.

(2) The department must provide a landowner who is either exempted from submitting a road maintenance and abandonment plan under subsection (1)(a) of this section, or who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section, with an educational brochure outlining road maintenance standards and requirements. In addition, the department must develop a series of nonmandatory educational workshops on the rules associated with road construction and maintenance.

(3)(a) A landowner who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section is only required to submit a checklist, designed by the department in consultation with the small forest landowner office advisory committee created in RCW 76.13.110, that confirms that the landowner is applying the checklist criteria to forest roads covered or affected by a forest practices application or notification. When developing the checklist road maintenance and abandonment plan, the department shall ensure that the checklist does not exceed current state law. Nothing in this subsection increases or adds to small forest landowners' duties or responsibilities under any other section of the forest practices rules or any other state law or rule.

(b) A landowner who qualifies for the checklist road maintenance and abandonment plan is not required to submit the checklist before the time that he or she submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. The department may encourage and accept checklists prior to the time that they are due.

(4) The department must monitor the extent of the checklist road maintenance and abandonment plan approach and report its findings to the appropriate committees of the legislature by December 31, 2008, and December 31, 2013.

(5) The board shall adopt emergency rules under RCW 34.05.090 by October 31, 2003, to implement this section. The emergency rules shall remain in effect until permanent rules can be adopted. The forest practices rules that relate to road maintenance and abandonment plans shall remain in effect as they existed on May 14, 2003, until emergency rules have been adopted under this section.

(6) This section is only intended to relate to the board's duties as they relate to the road maintenance and abandonment plan element of the forests and fish report. Nothing in this section alters any forest landowner's duties and responsibilities under any other section of the forest practices rules, or any other state law or rule. [2003 c 311 § 4.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.09.430 Application to RCW 76.13.150.** RCW 76.13.150 applies to road maintenance and abandonment plans under this chapter. [2003 c 311 § 8.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.09.440 Small forest landowner—Fish passage barriers.** The department shall not disapprove a forest practices application filed by a small forest landowner on the basis that fish passage barriers have not been removed or replaced if the small forest landowner filing the application has committed to participate in the program established in RCW 76.13.150 for all fish passage barriers existing on the block of forest land covered by the forest practices application, and the fish passage barriers existing on the block of forest land covered by the forest practices application are lower on the funding order list established for the program than the current projects that are capable of being funded by the program. [2003 c 311 § 9.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.09.450 Small forest landowner—Defined.** For the purposes of this chapter and RCW 76.13.150 and 77.12.755, "small forest landowner" means an owner of forest land who, at the time of submission of required documentation to the department, has harvested from his or her own lands in this state no more than an average timber volume of two million board feet per year during the three years prior to submitting documentation to the department and who certifies that he or she does not expect to harvest from his or her own lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of documentation to the department. However, any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forest landowner" if he or she establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses. [2003 c 311 § 11.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.09.460 Notice of conversion to nonforestry use—Denial of permits or approvals by the county, city, town, or regional governmental entity—Enforcement.** If a county, city, town, or regional governmental entity receives a notice of conversion to nonforestry use by the department under RCW 76.09.060, then the county, city, town, or regional governmental entity must deny all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of the land that is the subject of the notification. The prohibition created by this

section must be enforced by the county, city, town, or regional governmental entity:

(1) For a period of six years from the approval date of the applicable forest practices application or notification or the date that the department was made aware of the harvest activities; or

(2) Until the following activities are completed for the land that is the subject of the notice of conversion to a nonforestry use:

(a) Full compliance with chapter 43.21C RCW, if applicable;

(b) The department has notified the county, city, town, or regional governmental entity that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(c) A determination is made by the county, city, town, or regional governmental entity as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 2.]

**76.09.470 Conversion of land to nonforestry use—Action required of landowner—Action required of county, city, town, or regional governmental entity.** (1) If a landowner who did not state an intent to convert his or her land to a nonforestry use decides to convert his or her land to a nonforestry use within six years of receiving an approved forest practices application or notification under this chapter, the landowner must:

(a) Stop all forest practices activities on the parcels subject to the proposed land use conversion to a nonforestry use;

(b) Contact the department of ecology and the applicable county, city, town, or regional governmental entity to begin the permitting process; and

(c) Notify the department and withdraw any applicable applications or notifications or request a new application for conversion.

(2) Upon being contacted by a landowner under this section, the county, city, town, or regional governmental entity must:

(a) Notify the department and request from the department the status of any applicable forest practices applications, notifications, or final orders or decisions; and

(b) Complete the following activities:

(i) Require that the landowner be in full compliance with chapter 43.21C RCW, if applicable;

(ii) Receive notification from the department that the landowner has resolved any outstanding final orders or decisions issued by the department; and

(iii) Make a determination as to whether or not the condition of the land in question is in full compliance with local ordinances and regulations. If full compliance is not found, a mitigation plan to address violations of local ordinances or regulations must be required for the parcel in question by the county, city, town, or regional governmental entity. Required mitigation plans must be prepared by the landowner and approved by the county, city, town, or regional governmental entity. Once approved, the mitigation plan must be implemented by the landowner. Mitigation measures that may be required include, but are not limited to, revegetation requirements to plant and maintain trees of sufficient maturity and appropriate species composition to restore critical area and buffer function or to be in compliance with applicable local government regulations. [2007 c 106 § 3.]

**76.09.900 Short title.** Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

**76.09.905 Air pollution laws not modified.** Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 § 31.]

**76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.** Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (\*RCW 77.55.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [2003 c 39 § 35; 1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

\*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006.

**76.09.915 Repeal and savings.** (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(2008 Ed.)

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

**76.09.920 Application for extension of prior permits.** Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

**76.09.925 Effective dates—1974 ex.s. c 137.** RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260, 76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

**76.09.935 Severability—1974 ex.s. c 137.** If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

## Chapter 76.10 RCW SURFACE MINING

**Reviser's note:** Chapter 64, Laws of 1970 ex. sess. has been codified as chapter 78.44 RCW, "Mines, minerals, and petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

## Chapter 76.13 RCW STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

### Sections

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**76.13.005 Finding.** The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less than five thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forest land base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state. [1991 c 27 § 1.]

**76.13.007 Purpose.** The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives. [1991 c 27 § 2.]

**76.13.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply to RCW 76.13.005, 76.13.007, 76.13.020, and 76.13.030.

(1) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.

(2) "Department" means the department of natural resources.

(3) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state

agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(4) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(5) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements. [2000 c 11 § 11; 1999 sp.s. c 4 § 502; 1991 c 27 § 3.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.13.020 Authority.** In order to accomplish the purposes stated in RCW 76.13.007, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forest land owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

(4) Provide financial assistance to landowners and cooperating organizations.

(5) Appoint a stewardship advisory committee to assist in establishing and operating this program.

(6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.

(7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.

(8) Take such other steps as are necessary to carry out the purposes of this chapter. [1991 c 27 § 4.]

**76.13.030 Funding sources—Fees—Contracts.** The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.

(3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.

(4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter. [1991 c 27 § 5.]

**76.13.100 Findings.** (1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in RCW 77.85.180 about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forest landowners as a result of the rules to be adopted under RCW 76.09.055 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forest landowner office that shall be a resource and focal point for small forest landowner concerns and policies. The legislature further finds that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forest landowner office should be responsible for assisting small landowners in the development and implementation of these plans or restrictions. [2003 c 39 § 36; 1999 sp.s. c 4 § 501.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.13.110 Small forest landowner office—Establishment—Duties—Advisory committee—Report to the legislature.** (1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120.

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in rules and a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the land-

owner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. The commissioner shall designate two of the initial small forest landowner appointees to serve five-year terms and the other two small forest landowner appointees to serve four-year terms. Thereafter, appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2002, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage

continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2004, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends. [2002 c 120 § 1; 2001 c 280 § 1; 2000 c 11 § 12; 1999 sp.s. c 4 § 503.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.13.120 Findings—Definitions—Forestry riparian easement program.** (1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's

prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner

office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Cri-

teria for these measurements and payments shall be established by the small forest landowner office.

(9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forest riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and

(i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section. [2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.13.130 Small parcels—Alternative management plans.** On parcels of twenty contiguous acres or less, landowners with a total parcel ownership of less than eighty acres shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than fifteen percent of a volume of timber contained in a stand of well managed fifty-year old commercial timber covering the harvest area. The additional fifteen percent leave tree level shall be computed as a rotating stand vol-

ume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet riparian functions.

On parcels of twenty contiguous acres or less the small forest landowner office shall work with landowners with a total parcel ownership of less than eighty acres to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to public resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, parcels must be twenty acres or less in contiguous ownership, and owners cannot have ownership interests in a total of more than eighty acres of forest lands within the state. [1999 sp.s. c 4 § 505.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.13.140 Small forest landowners—Value of buffer trees.** In order to assist small forest landowners to remain economically viable, the legislature intends that the small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the riparian easement program. For purposes of this section, "compliance costs" includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement. The office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out streamside buffers and comply with other forest and fish regulatory requirements related to the forest riparian easement program. The department shall reimburse small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated. [2002 c 120 § 3; 2001 c 280 § 3.]

**76.13.150 Fish passage barriers—Cost-sharing program.** (1) The legislature finds that a state-led cost-sharing program is necessary to assist small forest landowners with removing and replacing fish passage barriers that were added to their land prior to May 14, 2003, to help achieve the goals of the forests and fish report, and to assist small forest landowners in complying with the state's fish passage requirements.

(2) The small forest landowner office must, in cooperation with the department of fish and wildlife, establish a program designed to assist small forest landowners with repairing or removing fish passage barriers and assist lead entities in acquiring the data necessary to fill any gaps in fish passage barrier information. The small forest landowner office and

the department of fish and wildlife must work closely with lead entities or other local watershed groups to make maximum use of current information regarding the location and priority of current fish passage barriers. Where additional fish passage barrier inventories are necessary, funding will be sought for the collection of this information. Methods, protocols, and formulas for data gathering and prioritizing must be developed in consultation with the department of fish and wildlife. The department of fish and wildlife must assist in the training and management of fish passage barrier location data collection.

(3) The small forest landowner office must actively seek out funding for the program authorized in this section. The small forest landowner office must work with consenting landowners to identify and secure funding from local, state, federal, tribal, or nonprofit habitat restoration organizations and other private sources, including the salmon recovery funding board, the United States department of agriculture, the United States department of transportation, the Washington state department of transportation, the United States department of commerce, and the federal highway administration.

(4)(a) Except as otherwise provided in this subsection, the small forest landowner office, in implementing the program established in this section, must provide the highest proportion of public funding available for the removal or replacement of any fish passage barrier.

(b) In no case shall a small forest landowner be required to pay more than the lesser of either: (i) Twenty-five percent of any costs associated with the removal or replacement of a particular fish passage barrier; or (ii) five thousand dollars for the removal or replacement of a particular fish passage barrier. No small forest landowner shall be required to pay more than the maximum total annual costs in (c) of this subsection.

(c) The portion of the total cost of removing or replacing fish passage barriers that a small forest landowner must pay in any calendar year shall be determined based on the average annual timber volume harvested from the landowner's lands in this state during the three preceding calendar years, and whether the fish passage barrier is in eastern or western Washington.

(i) In western Washington (west of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of eight thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twenty-four thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of thirty-two thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(ii) In eastern Washington (east of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of two thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of four thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twelve thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(iii) Maximum total annual costs for small forest landowners with fish passage barriers in both western and eastern Washington shall be those specified under (c)(i) and (ii) of this subsection.

(d) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in \*RCW 76.13.150, one hundred percent public funding shall be provided.

(5) If a small forest landowner is required to contribute a portion of the funding under the cost-share program established in this section, that landowner may satisfy his or her required proportion by providing either direct monetary contributions or in-kind services to the project. In-kind services may include labor, equipment, materials, and other landowner-provided services determined by the department to have an appropriate value to the removal of a particular fish passage barrier.

(6)(a) The department, using fish passage barrier assessments and ranked inventory information provided by the department of fish and wildlife and the appropriate lead entity as delineated in RCW 77.12.755, must establish a prioritized list for the funding of fish passage barrier removals on property owned by small forest landowners that ensures that funding is provided first to the known fish passage barriers existing on forest land owned by small forest landowners that cause the greatest harm to public resources.

(b) As the department collects information about the presence of fish passage barriers from submitted checklists, it must share this information with the department of fish and wildlife and the technical advisory groups established in \*\*RCW 77.85.070. If the addition of the information collected in the checklists or any other changes to the scientific instruments described in RCW 77.12.755 alter the analysis conducted under RCW 77.12.755, the department must alter the funding order appropriately to reflect the new information.

(7) The department may accept commitments from small forest landowners that they will participate in the program to

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remove fish passage barriers from their land at any time, regardless of the funding order given to the fish passage barriers on a particular landowner's property. [2003 c 311 § 7.]

**Reviser's note:** \*(1) The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

\*\*\*(2) RCW 77.85.070 was repealed by 2005 c 309 § 10.

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**76.13.160 Qualifying small forest landowner—Review of certain records.** When establishing a forest riparian easement program applicant's status as a qualifying small forest landowner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forest landowner at the request of the department; however, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the department from reviewing aggregate or general information provided by the department of revenue. [2004 c 102 § 2.]

## Chapter 76.14 RCW

### FOREST REHABILITATION

#### Sections

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76.14.070	Powers and duties—Expenditure of public funds.
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76.14.110	Fire protection projects—Credit on assessment for private expenditure.
76.14.120	Landowner's responsibility under other laws.
76.14.130	Lands not to be included in project.

**76.14.010 Definitions.** As used in this chapter:

(1) "Department" means the department of natural resources;

(2) "Forest land" means any lands considered best adapted for the growing of trees; and

(3) The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest landowners. [2000 c 11 § 14; 1988 c 128 § 37; 1953 c 74 § 2.]

**76.14.020 Yacolt burn designated high hazard area—Rehabilitation required.** The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by

the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

**76.14.030 Administration.** This chapter shall be administered by the department. [1988 c 128 § 38; 1953 c 74 § 3.]

**76.14.040 Duties.** The department shall use funds placed at its disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1988 c 128 § 39; 1955 c 171 § 1; 1953 c 74 § 4.]

**76.14.050 Firebreaks—Powers of department—Grazing lands.** The department is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership. The department may by gift, purchase, condemnation or otherwise acquire easements for road rights-of-way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the department shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1988 c 128 § 40; 1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

**76.14.051 Firebreaks—Preexisting agreements not altered.** Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

**76.14.060 Powers and duties—Private lands.** The department shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1988 c 128 § 41; 1955 c 171 § 3.]

**76.14.070 Powers and duties—Expenditure of public funds.** The department shall have authority to expend public money for the purposes and objectives provided in this chapter. [1988 c 128 § 42; 1955 c 171 § 4.]

**76.14.080 Fire protection projects—Assessments—Payment.** The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of

such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1988 c 128 § 43; 1955 c 171 § 5.]

**76.14.090 Fire protection projects—Notice—Hearing.** Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [1988 c 128 § 44; 1955 c 171 § 6.]

**76.14.100 Fire protection projects—Collection of assessments.** Except when the owner has notified the department in writing that he will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid

balance or portion thereof, he may make direct payment to the department. [1988 c 128 § 45; 1955 c 171 § 7.]

*Collection of taxes: Chapter 84.56 RCW.*

**76.14.110 Fire protection projects—Credit on assessment for private expenditure.** Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [1988 c 128 § 46; 1955 c 171 § 8.]

**76.14.120 Landowner's responsibility under other laws.** This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.610 or, in lieu thereof, of paying the forest fire protection assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1986 c 100 § 56; 1955 c 171 § 9.]

**76.14.130 Lands not to be included in project.** Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 3/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile;

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east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1 mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

## Chapter 76.15 RCW

### COMMUNITY AND URBAN FORESTRY

#### Sections

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76.15.030	Funding sources—Fees—Contracts.
76.15.040	Primary duty, department's—Cooperation.
76.15.050	Agreements for urban tree planting.
76.15.060	Urban tree planting to be encouraged.
76.15.070	Prioritized statewide inventory of community and urban forests—Community and urban forest assessment—Criteria and implementation plan.
76.15.080	Technical advisory committee.
76.15.090	Evergreen community designation—Department's duties.

**76.15.005 Finding.** (1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(3) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development. [1991 c 179 § 1.]

**76.15.007 Purpose.** The purpose of this chapter is to:

(1) Encourage planting and maintenance and management of trees in the state's municipalities and counties and maximize the potential of tree and vegetative cover in improving the quality of the environment.

(2) Encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs.

(3) Foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector.

(4) Facilitate the creation of employment opportunities related to community and urban forestry activities including opportunities for inner city youth to learn teamwork, resource conservation, environmental appreciation, and job skills.

(5) Provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities. [1991 c 179 § 2.]

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

(1) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(2) "Community and urban forest assessment" has the same meaning as defined in RCW 35.105.010.

(3) "Community and urban forest inventory" has the same meaning as defined in RCW 35.105.010.

(4) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and

associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(5) "Department" means the department of natural resources.

(6) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.

(7) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature. [2008 c 299 § 23; 2000 c 11 § 15; 1991 c 179 § 3.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**76.15.020 Authority.** (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council, in addition to the technical advisory committee created in RCW 76.15.080 to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects. [2008 c 299 § 3; 1991 c 179 § 4.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**76.15.030 Funding sources—Fees—Contracts.** The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources.

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare.

(4) Enter into agreements and contracts with persons having community and urban forestry-related responsibilities. [1991 c 179 § 5.]

**76.15.040 Primary duty, department's—Cooperation.** The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of

another state, the United States, any agency of the United States, or any agency or province of Canada. [1991 c 179 § 6.]

**76.15.050 Agreements for urban tree planting.** The department may enter into agreements with one or more non-profit organizations whose primary purpose is urban tree planting. The agreements shall be to further public education about and support for urban tree planting, and for obtaining voluntary activities by the local community organizations in tree planting programs. The agreements shall ensure that such programs are consistent with the purposes of the community and urban forestry program under this chapter. [1993 c 204 § 10.]

**Findings—1993 c 204:** See note following RCW 35.92.390.

**76.15.060 Urban tree planting to be encouraged.** The department shall encourage urban planting of tree varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective. [1993 c 204 § 11.]

**Findings—1993 c 204:** See note following RCW 35.92.390.

**76.15.070 Prioritized statewide inventory of community and urban forests—Community and urban forest assessment—Criteria and implementation plan.** (1)(a) The department may, in collaboration with educational institutions, municipalities, corporations, the technical advisory committee created in RCW 76.15.080, state and national service organizations, and environmental organizations, conduct a prioritized statewide inventory of community and urban forests.

(b) For purposes of efficiency, existing data and current inventory technologies must be utilized in the development of the inventory. Statewide data must be maintained and periodically updated by the department and made available to every municipality in the state.

(c) The criteria established for the statewide community and urban forest inventory must support the planning needs of local governments.

(d) The criteria for the statewide community and urban forest inventory may include but not be limited to: Tree size, species, location, site appropriateness, condition and health, contribution to canopy cover and volume, available planting spaces, and ecosystem, economic, social, and monetary value.

(e) In developing the statewide community and urban forest inventory, the department shall strive to enable Washington cities' urban forest managers to access carbon markets by working to ensure the inventory developed under this section is compatible with existing and developing urban forest reporting protocols designed to facilitate access to those carbon markets.

(2) The department may, in collaboration with a statewide organization representing urban and community forestry programs, and with the evergreen communities partnership task force established in RCW 35.105.110, conduct a

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community and urban forest assessment and develop recommendations to the appropriate committees of the legislature to improve community and urban forestry in Washington.

(3) The inventory and assessment in this section must be capable of supporting the adoption and implementation of evergreen community management plans and ordinances described in RCW 35.105.050.

(4) The department may, in collaboration with municipalities, the technical advisory committee created in RCW 76.15.080, and a statewide organization representing urban and community forestry programs, develop an implementation plan for the inventory and assessment of the community and urban forests in Washington.

(5)(a) The criteria and implementation plan for the statewide community and urban forest inventory and assessment required under this section must be completed by December 1, 2008. Upon the completion of the criteria and implementation plan's development, the department shall report the final product to the appropriate committees of the legislature.

(b) An initial inventory and assessment, consisting of the community and urban forests of the willing municipalities located in one county located east of the crest of the Cascade mountains and the willing municipalities located in one county located west of the crest of the Cascade mountains must be completed by June 1, 2010.

(6) The requirements of this section are subject to the availability of amounts appropriated for the specific purposes of this section. [2008 c 299 § 4.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**76.15.080 Technical advisory committee.** (1) The commissioner of public lands shall appoint a technical advisory committee to provide advice to the department during the development of the criteria and implementation plan for the statewide community and urban forest inventory and assessment required under RCW 76.15.070.

(2) The technical advisory committee must include, but not be limited to, representatives from the following groups: Arborists; municipal foresters; educators; consultants; researchers; public works and utilities professionals; information technology specialists; and other affiliated professionals.

(3) The technical advisory committee members shall serve without compensation. Advisory committee members who are not state employees may receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the technical advisory committee may be paid from the general fund appropriation made available to the department for community and urban forestry.

(4) The technical advisory committee created in this section must be disbanded by the commissioner upon the completion of the criteria and implementation plan for the statewide community and urban forest inventory and assessment required under RCW 76.15.070. [2008 c 299 § 5.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**76.15.090 Evergreen community designation—Department's duties.** The department shall manage the application and evaluation of candidates for evergreen com-

munity designation under RCW 35.105.030, and forward its recommendations to the department of community, trade, and economic development. [2008 c 299 § 8.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

## Chapter 76.36 RCW MARKS AND BRANDS

### Sections

76.36.010	Definitions.
76.36.020	Forest products to be marked.
76.36.035	Registration of brands—Assignments—Fee—Rules—Penalty.
76.36.060	Impression of mark—Presumption.
76.36.070	Cancellation of registration.
76.36.090	Catch brands.
76.36.100	Right of entry to retake branded products.
76.36.110	Penalty for false branding, etc.
76.36.120	Forgery of mark, etc.—Penalty.
76.36.130	Sufficiency of mark.
76.36.140	Application of chapter to eastern Washington.
76.36.160	Deposit of fees—Use.
76.36.900	Severability—1925 ex.s. c 154.

**76.36.010 Definitions.** The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

(1) "Booming equipment" includes boom sticks and boom chains.

(2) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(3) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.

(4) "Department" means the department of natural resources.

(5) "Forest products" means logs, spars, piles, and poles, boom sticks, and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill, or tie mill, or cut into cord wood, stove wood, or hewn ties.

(6) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms, and associations of persons.

(7) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes. [2000 c 11 § 16; 1984 c 60 § 1; 1925 ex.s. c 154 § 1; RRS § 8381-1.]

**76.36.020 Forest products to be marked.** Persons who wish to identify any of their forest products which will be stored or transported in or on the waters of the state shall place a registered mark or brand in a conspicuous place on each forest product item. Placement of the registered mark or brand is prima facie evidence of ownership over forest product items which have escaped from storage or transportation. Unbranded or unmarked stray logs or forest products become the property of the state when recovered. [1984 c 60 § 2; 1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

**76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty.** (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

(2) The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

(3) A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

(4) Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(5) The department may adopt and enforce rules implementing the provisions of this chapter.

(6)(a) Except as provided in (b) of this subsection, a violation of any rule adopted by the department under this [the] authority of this section is a misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 53 § 370; 1987 c 380 § 18; 1984 c 60 § 8.]

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

**Effective date—Severability—1987 c 380:** See RCW 7.84.900 and 7.84.901.

**76.36.060 Impression of mark—Presumption.** All forest products and booming equipment having impressed thereupon a registered mark or brand are presumed to belong to the person appearing on the records of the department as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand are presumed to belong to the owner of the registered catch brand, unless there is impressed thereupon more than one registered catch brand, in which event they are presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1984 c 60 § 3; 1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

**76.36.070 Cancellation of registration.** The department, upon the petition of the owner of a registered mark or brand, may cancel the registration in which case the mark or brand shall be open to registration by any person subsequently applying therefor. [1984 c 60 § 4; 1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

**76.36.090 Catch brands.** A person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired from another, shall before using it, make application for the registration thereof to the department in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the department shall apply equally to catch brands. The certificate of the department shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1984 c 60 § 5; 1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

**76.36.100 Right of entry to retake branded products.** The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

**76.36.110 Penalty for false branding, etc.** Every person is guilty of a gross misdemeanor:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a regis-

tered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner. [2003 c 53 § 371; 1994 c 163 § 1; 1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

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

**76.36.120 Forgery of mark, etc.—Penalty.** Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his or her own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand. [2003 c 53 § 372; 1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

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

**76.36.130 Sufficiency of mark.** A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file with the department. [1988 c 128 § 47; 1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

**76.36.140 Application of chapter to eastern Washington.** In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: PROVIDED, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered with the department pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1988 c 128 § 48; 1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

**76.36.160 Deposit of fees—Use.** The department shall deposit all moneys received under this chapter in the general fund to be used exclusively for the administration of this chapter by the department. [1984 c 60 § 7; 1957 c 36 § 10.]

**76.36.900 Severability—1925 ex.s. c 154.** If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

### Chapter 76.42 RCW

#### WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

##### Sections

76.42.010	Removal of debris authorized—Enforcement of chapter—Department of natural resources.
76.42.020	Definitions.
76.42.030	Removal of wood debris—Authorized.
76.42.060	Navigable waters—Unlawful to deposit wood debris into—Exception.
76.42.070	Rules and regulations—Administration of chapter—Authority to adopt and enforce.

*Navigation and harbor improvements: Title 88 RCW.*

**76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources.** This chapter authorizes the removal of wood debris from navigable waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

**76.42.020 Definitions.** (1) "Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner.

(2) "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands. [2000 c 11 § 17; 1994 c 163 § 2; 1973 c 136 § 3.]

**76.42.030 Removal of wood debris—Authorized.** The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchandise wood debris for his own personal use. [1994 c 163 § 3; 1973 c 136 § 4.]

**76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception.** It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules duly adopted thereunder or any deposit allowed to be made under and in compliance with chapter 76.09 or 77.85 RCW and any rules duly adopted under those chapters. Violation

of this section shall be a misdemeanor. [2003 c 39 § 37; 1999 sp.s. c 4 § 601; 1973 c 136 § 7.]

**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.180.

**76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce.** The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

### Chapter 76.44 RCW

#### INSTITUTE OF FOREST RESOURCES

##### Sections

76.44.010	Institute created.
76.44.020	Administration of institute.
76.44.030	Duties.
76.44.040	Dissemination of research results.
76.44.050	Contributions may be accepted.

**76.44.010 Institute created.** There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

**Severability—1979 c 50:** "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 50 § 8.]

**76.44.020 Administration of institute.** The institute of forest resources shall be administered by the dean of the college of forest resources of the University of Washington who shall also be the director of the institute. [1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

**Severability—1979 c 50:** See note following RCW 76.44.010.

**76.44.030 Duties.** The institute of forest resources shall pursue research and education related to the forest resource and its multiple use including its conservation, management and utilization; its evaluation of forest land use and the maintenance of its rural environment; the manufacture and marketing of forest products and the provision of recreation and aesthetic values.

In pursuit of these objectives, the institute of forest resources is authorized to cooperate with other universities, state and federal agencies, industrial institutions, domestic or foreign, where such cooperation advances these objectives. [1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

**Severability—1979 c 50:** See note following RCW 76.44.010.

**76.44.040 Dissemination of research results.** The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

**Severability—1979 c 50:** See note following RCW 76.44.010.

**76.44.050 Contributions may be accepted.** The institute is authorized to solicit and/or accept funds through grants, contracts, or institutional consulting arrangements for the prosecution of any research or education activity which it may undertake in pursuit of its objectives. [1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

**Severability—1979 c 50:** See note following RCW 76.44.010.

## Chapter 76.48 RCW

### SPECIALIZED FOREST PRODUCTS

#### Sections

76.48.010	Declaration of public interest.
76.48.020	Definitions.
76.48.030	Unlawful acts.
76.48.040	Agencies responsible for enforcement of chapter.
76.48.050	Specialized forest products permits—Expiration—Specifications.
76.48.060	Specialized forest products permits—Required—Forms—Filing.
76.48.062	Validation of specialized forest product permits—Authorized agents.
76.48.070	Transporting or possessing cedar or other specialized forest products—Requirements.
76.48.075	Specialized forest products from out-of-state.
76.48.080	Contents of authorization, sales invoice, or bill of lading.
76.48.085	Purchase of specialized forest products or huckleberries—Required records.
76.48.086	Records of buyers available for research.
76.48.094	Cedar or specialty wood processors—Records of purchase, possession, or retention of cedar products, salvage, or specialty wood—Bill of lading.
76.48.096	Obtaining products from suppliers not having specialized forest products permit unlawful.
76.48.098	Display of valid registration certificate required.
76.48.100	Exemptions.
76.48.110	Violations—Seizure and disposition of products and other items—Disposition of proceeds.
76.48.120	False, fraudulent, forged, or stolen specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.
76.48.130	Penalties—Affirmative defense.
76.48.140	Disposition of fines.
76.48.150	Department to develop specialized forest products permit/education material.
76.48.200	Assistance and training for minority groups.
76.48.210	Sale of raw or unprocessed huckleberries—Requirements.
76.48.900	Severability—1967 ex.s. c 47.
76.48.901	Severability—1977 ex.s. c 147.
76.48.902	Severability—1979 ex.s. c 94.
76.48.910	Saving—1967 ex.s. c 47.

**76.48.010 Declaration of public interest.** It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

**76.48.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Authorization" means a properly completed pre-printed form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product.

(3) "Cascara bark" means the bark of a Cascara tree.

(4) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(5) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(6) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(7) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(8) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry foliage, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones, berries, any foliage that does not remain green year-round, or seeds.

(9) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(10) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(11) "Huckleberry" means the following species of edible berries, if they are not nursery grown: *Vaccinium membranaceum*, *Vaccinium deliciosum*, *Vaccinium ovatum*, *Vaccinium parvifolium*, *Vaccinium globulare*, *Vaccinium ovalifolium*, *Vaccinium alaskaense*, *Vaccinium caespitosum*, *Vaccinium occidentale*, *Vaccinium uliginosum*, *Vaccinium myrtillus*, and *Vaccinium scoparium*.

(12) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(13) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(14) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(15) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(16) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(17) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(18) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, specialty wood, wild edible mushrooms, and Cas-cara bark.

(19) "Specialized forest products permit" means a printed document in a form printed by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permitter and that is located in the county where the permit is issued, or sell raw or unprocessed huckleberries.

(20) "Specialty wood" means wood that is:

(a) In logs less than eight feet in length, chunks, slabs, stumps, or burls; and

(b) One or more of the following:

(i) Of the species western red cedar, Englemann spruce, Sitka spruce, big leaf maple, or western red alder;

(ii) Without knots in a portion of the surface area at least twenty-one inches long and seven and a quarter inches wide when measured from the outer surface toward the center; or

(iii) Suitable for the purposes of making musical instruments or ornamental boxes.

(21) "Specialty wood buyer" means the first person that receives any specialty wood product after it leaves the harvest site.

(22) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood products or specialty wood salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(23) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(24) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permitter signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permitter specify an earlier date. A permitter may require the actual signatures of both the permittee and permitter for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permitter, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(25) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means. [2008 c 191 § 9; 2007 c 392 § 3; 2005 c 401 § 1; 2000 c 11 § 18; 1995 c

366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

**Severability—1995 c 366:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

**76.48.030 Unlawful acts.** It is unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit;

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his or her duly authorized agent or representative; or

(4) Harvest huckleberries in any amount using a rake, mechanical device, or any other method that damages the huckleberry bush. [2007 c 392 § 4; 1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.040 Agencies responsible for enforcement of chapter.** Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources and fish and wildlife. Primary enforcement responsibility lies in the county sheriffs and their deputies. The legislature encourages county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.050 Specialized forest products permits—Expiration—Specifications.** (1) Except as otherwise provided in subsection (3) of this section, specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the issuance of the permits shall be by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permitter.

(2) A properly completed specialized forest products permit form shall include:

(a) The date of its execution and expiration;

(b) The name, address, telephone number, if any, and signature of the permitter;

(c) The name, address, telephone number, if any, and signature of the permittee;

(d) The type of specialized forest products to be harvested or transported;

(e) The approximate amount or volume of specialized forest products to be harvested or transported;

(f) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

(g) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(h) For cedar products, cedar salvage, and specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

(i) A copy of a valid picture identification; and

(j) Any other condition or limitation which the permitter may specify.

(3) For permits intended to satisfy the requirements of RCW 76.48.210 relating only to the sale of huckleberries, the specialized forest products permit:

(a) May be obtained from the department of natural resources or the sheriff of any county in the state;

(b) Must, in addition to the requirements of subsection (2) of this section, also contain information relating to where the huckleberries were, or plan to be, harvested, and the approximate amount of huckleberries that are going to be offered for sale; and

(c) Must include a statement designed to inform the possessor that permission from the landowner is still required prior to the harvesting of huckleberries.

(4) Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and the permittee's agents and be available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site. [2008 c 191 § 2; 2005 c 401 § 2; 1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.060 Specialized forest products permits—Required—Forms—Filing.** (1) A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to:

(a) Harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than five United States gallons of a single species of wild edible mushroom; or

(b) Selling, or offering for sale, any amount of raw or unprocessed huckleberries.

(2) Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permitters in reasonable quantities. A permit form shall be completed in triplicate for each permitter's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested.

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(3) Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp.

(4) Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products and the sale of huckleberries, subject to any other conditions or limitations which the permitter may specify. Two copies of the permit shall be given or mailed to the permitter, or one copy shall be given or mailed to the permitter and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit.

(5) In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county.

(6) While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [2008 c 191 § 3; 2005 c 401 § 3; 1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.062 Validation of specialized forest product permits—Authorized agents.** County sheriffs may contract with other entities to serve as authorized agents to validate specialized forest product permits. These entities include the United States forest service, the bureau of land management, the department of natural resources, local police departments, and other entities as decided upon by the county sheriffs' departments. An entity that contracts with a county sheriff to serve as an authorized agent to validate specialized forest product permits may make reasonable efforts to verify the information provided on the permit form such as the section, township, and range of the area where harvesting is to occur. [1995 c 366 § 15.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements.** (1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor [permitter], more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than five gallons of a single species of wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have pos-

session of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington any cedar products, cedar salvage, or specialty wood without having in his or her possession a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported. The specialized forest products permit or true copy are valid to possess, transport, or possess and transport the cedar products, cedar salvage, or specialty wood from the harvest site to the first cedar or specialty wood processor or buyer. For purposes of this subsection, a true copy requires the actual signatures of both the permittee and the permittor [permitter] for the execution of a true copy. [2005 c 401 § 4; 1995 c 366 § 6; 1992 c 184 § 3; 1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.075 Specialized forest products from out-of-state.** (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar or specialty wood processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other governmental document indicating the true origin of the specialized forest products as being outside the state. For purposes of this subsection, a true copy requires the actual signatures of both the permittee and the permittor [permitter] for the execution of a true copy. The cedar or specialty wood processor shall make and maintain a record of the purchase, taking possession, or retention of

cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [2005 c 401 § 5; 1995 c 366 § 7; 1979 ex.s. c 94 § 15.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.080 Contents of authorization, sales invoice, or bill of lading.** The authorization, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.
- (4) The name and address of the vendee, donee, or receiver of the specialized forest products.
- (5) The location of origin of the specialized forest products. [1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9.]

**76.48.085 Purchase of specialized forest products or huckleberries—Required records.** (1) Buyers who purchase specialized forest products or huckleberries are required to record:

- (a) The permit number;
- (b) The type of forest product purchased, and whether huckleberries were purchased;
- (c) The permit holder's name; and
- (d) The amount of forest product or huckleberries purchased.

(2) The buyer or processor shall keep a record of this information for a period of one year from the date of purchase and must make the records available for inspection upon demand by authorized enforcement officials.

(3) The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products or huckleberries on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

(4) This section shall not apply to buyers of specialized forest products at the retail sales level. [2008 c 191 § 4; 2005 c 401 § 6; 2000 c 11 § 19; 1995 c 366 § 14.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.086 Records of buyers available for research.** Records of buyers of specialized forest products and huckleberries collected under the requirements of RCW 76.48.085 may be made available to colleges and universities for the purpose of research. [2008 c 191 § 5; 1995 c 366 § 16.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.094 Cedar or specialty wood processors—Records of purchase, possession, or retention of cedar products, salvage, or specialty wood—Bill of lading.** (1) Cedar or specialty wood processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products, cedar salvage, or specialty wood for at least one year after the date of receipt. The record must be legible and must be made at the time each delivery is made.

(2) The bill of lading must accompany all cedar products, cedar salvage, or specialty wood products after the products are received by the cedar or specialty wood processor. The bill of lading must include the specialized forest products permit number or the information provided for in RCW 76.48.075(5) and must also specify:

- (a) The date of transportation;
- (b) The name and address of the first cedar or specialty wood processor or buyer who recorded the specialized forest products information;
- (c) The name and address from where the cedar or specialty wood products are being transported;
- (d) The name of the person receiving the cedar or specialty wood products;
- (e) The address to where the cedar or specialty wood products are being transported;
- (f) The name of the driver;
- (g) The vehicle license number;
- (h) The type of cedar or specialty wood product being shipped; and
- (i) The amount of cedar or specialty wood product being shipped. [2005 c 401 § 7; 1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

**76.48.096 Obtaining products from suppliers not having specialized forest products permit unlawful.** It is unlawful for any cedar or specialty wood buyer or processor to purchase, take possession, or retain cedar or specialty wood products or cedar salvage subsequent to the harvesting and prior to the retail sale of the products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof that appears to be valid, or obtains the information under RCW 76.48.075(5). [2005 c 401 § 8; 1995 c 366 § 8; 1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.098 Display of valid registration certificate required.** Every cedar or specialty wood buyer or processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the buyer or processor receives cedar products, cedar salvage, or specialty wood.

Permittees shall sell cedar products, cedar salvage, or specialty wood products only to cedar or specialty wood processors displaying registration certificates which appear to be valid. [2005 c 401 § 9; 1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.100 Exemptions.** The provisions of this chapter do not apply to:

- (1) Nursery grown products.

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(2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, specialty wood, and cedar salvage when harvested concurrently with timber stands (a) under an approved practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his or her agent, or representative, or of a lessee of land in carrying on noncommercial property management, maintenance, or improvements on or in connection with the land of the landowner or lessee. [2005 c 401 § 10; 1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.110 Violations—Seizure and disposition of products and other items—Disposition of proceeds.** (1) Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products, or selling or attempting to sell huckleberries, in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products or huckleberries found. If the specialized forest product is a cedar product, cedar salvage, or specialty wood, at the time of making an arrest the law enforcement officer may seize and take possession of any equipment, vehicles, tools, or paperwork. The law enforcement officer shall provide reasonable protection for the equipment, vehicles, tools, paperwork, or specialized forest products involved during the period of litigation or he or she shall dispose of the equipment, vehicles, tools, paperwork, or specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

(2) Upon any disposition of the case by the court, the court shall make a reasonable effort to return the equipment, vehicles, tools, paperwork, huckleberries, or specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products or huckleberries less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the equipment, vehicles, tools, paperwork, or specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [2008 c 191 § 6; 2005 c 401 § 11; 1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.120 False, fraudulent, forged, or stolen specialized forest products permit, sales invoice, bill of lading, etc.—Penalty.** (1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument

in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, or the sale of huckleberries, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [2008 c 191 § 7; 2003 c 53 § 373; 1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

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

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.130 Penalties—Affirmative defense.** (1) A person who violates a provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both a fine and imprisonment.

(2) In any prosecution for a violation of this chapter's requirements to obtain or possess a specialized forest products permit or true copy thereof, an authorization, sales invoice, or bill of lading, it is an affirmative defense, if established by the defendant by a preponderance of the evidence, that: (a) The specialized forest products were harvested from the defendant's own land; or (b) the specialized forest products were harvested with the permission of the landowner. [2007 c 392 § 1; 1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.140 Disposition of fines.** All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred and distributed equally among the district courts in the county, the county sheriff's office, and the county's general fund. [2005 c 401 § 12; 1977 ex.s. c 147 § 15.]

**76.48.150 Department to develop specialized forest products permit/education material.** The department of natural resources is the designated agency to develop and print the specialized forest products permit and distribute it to the county sheriffs. In addition, the department of natural resources shall develop educational material and other printed information for law enforcement, forest landowners, and specialized forest products harvesters, buyers, and processors specific to this chapter. [2005 c 401 § 13.]

**76.48.200 Assistance and training for minority groups.** Minority groups have long been participants in the specialized forest products and huckleberry harvesting industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products and huckleberry harvesting industry, and other interested groups to work cooperatively to accomplish the following purposes:

(1) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products and huckleberries;

(2) To hold clinics to teach techniques for effective picking; and

(3) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

To the extent practicable within their existing resources, the commission on Asian-American affairs, the commission on Hispanic affairs, and the department of natural resources are encouraged to coordinate this effort. [2008 c 191 § 8; 1995 c 366 § 17.]

**Severability—1995 c 366:** See note following RCW 76.48.020.

**76.48.210 Sale of raw or unprocessed huckleberries—Requirements.** (1) Except as otherwise provided in this section, no person may sell, or attempt to sell, any amount of raw or unprocessed huckleberries without first obtaining a specialized forest products permit as provided in RCW 76.48.060, regardless if the huckleberries were harvested with the consent of the landowner.

(2) If the possessor of the huckleberries being offered for sale is able to show that the huckleberries originated on land owned by the United States forest service, then the requirements of this section may be satisfied with the display of a valid permit from the United States forest service that lawfully entitles the possessor to harvest the huckleberries in question.

(3) Nothing in this section creates a requirement that a specialized forest products permit is required for an individual to harvest, possess, or transport huckleberries.

(4) Compliance with this section allows an individual to sell, or offer for sale, raw or unprocessed huckleberries. Possession of a specialized forest products permit does not create a right or privilege to harvest huckleberries. Huckleberries may be harvested only with the permission of the landowner and under the terms and conditions established between the landowner and the harvester. [2008 c 191 § 1.]

**76.48.900 Severability—1967 ex.s. c 47.** If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15.]

**76.48.901 Severability—1977 ex.s. c 147.** If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the

act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 147 § 16.]

**76.48.902 Severability—1979 ex.s. c 94.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 94 § 17.]

**76.48.910 Saving—1967 ex.s. c 47.** This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

### Chapter 76.52 RCW

#### COOPERATIVE FOREST MANAGEMENT SERVICES ACT

##### Sections

76.52.010	Short title.
76.52.020	Contracts with landowners.
76.52.030	Extending department forest management services to landowners.
76.52.040	Disposition of funds from landowners.

**76.52.010 Short title.** This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

**76.52.020 Contracts with landowners.** The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [1979 c 100 § 2.]

**76.52.030 Extending department forest management services to landowners.** The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

**76.52.040 Disposition of funds from landowners.** Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

(2008 Ed.)

### Chapter 76.56 RCW

#### CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

##### Sections

76.56.010	Center for international trade in forest products created at the University of Washington.
76.56.020	Duties.
76.56.030	Director—Appointment.
76.56.040	Use of center's programs, research, and advisory services—Schedule of fees.
76.56.050	Solicitation of financial contributions and support—Annual report—Use of other funds.
76.56.900	Severability—1985 c 122.

**76.56.010 Center for international trade in forest products created at the University of Washington.** There is created a center for international trade in forest products at the University of Washington in the college of forest resources, which shall be referred to in this chapter as "the center." The center shall operate under the authority of the board of regents of the University of Washington. [1985 c 122 § 1.]

**76.56.020 Duties.** The center shall:

(1) Coordinate the University of Washington's college of forest resources' faculty and staff expertise to assist in:

(a) The development of research and analysis for developing policies and strategies which will expand forest-based international trade, including a major focus on secondary manufacturing;

(b) The development of technology or commercialization support for manufactured products that will meet the evolving needs of international customers;

(c) The development of research and analysis on other factors critical to forest-based trade, including the quality and availability of raw wood resources; and

(d) The coordination, development, and dissemination of market and technical information relevant to international trade in forest products, including a major focus on secondary manufacturing;

(2) Further develop and maintain computer databases on worldwide forest products production and trade in order to monitor and report on trends significant to the Northwest forest products industry and support the center's research functions; and coordinate this system with state, federal, and private sector efforts to insure a cost-effective information resource that will avoid unnecessary duplication;

(3) Monitor international forest products markets and assess the status of the state's forest products industry, including the competitiveness of small and medium-sized secondary manufacturing firms in the forest products industry, which for the purposes of this chapter shall be firms with annual revenues of twenty-five million or less, and including the increased exports of Washington-produced products of small and medium-sized secondary manufacturing firms;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in forest products in cooperation with the University of Washington's graduate school of business administration, the school of law, the Jackson school of international studies, the Northwest policy center of the graduate school of public administration, and other supporting academic units;

(5) Develop cooperative linkages with the international marketing program for agricultural commodities and trade at Washington State University, the international trade project of the United States forest service, the department of natural resources, the department of community, trade, and economic development, the small business export finance assistance center, and other state and federal agencies to avoid duplication of effort and programs;

(6) Cooperate with personnel from the state's community and technical colleges in their development of wood products manufacturing and wood technology curriculum and offer periodic workshops on wood products manufacturing, wood technology, and trade opportunities to community colleges and private educators and trainers;

(7) Provide for public dissemination of research, analysis, and results of the center's programs to all groups, including direct assistance groups, through technical workshops, short courses, international and national symposia, cooperation with private sector networks and marketing associations, or other means, including appropriate publications;

(8) Establish an executive policy board, including representatives of small and medium-sized businesses, with at least fifty percent of its business members representing small businesses with one hundred or fewer employees and medium-sized businesses with one hundred to five hundred employees. The executive policy board shall also include a representative of the community and technical colleges, representatives of state and federal agencies, and a representative of a wood products manufacturing network or trade association of small and medium-sized wood product manufacturers. The executive policy board shall provide advice on: Overall policy direction and program priorities, state and federal budget requests, securing additional research funds, identifying priority areas of focus for research efforts, selection of projects for research, and dissemination of results of research efforts; and

(9) Establish advisory or technical committees for each research program area, to advise on research program area priorities, consistent with the international trade opportunities achievable by the forest products sector of the state and region, to help ensure projects are relevant to industry needs, and to advise on and support effective dissemination of research results. Each advisory or technical committee shall include representatives of forest products industries that might benefit from this research.

Service on the committees and the executive policy board established in subsections (8) and (9) of this section shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1994 c 282 § 1; 1992 c 121 § 1; 1987 c 195 § 16; 1985 c 122 § 2.]

**Effective date—1994 c 282:** "This act shall take effect July 1, 1994." [1994 c 282 § 6.]

**76.56.030 Director—Appointment.** The center shall be administered by a director appointed by the dean of the college of forest resources of the University of Washington. The director shall be a member of the professional staff of that college. [1985 c 122 § 3.]

**76.56.040 Use of center's programs, research, and advisory services—Schedule of fees.** The governor, the legislature, state agencies, and the public may use the center's programs, research, and advisory services as may be needed. The center shall establish a schedule of fees for actual services rendered. [1985 c 122 § 4.]

**76.56.050 Solicitation of financial contributions and support—Annual report—Use of other funds.** The center shall aggressively solicit financial contributions and support from the forest products industry, federal and state agencies, and other granting sources or through other arrangements to assist in conducting its activities. Subject to RCW 40.07.040, the center shall report annually to the governor and the legislature on its success in obtaining funding from nonstate sources and on its accomplishments in meeting the provisions of this chapter. It may also use separately appropriated funds of the University of Washington for the center's activities. [1994 c 282 § 2; 1987 c 505 § 74; 1985 c 122 § 5.]

**Effective date—1994 c 282:** See note following RCW 76.56.020.

**76.56.900 Severability—1985 c 122.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 122 § 6.]

# Title 77

## FISH AND WILDLIFE

(Formerly: Game and game fish)

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### Chapter 77.04 RCW

#### DEPARTMENT OF FISH AND WILDLIFE

(Formerly: Department of wildlife)

### Sections

- 77.04.010 Short title.
- 77.04.012 Mandate of department and commission.
- 77.04.013 Findings and intent.
- 77.04.020 Composition of department—Powers and duties.
- 77.04.030 Commission—Appointment.
- 77.04.040 Commission—Qualifications of members.
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- 77.04.060 Commission—Meetings—Officers—Compensation, travel expenses.
- 77.04.080 Director—Qualifications—Duties—Salary.
- 77.04.090 Rule-making authority—Certified copy as evidence.
- 77.04.120 Director—Research—Reports.
- 77.04.130 Adoption and certification of rules.
- 77.04.140 Unofficial printings of laws or rules—Approval required.
- 77.04.145 Notification requirements.
- 77.04.150 Hunters and fishers with disabilities—Advisory committee—Composition—Terms—Pilot project—Report to the legislature.
- 77.04.160 Surplus salmon report.
- 77.04.170 Funding for fish stock protection or recovery programs—Prioritization and selection process requirements—Development of outcome-focused performance measures.

*Public bodies may retain collection agencies to collect public debts—Fees:* RCW 19.16.500.

**77.04.010 Short title.** This title is known and may be cited as "Fish and Wildlife Code of the State of Washington." [2000 c 107 § 201; 1990 c 84 § 1; 1980 c 78 § 2; 1955 c 36 § 77.04.010. Prior: 1947 c 275 § 1; Rem. Supp. 1947 § 5992-11.]

**Effective date—1980 c 78:** "This act shall take effect on July 1, 1981." [1980 c 78 § 137.]

**Intent, construction—1980 c 78:** "In enacting this 1980 act, it is the intent of the legislature to revise and reorganize the game code of this state to clarify and improve the administration of the state's game laws. Unless the context clearly requires otherwise, the revisions made to the game code by this act are not to be construed as substantive." [1980 c 78 § 1.]

**Savings—1980 c 78:** "This act shall not have the effect of terminating or in any way modifying any proceeding or liability, civil or criminal, which exists on the effective date of this act." [1980 c 78 § 138.]

**Severability—1980 c 78:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 78 § 139.]

**77.04.012 Mandate of department and commission.** Wildlife, fish, and shellfish are the property of the state. The commission, director, and the department shall preserve, protect, perpetuate, and manage the wildlife and food fish, game fish, and shellfish in state waters and offshore waters.

The department shall conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource. In a manner consistent with this goal, the department shall seek to maintain the economic well-being and stability of the fishing industry in the state. The department shall promote orderly fisheries and shall enhance and improve recreational and commercial fishing in this state.

The commission may authorize the taking of wildlife, food fish, game fish, and shellfish only at times or places, or in manners or quantities, as in the judgment of the commission does not impair the supply of these resources.

The commission shall attempt to maximize the public recreational game fishing and hunting opportunities of all citizens, including juvenile, disabled, and senior citizens.

Recognizing that the management of our state wildlife, food fish, game fish, and shellfish resources depends heavily on the assistance of volunteers, the department shall work cooperatively with volunteer groups and individuals to achieve the goals of this title to the greatest extent possible.

Nothing in this title shall be construed to infringe on the right of a private property owner to control the owner's private property. [2000 c 107 § 2; 1983 1st ex.s. c 46 § 5; 1975 1st ex.s. c 183 § 1; 1949 c 112 § 3, part; Rem. Supp. 1949 § 5780-201, part. Formerly RCW 75.08.012, 43.25.020.]

*State policy regarding improvement of recreational salmon fishing: See note following RCW 77.65.150.*

**77.04.013 Findings and intent.** The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for the department, and to select commission staff and the director of the department.

The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making. [1995 1st sp.s. c 2 § 1 (Referendum Bill No. 45, approved November 7, 1995). Formerly RCW 75.08.013.]

**Referral to electorate—1995 1st sp.s. c 2:** "This act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof." [1995 1st sp.s. c 2 § 46.] Referendum Bill No. 45 was approved by the electorate at the November 7, 1995, election.

**77.04.020 Composition of department—Powers and duties.** The department consists of the state fish and wildlife commission and the director. The commission may delegate to the director any of the powers and duties vested in the commission. [2000 c 107 § 202; 1996 c 267 § 32; 1993 sp.s. c 2 § 59; 1987 c 506 § 4; 1980 c 78 § 3; 1955 c 36 § 77.04.020. Prior: 1947 c 275 § 2; Rem. Supp. 1947 § 5992-12.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** "Washington's fish and wildlife resources are the responsibility of all residents of the state. We all benefit economically, recreationally, and aesthetically from these resources. Recognizing the state's changing environment, the legislature intends to continue to provide opportunities for the people to appreciate wildlife in its native habitat. However, the wildlife management in the state of Washington shall not cause a reduction of recreational opportunity for hunting and fishing activities. The paramount responsibility of the department remains to preserve, protect, and perpetuate all wildlife species. Adequate funding for proper management, now and for future generations, is the responsibility of everyone.

The intent of the legislature is: (1) To allow the governor to select the director of wildlife; (2) to retain the authority of the wildlife commission to establish the goals and objectives of the department; (3) to insure a high level of public involvement in the decision-making process; (4) to provide effective communications among the commission, the governor, the legislature, and the public; (5) to expand the scope of appropriate funding for the management, conservation, and enhancement of wildlife; (6) to not increase the cost of license, tag, stamp, permit, and punch card fees prior to January 1, 1990; and (7) for the commission to carry out any other responsibilities prescribed by the legislature in this title." [1987 c 506 § 1.]

**References—1987 c 506:** "All references in the Revised Code of Washington to the department of game, the game commission, the director of game, and the game fund shall mean, respectively, the department of wildlife, the wildlife commission, the director of wildlife, and the wildlife fund." [1987 c 506 § 99.]

**Continuation of rules, director, game commission—1987 c 506:** "Rules of the department of game existing prior to July 26, 1987, shall remain in effect unless or until amended or repealed by the director of wildlife or the wildlife commission pursuant to Title 77 RCW. The director of game on July 26, 1987, shall continue as the director of wildlife until resignation or removal in accordance with the provisions of RCW 43.17.020. The game commission on July 26, 1987, shall continue as the wildlife commission." [1987 c 506 § 100.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.04.030 Commission—Appointment.** The fish and wildlife commission consists of nine registered voters of the state. In January of each odd-numbered year, the governor shall appoint with the advice and consent of the senate three registered voters to the commission to serve for terms of six years from that January or until their successors are appointed and qualified. If a vacancy occurs on the commission prior to the expiration of a term, the governor shall appoint a registered voter within sixty days to complete the term. Three members shall be residents of that portion of the state lying east of the summit of the Cascade mountains, and three shall be residents of that portion of the state lying west of the summit of the Cascade mountains. Three additional members shall be appointed at-large. No two members may be residents of the same county. The legal office of the commission is at the administrative office of the department in Olympia. [2001 c 155 § 1; 2000 c 107 § 203; 1994 c 264 § 52; 1993 sp.s. c 2 § 60; 1987 c 506 § 5; 1981 c 338 § 11; 1980 c 78 § 4; 1955 c 36 § 77.04.030. Prior: 1947 c 275 § 3; Rem. Supp. 1947 § 5992-13.]

**Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100:** See RCW 77.105.100.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.04.040 Commission—Qualifications of members.** Persons eligible for appointment as members of the commission shall have general knowledge of the habits and distribution of fish and wildlife and shall not hold another state, county, or municipal elective or appointive office. In making these appointments, the governor shall seek to maintain a balance reflecting all aspects of fish and wildlife, including representation recommended by organized groups representing sportfishers, commercial fishers, hunters, private landowners, and environmentalists. Persons eligible for appointment as fish and wildlife commissioners shall comply with the pro-

visions of chapters 42.52 and 42.17 RCW. [1995 1st sp.s. c 2 § 3 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 61; 1987 c 506 § 6; 1980 c 78 § 5; 1955 c 36 § 77.04.040. Prior: 1947 c 275 § 4; Rem. Supp. 1947 § 5992-14.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.04.055 Commission—Duties.** (1) In establishing policies to preserve, protect, and perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall meet annually with the governor to:

(a) Review and prescribe basic goals and objectives related to those policies; and

(b) Review the performance of the department in implementing fish and wildlife policies.

The commission shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy and diverse fish and wildlife populations.

(2) The commission shall establish hunting, trapping, and fishing seasons and prescribe the time, place, manner, and methods that may be used to harvest or enjoy game fish and wildlife.

(3) The commission shall establish provisions regulating food fish and shellfish as provided in RCW 77.12.047.

(4) The commission shall have final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife.

(5) The commission shall adopt rules to implement the state's fish and wildlife laws.

(6) The commission shall have final approval authority for the department's budget proposals.

(7) The commission shall select its own staff and shall appoint the director of the department. The director and commission staff shall serve at the pleasure of the commission. [2000 c 107 § 204; 1995 1st sp.s. c 2 § 4 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 62; 1990 c 84 § 2; 1987 c 506 § 7.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.04.060 Commission—Meetings—Officers—Compensation, travel expenses.** The commission shall hold at least one regular meeting during the first two months of each calendar quarter, and special meetings when called by the

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chair and by five members. Five members constitute a quorum for the transaction of business.

The commission at a meeting in each odd-numbered year shall elect one of its members as chairman and another member as vice chairman, each of whom shall serve for a term of two years or until a successor is elected and qualified.

Members of the commission shall be compensated in accordance with RCW 43.03.250. In addition, members are allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060. [1993 sp.s. c 2 § 63. Prior: 1987 c 506 § 8; 1987 c 114 § 1; 1984 c 287 § 110; 1980 c 78 § 6; 1977 c 75 § 89; 1975-'76 2nd ex.s. c 34 § 175; 1961 c 307 § 9; 1955 c 352 § 1; 1955 c 36 § 77.04.060; prior: 1949 c 205 § 1; 1947 c 275 § 6; Rem. Supp. 1949 § 5992-16.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

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

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

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

**77.04.080 Director—Qualifications—Duties—Salary.** Persons eligible for appointment as director shall have practical knowledge of the habits and distribution of fish and wildlife. The director shall supervise the administration and operation of the department and perform the duties prescribed by law and delegated by the commission. The director shall carry out the basic goals and objectives prescribed under RCW 77.04.055. The director may appoint and employ necessary personnel. The director may delegate, in writing, to department personnel the duties and powers necessary for efficient operation and administration of the department.

Only persons having general knowledge of the fisheries and wildlife resources and of the commercial and recreational fishing industry in this state are eligible for appointment as director. The director shall not have a financial interest in the fishing industry or a directly related industry. The director shall receive the salary fixed by the governor under RCW 43.03.040.

The director is the ex officio secretary of the commission and shall attend its meetings and keep a record of its business. [2000 c 107 § 205; 1995 1st sp.s. c 2 § 5 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 64; 1987 c 506 § 9; 1980 c 78 § 8; 1955 c 36 § 77.04.080. Prior: 1947 c 275 § 8; Rem. Supp. 1947 § 5992-18.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.04.090 Rule-making authority—Certified copy as evidence.** The commission shall adopt permanent rules and amendments to or repeals of existing rules by approval of a majority of the members by resolution, entered and recorded in the minutes of the commission: PROVIDED, That the commission may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule. The commission shall adopt emergency rules by approval of a majority of the members. The commission, when adopting emergency rules under RCW 77.12.150, shall adopt rules in conformance with chapter 34.05 RCW. Judicial notice shall be taken of the rules filed and published as provided in RCW 34.05.380 and 34.05.210.

A copy of an emergency rule, certified as a true copy by a member of the commission, the director, or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule. [1996 c 267 § 35; 1995 c 403 § 111; 1984 c 240 § 1; 1980 c 78 § 16; 1955 c 36 § 77.12.050. Prior: 1947 c 275 § 15; Rem. Supp. 1947 § 5992-25. Formerly RCW 77.12.050.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.04.120 Director—Research—Reports.** (1) The director shall investigate the habits, supply, and economic use of food fish and shellfish in state and offshore waters.

(2) The director shall make an annual report to the governor on the operation of the department and the statistics of the fishing industry.

(3) Subject to RCW 40.07.040, the director shall provide a comprehensive biennial report of all departmental operations to the chairs of the committees on natural resources of the senate and house of representatives, the senate ways and means committee, and the house of representatives appropriations committee, including one copy to the staff of each of the committees, to reflect the previous fiscal period. The format of the report shall be similar to reports issued by the department from 1964-1970 and the report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, inter-governmental agreements, and outlines of ongoing litigation, recent court decisions and orders on major issues with the potential for state liability. The report shall describe the status of the resource and its recreational, commercial, and tribal utilization. The report shall be made available to the public. [2000 c 107 § 3; 1988 c 36 § 31; 1987 c 505 § 71; 1985 c 208 § 1; 1985 c 93 § 1; 1983 1st ex.s. c 46 § 7; 1977 c 75 § 87; 1955 c 12 § 75.08.020. Prior: 1949 c 112 § 7(3), (6), (7);

Rem. Supp. 1949 § 5780-206 (3), (6), (7). Formerly RCW 75.08.020.]

*Director of fish and wildlife to develop proposals to reinstate salmon and steelhead in Tilton and Cowlitz rivers: RCW 77.12.765.*

**77.04.130 Adoption and certification of rules.** (1) Rules of the commission shall be adopted by the commission or a designee in accordance with chapter 34.05 RCW.

(2) Rules of the commission shall be admitted as evidence in the courts of the state when accompanied by an affidavit from the commission or a designee certifying that the rule has been lawfully adopted and the affidavit is prima facie evidence of the adoption of the rule.

(3) The commission may designate department employees to act on the commission's behalf in the adoption and certification of rules. [1995 1st sp.s. c 2 § 12 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 16; 1973 c 93 § 1; 1955 c 12 § 75.08.090. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part. Formerly RCW 75.08.090.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.04.140 Unofficial printings of laws or rules—Approval required.** Provisions of this title or rules of the commission shall not be printed in a pamphlet unless the pamphlet is clearly marked as an unofficial version. This section does not apply to printings approved by the commission. [1995 1st sp.s. c 2 § 13 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 17; 1955 c 12 § 75.08.110. Prior: 1949 c 112 § 16; Rem. Supp. 1949 § 5780-215. Formerly RCW 75.08.110.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.04.145 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 7.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

**77.04.150 Hunters and fishers with disabilities—Advisory committee—Composition—Terms—Pilot project—Report to the legislature.** (1) The commission must appoint an advisory committee to generally represent the interests of hunters and fishers with disabilities on matters including, but not limited to, special hunts, modified sporting equipment, access to public land, and hunting and fishing opportunities. The advisory committee is composed of seven members, each being an individual with a disability. The advisory committee members must represent the entire state. The members must be appointed so that each of the six department administrative regions, as they existed on January 1, 2007, are represented with one resident on the advisory committee. One additional member must be appointed at large. The chair of the advisory committee must be a member

of the advisory committee and shall be selected by the members of the advisory committee.

(2) For the purposes of this section, an individual with a disability includes but is not limited to:

(a) An individual with a permanent disability who is not ambulatory over natural terrain without a prosthesis or assistive device;

(b) An individual with a permanent disability who is unable to walk without the use of assistance from a brace, cane, crutch, wheelchair, scooter, walker, or other assistive device;

(c) An individual who has a cardiac condition to the extent that the individual's functional limitations are severe;

(d) An individual who is restricted by lung disease to the extent that the individual's functional limitations are severe;

(e) An individual who is totally blind or visually impaired; or

(f) An individual with a permanent disability with upper or lower extremity impairments who does not have the use of one or both upper or lower extremities.

(3) The members of the advisory committee are appointed for a four-year term. If a vacancy occurs on the advisory committee prior to the expiration of a term, the commission must appoint a replacement within sixty days to complete the term.

(4) The advisory committee must meet at least semiannually, and may meet at other times as requested by a majority of the advisory committee members for any express purpose that directly relates to the duties set forth in subsection (1) of this section. A majority of members currently serving on the advisory committee constitutes a quorum. The department must provide staff support for all official advisory committee meetings.

(5) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(6) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties.

(7) Beginning December 1, 2011, and again at least once every four years, the commission shall present a report to the appropriate legislative committees detailing the effectiveness of the advisory committee including, but not limited to, the participation levels, general interest, quality of advice, and recommendations as to the advisory committee's continuance or modification. [2008 c 294 § 1; 2005 c 149 § 1; 2001 c 312 § 1.]

**77.04.160 Surplus salmon report.** (1) The department shall prepare an annual surplus salmon report. This report shall include the disposition of adult salmonids that have returned to salmonid hatchery facilities operated under the jurisdiction of the state that:

- (a) Have not been harvested; and
- (b) Were not allowed to escape for natural spawning.

(2) The report shall include, by species, the number and estimated weight of surplus salmon and steelhead and a description of the disposition of the adult carcasses including, but not limited to, the following categories:

- (a) Disposed in landfills;

(b) Transferred to another government agency for reproductive purposes;

(c) Sold to contract buyers in the round;

(d) Sold to contract buyers after spawning;

(e) Transferred to Native American tribes;

(f) Donated to food banks; and

(g) Used in stream nutrient enrichment programs.

(3) The report shall also include, by species, information on the number of requests for viable salmon eggs, the number of these requests that were granted and the number that were denied, the geographic areas for which these requests were granted or denied, and a brief explanation given for each denial of a request for viable salmon eggs.

(4) The report shall be included in the biennial state of the salmon report required by RCW 77.85.020 and other similar state reports on salmon.

(5) The report shall include an assessment of the infrastructure needs and facility modifications necessary to implement chapter 337, Laws of 2001. [2001 c 337 § 5.]

**77.04.170 Funding for fish stock protection or recovery programs—Prioritization and selection process requirements—Development of outcome-focused performance measures.** In administering programs funded with moneys from the capital budget related to protection or recovery of fish stocks, the department shall incorporate the environmental benefits of a project into its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 11.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**Chapter 77.08 RCW**

**GENERAL TERMS DEFINED**

Sections

- 77.08.010 Definitions.
- 77.08.020 "Game fish" defined.
- 77.08.022 "Food fish" defined.
- 77.08.024 "Salmon" defined.
- 77.08.030 "Big game" defined.
- 77.08.045 Migratory waterfowl terms defined.

**77.08.010 Definitions.** The definitions in this section apply throughout this title or rules adopted under this title unless the context clearly requires otherwise.

(1) "Angling gear" means a line attached to a rod and reel capable of being held in hand while landing the fish or a hand-held line operated without rod or reel.

(2) "Aquatic invasive species" means any invasive, prohibited, regulated, unregulated, or unlisted aquatic animal or plant species as defined under subsections (48) through (53) of this section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c), and aquatic nuisance species as defined under RCW 77.60.130(1).

(3) "Aquatic plant species" means an emergent, submersed, partially submersed, free-floating, or floating-leaving plant species that grows in or near a body of water or wetland.

(4) "Bag limit" means the maximum number of game animals, game birds, or game fish which may be taken, caught, killed, or possessed by a person, as specified by rule of the commission for a particular period of time, or as to size, sex, or species.

(5) "Closed area" means a place where the hunting of some or all species of wild animals or wild birds is prohibited.

(6) "Closed season" means all times, manners of taking, and places or waters other than those established by rule of the commission as an open season. "Closed season" also means all hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that do not conform to the special restrictions or physical descriptions established by rule of the commission as an open season or that have not otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission as an open season.

(7) "Closed waters" means all or part of a lake, river, stream, or other body of water, where fishing or harvesting is prohibited.

(8) "Commercial" means related to or connected with buying, selling, or bartering.

(9) "Commission" means the state fish and wildlife commission.

(10) "Concurrent waters of the Columbia river" means those waters of the Columbia river that coincide with the Washington-Oregon state boundary.

(11) "Deleterious exotic wildlife" means species of the animal kingdom not native to Washington and designated as dangerous to the environment or wildlife of the state.

(12) "Department" means the department of fish and wildlife.

(13) "Director" means the director of fish and wildlife.

(14) "Endangered species" means wildlife designated by the commission as seriously threatened with extinction.

(15) "Ex officio fish and wildlife officer" means a commissioned officer of a municipal, county, state, or federal agency having as its primary function the enforcement of criminal laws in general, while the officer is in the appropriate jurisdiction. The term "ex officio fish and wildlife officer" includes special agents of the national marine fisheries service, state parks commissioned officers, United States fish and wildlife special agents, department of natural resources enforcement officers, and United States forest service officers, while the agents and officers are within their respective jurisdictions.

(16) "Fish" includes all species classified as game fish or food fish by statute or rule, as well as all fin fish not currently classified as food fish or game fish if such species exist in state waters. The term "fish" includes all stages of development and the bodily parts of fish species.

(17) "Fish and wildlife officer" means a person appointed and commissioned by the director, with authority to enforce this title and rules adopted pursuant to this title, and other statutes as prescribed by the legislature. Fish and

wildlife officer includes a person commissioned before June 11, 1998, as a wildlife agent or a fisheries patrol officer.

(18) "Fishery" means the taking of one or more particular species of fish or shellfish with particular gear in a particular geographical area.

(19) "Freshwater" means all waters not defined as salt-water including, but not limited to, rivers upstream of the river mouth, lakes, ponds, and reservoirs.

(20) "Fur-bearing animals" means game animals that shall not be trapped except as authorized by the commission.

(21) "Game animals" means wild animals that shall not be hunted except as authorized by the commission.

(22) "Game birds" means wild birds that shall not be hunted except as authorized by the commission.

(23) "Game farm" means property on which wildlife is held or raised for commercial purposes, trade, or gift. The term "game farm" does not include publicly owned facilities.

(24) "Game reserve" means a closed area where hunting for all wild animals and wild birds is prohibited.

(25) "Invasive species" means a plant species or a nonnative animal species that either:

(a) Causes or may cause displacement of, or otherwise threatens, native species in their natural communities;

(b) Threatens or may threaten natural resources or their use in the state;

(c) Causes or may cause economic damage to commercial or recreational activities that are dependent upon state waters; or

(d) Threatens or harms human health.

(26) "License year" means the period of time for which a recreational license is valid. The license year begins April 1st, and ends March 31st.

(27) "Limited-entry license" means a license subject to a license limitation program established in chapter 77.70 RCW.

(28) "Nonresident" means a person who has not fulfilled the qualifications of a resident.

(29) "Offshore waters" means marine waters of the Pacific Ocean outside the territorial boundaries of the state, including the marine waters of other states and countries.

(30) "Open season" means those times, manners of taking, and places or waters established by rule of the commission for the lawful hunting, fishing, taking, or possession of game animals, game birds, game fish, food fish, or shellfish that conform to the special restrictions or physical descriptions established by rule of the commission or that have otherwise been deemed legal to hunt, fish, take, harvest, or possess by rule of the commission. "Open season" includes the first and last days of the established time.

(31) "Person" means and includes an individual; a corporation; a public or private entity or organization; a local, state, or federal agency; all business organizations, including corporations and partnerships; or a group of two or more individuals acting with a common purpose whether acting in an individual, representative, or official capacity.

(32) "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter.

(33) "Predatory birds" means wild birds that may be hunted throughout the year as authorized by the commission.

(34) "Prohibited aquatic animal species" means an invasive species of the animal kingdom that has been classified as a prohibited aquatic animal species by the commission.

(35) "Protected wildlife" means wildlife designated by the commission that shall not be hunted or fished.

(36) "Raffle" means an activity in which tickets bearing an individual number are sold for not more than twenty-five dollars each and in which a permit or permits are awarded to hunt or for access to hunt big game animals or wild turkeys on the basis of a drawing from the tickets by the person or persons conducting the raffle.

(37) "Recreational and commercial watercraft" includes the boat, as well as equipment used to transport the boat, and any auxiliary equipment such as attached or detached outboard motors.

(38) "Regulated aquatic animal species" means a potentially invasive species of the animal kingdom that has been classified as a regulated aquatic animal species by the commission.

(39) "Resident" means:

(a) A person who has maintained a permanent place of abode within the state for at least ninety days immediately preceding an application for a license, has established by formal evidence an intent to continue residing within the state, and who is not licensed to hunt or fish as a resident in another state; and

(b) A person age eighteen or younger who does not qualify as a resident under (a) of this subsection, but who has a parent that qualifies as a resident under (a) of this subsection.

(40) "Retail-eligible species" means commercially harvested salmon, crab, and sturgeon.

(41) "Saltwater" means those marine waters seaward of river mouths.

(42) "Seaweed" means marine aquatic plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free floating form, and includes but is not limited to marine aquatic plants in the classes Chlorophyta, Phaeophyta, and Rhodophyta.

(43) "Senior" means a person seventy years old or older.

(44) "Shellfish" means those species of marine and freshwater invertebrates that have been classified and that shall not be taken except as authorized by rule of the commission. The term "shellfish" includes all stages of development and the bodily parts of shellfish species.

(45) "State waters" means all marine waters and fresh waters within ordinary high water lines and within the territorial boundaries of the state.

(46) "To fish," "to harvest," and "to take," and their derivatives means an effort to kill, injure, harass, or catch a fish or shellfish.

(47) "To hunt" and its derivatives means an effort to kill, injure, capture, or harass a wild animal or wild bird.

(48) "To process" and its derivatives mean preparing or preserving fish, wildlife, or shellfish.

(49) "To trap" and its derivatives means a method of hunting using devices to capture wild animals or wild birds.

(50) "Trafficking" means offering, attempting to engage, or engaging in sale, barter, or purchase of fish, shellfish, wildlife, or deleterious exotic wildlife.

(51) "Unlisted aquatic animal species" means a nonnative animal species that has not been classified as a prohibited aquatic animal species, a regulated aquatic animal species, or an unregulated aquatic animal species by the commission.

(52) "Unregulated aquatic animal species" means a nonnative animal species that has been classified as an unregulated aquatic animal species by the commission.

(53) "Wild animals" means those species of the class Mammalia whose members exist in Washington in a wild state and the species *Rana catesbeiana* (bullfrog). The term "wild animal" does not include feral domestic mammals or old world rats and mice of the family Muridae of the order Rodentia.

(54) "Wild birds" means those species of the class Aves whose members exist in Washington in a wild state.

(55) "Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. This includes but is not limited to mammals, birds, reptiles, amphibians, fish, and invertebrates. The term "wildlife" does not include feral domestic mammals, old world rats and mice of the family Muridae of the order Rodentia, or those fish, shellfish, and marine invertebrates classified as food fish or shellfish by the director. The term "wildlife" includes all stages of development and the bodily parts of wildlife members.

(56) "Youth" means a person fifteen years old for fishing and under sixteen years old for hunting. [2008 c 277 § 2. Prior: 2007 c 350 § 2; 2007 c 254 § 1; 2005 c 104 § 1; 2003 c 387 § 1; 2002 c 281 § 2; 2001 c 253 § 10; 2000 c 107 § 207; 1998 c 190 § 111; 1996 c 207 § 2; 1993 sp.s. c 2 § 66; 1989 c 297 § 7; 1987 c 506 § 11; 1980 c 78 § 9; 1955 c 36 § 77.08.010; prior: 1947 c 275 § 9; Rem. Supp. 1947 § 5992-19.]

**Alphabetization—2008 c 277:** "The code reviser is directed to put the defined terms in RCW 77.08.010 in alphabetical order." [2008 c 277 § 1.]

**Purpose—2002 c 281:** "The legislature recognizes the potential economic and environmental damage that can occur from the introduction of invasive aquatic species. The purpose of this act is to increase public awareness of invasive aquatic species and enhance the department of fish and wildlife's regulatory capability to address threats posed by these species." [2002 c 281 § 1.]

**Intent—1996 c 207:** "It is the intent of the legislature to clarify hunting and fishing laws in light of the decision in *State v. Bailey*, 77 Wn. App. 732 (1995). The fish and wildlife commission has the authority to establish hunting and fishing seasons. These seasons are defined by limiting the times, manners of taking, and places or waters for lawful hunting, fishing, or possession of game animals, game birds, or game fish, as well as by limiting the physical characteristics of the game animals, game birds, or game fish which may be lawfully taken at those times, in those manners, and at those places or waters." [1996 c 207 § 1.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.08.020 "Game fish" defined.** (1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

Scientific Name	Common Name
Ambloplites rupestris	rock bass
Coregonus clupeaformis	lake white fish
Ictalurus furcatus	blue catfish
Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
Ictalurus punctatus	channel catfish
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or fresh water ling
Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
Oncorhynchus aquabonita	golden trout
Oncorhynchus clarkii	cutthroat trout
Oncorhynchus mykiss	rainbow or steelhead trout
Salmo salar (in its landlocked form)	Atlantic salmon
Salmo trutta	brown trout
Salvelinus fontinalis	eastern brook trout
Salvelinus malma	Dolly Varden trout
Salvelinus namaycush	lake trout
Stizostedion vitreum	Walleye
Thymallus arcticus	arctic grayling

(2) Private sector cultured aquatic products as defined in RCW 15.85.020 are not game fish. [1989 c 218 § 2; 1985 c 457 § 21; 1980 c 78 § 10; 1969 ex.s. c 19 § 1; 1955 c 36 § 77.08.020. Prior: 1947 c 275 § 10; Rem. Supp. 1947 § 5992-20.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.08.022 "Food fish" defined.** "Food fish" means those species of the classes Osteichthyes, Agnatha, and Chondrichthyes that have been classified and that shall not be fished for except as authorized by rule of the commission. The term "food fish" includes all stages of development and the bodily parts of food fish species. [2000 c 107 § 208.]

**77.08.024 "Salmon" defined.** "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in RCW 77.08.020, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorboscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

[2000 c 107 § 209.]

[Title 77 RCW—page 8]

**77.08.030 "Big game" defined.** As used in this title or rules of the commission, "big game" means the following species:

Scientific Name	Common Name
<i>Cervus canadensis</i>	elk or wapiti
<i>Odocoileus hemionus</i>	blacktail deer or mule deer
<i>Odocoileus virginianus</i>	whitetail deer
<i>Alces americana</i>	moose
<i>Oreamnos americanus</i>	mountain goat
<i>Rangifer caribou</i>	caribou
<i>Ovis canadensis</i>	mountain sheep
<i>Antilocapra americana</i>	pronghorn antelope
<i>Felis concolor</i>	cougar or mountain lion
<i>Euarctos americana</i>	black bear
<i>Ursus horribilis</i>	grizzly bear

[1980 c 78 § 11; 1971 ex.s. c 166 § 1.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.08.045 Migratory waterfowl terms defined.** As used in this title or rules adopted pursuant to this title:

(1) "Migratory waterfowl" means members of the family Anatidae, including brants, ducks, geese, and swans;

(2) "Migratory bird" means migratory waterfowl and coots, snipe, doves, and band-tailed pigeon;

(3) "Migratory bird stamp" means the stamp that is required by RCW 77.32.350 to be in the possession of all persons to hunt migratory birds;

(4) "Prints and artwork" means replicas of the original stamp design that are sold to the general public. Prints and artwork are not to be construed to be the migratory bird stamp that is required by RCW 77.32.350. Artwork may be any facsimile of the original stamp design, including color renditions, metal duplications, or any other kind of design; and

(5) "Migratory waterfowl art committee" means the committee created by RCW 77.12.680. The committee's primary function is to select the annual migratory bird stamp design. [1998 c 191 § 31; 1987 c 506 § 12; 1985 c 243 § 2.]

**Effective date—1998 c 191:** See note following RCW 77.32.050.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

## Chapter 77.12 RCW POWERS AND DUTIES

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*Wild salmonid policy: RCW 77.65.420.*

**77.12.010 Limitation on prohibiting fishing with bait or artificial lures.** The commission shall not adopt rules that categorically prohibit fishing with bait or artificial lures in streams, rivers, beaver ponds, and lakes except that the commission may adopt rules and regulations restricting fishing methods upon a determination by the director that an individual body of water or part thereof clearly requires a fishing method prohibition to conserve or enhance the fisheries resource or to provide selected fishing alternatives. [2000 c 107 § 210; 1985 c 438 § 1; 1980 c 78 § 12; 1977 c 74 § 1; 1955 c 36 § 77.12.010. Prior: 1947 c 275 § 11; Rem. Supp. 1947 § 5992-21.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.020 Wildlife to be classified.** (1) The director shall investigate the habits and distribution of the various species of wildlife native to or adaptable to the habitats of the state. The commission shall determine whether a species should be managed by the department and, if so, classify it under this section.

(2) The commission may classify by rule wild animals as game animals and game animals as fur-bearing animals.

(3) The commission may classify by rule wild birds as game birds or predatory birds. All wild birds not otherwise classified are protected wildlife.

(4) In addition to those species listed in RCW 77.08.020, the commission may classify by rule as game fish other species of the class Osteichthyes that are commonly found in fresh water except those classified as food fish by the director.

(5) The director may recommend to the commission that a species of wildlife should not be hunted or fished. The commission may designate species of wildlife as protected.

(6) If the director determines that a species of wildlife is seriously threatened with extinction in the state of Washington, the director may request its designation as an endangered species. The commission may designate an endangered species.

(7) If the director determines that a species of the animal kingdom, not native to Washington, is dangerous to the environment or wildlife of the state, the director may request its designation as deleterious exotic wildlife. The commission may designate deleterious exotic wildlife.

(8) Upon recommendation by the director, the commission may classify nonnative aquatic animal species according to the following categories:

(a) Prohibited aquatic animal species: These species are considered by the commission to have a high risk of becoming an invasive species and may not be possessed, imported, purchased, sold, propagated, transported, or released into state waters except as provided in RCW 77.15.253;

(b) Regulated aquatic animal species: These species are considered by the commission to have some beneficial use along with a moderate, but manageable risk of becoming an invasive species, and may not be released into state waters, except as provided in RCW 77.15.253. The commission shall classify the following commercial aquaculture species as regulated aquatic animal species, and allow their release into state waters pursuant to rule of the commission: Pacific oyster (*Crassostrea gigas*), kumamoto oyster (*Crassostrea sikamea*), European flat oyster (*Ostrea edulis*), eastern oyster (*Crassostrea virginica*), manila clam (*Tapes philippinarum*), blue mussel (*Mytilus galloprovincialis*), and suminoe oyster (*Crassostrea ariakenensis*);

(c) Unregulated aquatic animal species: These species are considered by the commission as having some beneficial use along with a low risk of becoming an invasive species, and are not subject to regulation under this title;

(d) Unlisted aquatic animal species: These species are not designated as a prohibited aquatic animal species, regulated aquatic animal species, or unregulated aquatic animal species by the commission, and may not be released into state waters. Upon request, the commission may determine the appropriate category for an unlisted aquatic animal species and classify the species accordingly;

(e) This subsection (8) does not apply to the transportation or release of nonnative aquatic animal species by ballast water or ballast water discharge.

(9) Upon recommendation by the director, the commission may develop a work plan to eradicate native aquatic species that threaten human health. Priority shall be given to water bodies that the department of health has classified as representing a threat to human health based on the presence of a native aquatic species. [2002 c 281 § 3; 1994 c 264 § 53; 1987 c 506 § 13; 1980 c 78 § 13; 1969 ex.s. c 18 § 1; 1955 c 36 § 77.12.020. Prior: 1947 c 275 § 12; Rem. Supp. 1947 § 5992-22.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.031 Llamas and alpacas.** The authority of the department does not extend to preventing, controlling, or suppressing diseases in llamas or alpacas or to controlling the movement or sale of llamas or alpacas.

This section shall not be construed as granting or denying authority to the department to prevent, control, or sup-

press diseases in any animals other than llamas and alpacas. [1994 c 264 § 54; 1993 c 80 § 4.]

**77.12.035 Protection of grizzly bears—Limitation on transplantation or introduction—Negotiations with federal and state agencies.** The commission shall protect grizzly bears and develop management programs on publicly owned lands that will encourage the natural regeneration of grizzly bears in areas with suitable habitat. Grizzly bears shall not be transplanted or introduced into the state. Only grizzly bears that are native to Washington state may be utilized by the department for management programs. The department is directed to fully participate in all discussions and negotiations with federal and state agencies relating to grizzly bear management and shall fully communicate, support, and implement the policies of this section. [2000 c 107 § 211; 1995 c 370 § 1.]

**77.12.037 Acquisition, use, and management of property—Condemnation—When authorized.** The commission may acquire by gift, easement, purchase, lease, or condemnation lands, buildings, water rights, rights-of-way, or other necessary property, and construct and maintain necessary facilities for purposes consistent with this title. The commission may authorize the director to acquire property under this section, but the power of condemnation may only be exercised by the director when an appropriation has been made by the legislature for the acquisition of a specific property, except to clear title and acquire access rights-of-way.

The commission may sell, lease, convey, or grant concessions upon real or personal property under the control of the department. [2000 c 107 § 4; 1995 1st sp.s. c 2 § 23 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 9; 1955 c 212 § 1; 1955 c 12 § 75.08.040. Prior: 1949 c 112 § 7(2); Rem. Supp. 1949 § 5780-206(2). Formerly RCW 75.08.040.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

*Tidelands reserved for recreational use and taking of fish and shellfish:*  
RCW 79.125.740, 79.125.750.

**77.12.038 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 8.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

**77.12.039 Acceptance of funds or property for damage claims or conservation of fish, shellfish, and wildlife resources.** The director may accept money or real property from persons under conditions requiring the use of the property or money for the protection, rehabilitation, preservation, or conservation of the state wildlife, fish, and shellfish resources, or in settlement of claims for damages to wildlife, fish, and shellfish resources. The director shall only accept real property useful for the protection, rehabilitation, preservation, or conservation of fish, shellfish, and wildlife resources. [2001 c 253 § 11; 2000 c 107 § 5; 1995 1st sp.s. c 2 § 24 (Referendum Bill No. 45, approved November 7,

1995); 1983 1st ex.s. c 46 § 11; 1955 c 12 § 75.16.050. Prior: 1949 c 112 § 51; Rem. Supp. 1949 § 5780-325. Formerly RCW 75.08.045, 75.16.050.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.043 Contracts and agreements for propagation of fish or shellfish.** (1) The director may enter into contracts and agreements with a person to secure fish or shellfish or for the construction, operation, and maintenance of facilities for the propagation of fish or shellfish.

(2) The director may enter into contracts and agreements to procure from private aquaculturists fish or shellfish with which to stock state waters. [2001 c 253 § 12; 1985 c 458 § 7; 1983 1st ex.s. c 46 § 13; 1955 c 12 § 75.16.070. Prior: 1949 c 112 § 53; Rem. Supp. 1949 § 5780-327. Formerly RCW 75.08.065, 75.16.070.]

**Severability—1985 c 458:** See RCW 77.95.900.

**77.12.045 Territorial authority of commission—Adoption of federal regulations and rules of fisheries commissions and compacts.** Consistent with federal law, the commission's authority extends to all areas and waters within the territorial boundaries of the state, to the offshore waters, and to the concurrent waters of the Columbia river.

Consistent with federal law, the commission's authority extends to fishing in offshore waters by residents of this state.

The commission may adopt rules consistent with the regulations adopted by the United States department of commerce for the offshore waters. The commission may adopt rules consistent with the recommendations or regulations of the Pacific marine fisheries commission, Columbia river compact, the Pacific salmon commission as provided in chapter 77.75 RCW, or the international Pacific halibut commission. [2001 c 253 § 13; 1995 1st sp.s. c 2 § 10 (Referendum Bill No. 45, approved November 7, 1995); 1989 c 130 § 1; 1983 1st ex.s. c 46 § 14; 1955 c 12 § 75.08.070. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part. Formerly RCW 75.08.070.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.047 Scope of commission's authority to adopt rules—Application to private tideland owners or lessees of the state.** (1) The commission may adopt, amend, or repeal rules as follows:

(a) Specifying the times when the taking of wildlife, fish, or shellfish is lawful or unlawful.

(b) Specifying the areas and waters in which the taking and possession of wildlife, fish, or shellfish is lawful or unlawful.

(c) Specifying and defining the gear, appliances, or other equipment and methods that may be used to take wildlife, fish, or shellfish, and specifying the times, places, and manner in which the equipment may be used or possessed.

(d) Regulating the importation, transportation, possession, disposal, landing, and sale of wildlife, fish, shellfish, or

seaweed within the state, whether acquired within or without the state.

(e) Regulating the prevention and suppression of diseases and pests affecting wildlife, fish, or shellfish.

(f) Regulating the size, sex, species, and quantities of wildlife, fish, or shellfish that may be taken, possessed, sold, or disposed of.

(g) Specifying the statistical and biological reports required from fishers, dealers, boathouses, or processors of wildlife, fish, or shellfish.

(h) Classifying species of marine and freshwater life as food fish or shellfish.

(i) Classifying the species of wildlife, fish, and shellfish that may be used for purposes other than human consumption.

(j) Regulating the taking, sale, possession, and distribution of wildlife, fish, shellfish, or deleterious exotic wildlife.

(k) Establishing game reserves and closed areas where hunting for wild animals or wild birds may be prohibited.

(l) Regulating the harvesting of fish, shellfish, and wildlife in the federal exclusive economic zone by vessels or individuals registered or licensed under the laws of this state.

(m) Authorizing issuance of permits to release, plant, or place fish or shellfish in state waters.

(n) Governing the possession of fish, shellfish, or wildlife so that the size, species, or sex can be determined visually in the field or while being transported.

(o) Other rules necessary to carry out this title and the purposes and duties of the department.

(2) Subsections (1)(a), (b), (c), (d), and (f) of this section do not apply to private tideland owners and lessees and the immediate family members of the owners or lessees of state tidelands, when they take or possess oysters, clams, cockles, borers, or mussels, excluding razor clams, produced on their own private tidelands or their leased state tidelands for personal use.

"Immediate family member" for the purposes of this section means a spouse, brother, sister, grandparent, parent, child, or grandchild.

(3) Except for subsection (1)(g) of this section, this section does not apply to private sector cultured aquatic products as defined in RCW 15.85.020. Subsection (1)(g) of this section does apply to such products. [2001 c 253 § 14; 2000 c 107 § 7; 1995 1st sp.s. c 2 § 11 (Referendum Bill No. 45, approved November 7, 1995); 1993 c 117 § 1; 1985 c 457 § 17; 1983 1st ex.s. c 46 § 15; 1980 c 55 § 1; 1955 c 12 § 75.08.080. Prior: 1949 c 112 § 6, part; Rem. Supp. 1949 § 5780-205, part. Formerly RCW 75.08.080.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.065 Wildlife viewing tourism.** The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports wildlife viewing tourism without impairing the state's wildlife resources. [2003 c 183 § 1.]

**77.12.068 Dissemination of information about RCW 77.15.740 and responsible wildlife viewing.** The depart-

ment and the state parks and recreation commission shall disseminate information about RCW 77.15.740, whale and wildlife viewing guidelines, and other responsible wildlife viewing messages to educate Washington's citizens on how to reduce the risk of disturbing southern resident orca whales. The department and the state parks and recreation commission must, at minimum, disseminate this information on their internet sites and through appropriate agency publications, brochures, and other information sources. The department and the state parks and recreation commission shall also attempt to reach the state's boating community by coordinating with appropriate state and nongovernmental entities to provide this information at marinas, boat shows, boat dealers, during boating safety training courses, and in conjunction with vessel registration or licensing. [2008 c 225 § 4.]

**Findings—Intent—2008 c 225:** See notes following RCW 77.15.740.

**77.12.071 Sampling of fish, wildlife, or shellfish by department employees.** (1) Department employees, in carrying out their duties under this title on public lands or state waters, may:

(a) Collect samples of tissue, fluids, or other bodily parts of fish, wildlife, or shellfish; or

(b) Board vessels in state waters engaged in commercial and recreational harvest activities to collect samples of fish, wildlife, or shellfish.

(i) Department employees shall ask permission from the owner or his or her agent before boarding vessels in state waters.

(ii) If an employee of the department is denied access to any vessel where access was sought for the purposes of (b) of this subsection, the department employee may contact an enforcement officer for assistance in applying for a search warrant authorizing access to the vessel in order to carry out the department employee's duties under this section.

(2) Department employees must have official identification, announce their presence and intent, and perform their duties in a safe and professional manner while carrying out the activities in this section.

(3) This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(4) This section does not apply to fish and wildlife officers and ex officio fish and wildlife officers carrying out their duties under this title. [2007 c 337 § 2.]

**Intent—Finding—2007 c 337:** "The legislature intends that sampling of fish, wildlife, and shellfish by department of fish and wildlife employees will ensure the conservation and management of fish, shellfish, and wildlife. Because the harvest of fish and wildlife is regulated by the department, the legislature finds that sampling by departmental employees will benefit the resource, and will further the department's research related to fish, wildlife, and shellfish. This section and RCW 77.12.071 do not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020." [2007 c 337 § 1.]

**77.12.140 Acquisition or sale of wildlife.** The director, acting in a manner not inconsistent with criteria established by the commission, may obtain by purchase, gift, or exchange and may sell or transfer wildlife and their eggs for stocking, research, or propagation. [1987 c 506 § 23; 1980 c 78 § 28; 1955 c 36 § 77.12.140. Prior: 1947 c 275 § 24; Rem. Supp. 1947 § 5992-34.]

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**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.150 Game seasons—Opening and closing—Special hunt.** (1) By emergency rule only, and in accordance with criteria established by the commission, the director may close or shorten a season for game animals, game birds, or game fish, and after a season has been closed or shortened, may reopen it and reestablish bag limits on game animals, game birds, or game fish during that season. The director shall advise the commission of the adoption of emergency rules. A copy of an emergency rule, certified as a true copy by the director or by a person authorized in writing by the director to make the certification, is admissible in court as prima facie evidence of the adoption and validity of the rule.

(2)(a) If the director finds that game animals have increased in numbers in an area of the state so that they are damaging public or private property or over-utilizing their habitat, the commission may establish a special hunting season and designate the time, area, and manner of taking and the number and sex of the animals that may be killed or possessed by a licensed hunter. The director shall include notice of the special season in the rules establishing open seasons.

(b) When the department receives six complaints concerning damage to commercial agricultural and horticultural crop production by wildlife from the owner or tenant of real property, or from several owners or tenants in a locale, the commission shall conduct a special hunt or special hunts or take remedial action to reduce the potential for the damage, and shall authorize either one or two permits per hunter. Each complaint must be confirmed by qualified department staff, or their designee.

(c) The director shall determine by random selection the identity of hunters who may hunt within the area of the special hunt and shall determine the conditions and requirements of the selection process. Within this process, the department must maintain a list of all persons holding valid wildlife hunting licenses, arranged by county of residence, who may hunt deer or elk that are causing damage to crops. The department must update the list annually and utilize the list when contacting persons to assist in controlling game damage to crops. The department must make all reasonable efforts to contact individuals residing within the county where the hunting of deer or elk will occur before contacting a person who is not a resident of that county. The department must randomize the names of people on the list in order to provide a fair distribution of the hunting opportunities. Hunters who participate in hunts under this section must report any kills to the department. The department must include a summary of the wildlife harvested in these hunts in the annual game management reports it makes available to the public. [2003 c 385 § 2; 1987 c 506 § 24; 1984 c 240 § 4; 1980 c 78 § 29; 1977 ex.s. c 58 § 1; 1975 1st ex.s. c 102 § 1; 1955 c 36 § 77.12.150. Prior: 1949 c 205 § 2; 1947 c 275 § 25; Rem. Supp. 1949 § 5992-35.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

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*Special hunting season permits: RCW 77.32.370.*

#### **77.12.152 Commission may designate fishing areas.**

The commission may designate the boundaries of fishing areas by driving piling or by establishing monuments or by description of landmarks or section lines and directional headings. [1995 1st sp.s. c 2 § 14 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 18; 1955 c 12 § 75.08.120. Prior: 1949 c 112 § 10; Rem. Supp. 1949 § 5780-209. Formerly RCW 75.08.120.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.154 Right of entry—Aircraft operated by department.** The director, fish and wildlife officers, ex officio fish and wildlife officers, and department employees may enter upon any land or waters and remain there while performing their duties without liability for trespass.

It is lawful for aircraft operated by the department to land and take off from the beaches or waters of the state. [1998 c 190 § 71; 1983 1st ex.s. c 46 § 19; 1955 c 12 § 75.08.160. Prior: 1949 c 112 § 13; Rem. Supp. 1949 § 5780-212. Formerly RCW 75.08.160.]

**77.12.170 State wildlife account—Deposits.** (1) There is established in the state treasury the state wildlife account which consists of moneys received from:

- (a) Rentals or concessions of the department;
- (b) The sale of real or personal property held for department purposes;
- (c) The assessment of administrative penalties, and the sale of licenses, permits, tags, and stamps required by chapter 77.32 RCW and RCW 77.65.490, except annual resident adult saltwater and all annual razor clam and shellfish licenses, which shall be deposited into the state general fund;
- (d) Fees for informational materials published by the department;
- (e) Fees for personalized vehicle, Wild on Washington, and Endangered Wildlife license plates and Washington's Wildlife license plate collection as provided in chapter 46.16 RCW;
- (f) Articles or wildlife sold by the director under this title;
- (g) Compensation for damage to department property or wildlife losses or contributions, gifts, or grants received under RCW 77.12.320;
- (h) Excise tax on anadromous game fish collected under chapter 82.27 RCW;
- (i) The sale of personal property seized by the department for fish, shellfish, or wildlife violations;
- (j) The department's share of revenues from auctions and raffles authorized by the commission; and
- (k) The sale of watchable wildlife decals under RCW 77.32.560.

(2) State and county officers receiving any moneys listed in subsection (1) of this section shall deposit them in the state treasury to be credited to the state wildlife account. [2005 c 418 § 3; 2005 c 225 § 4; 2005 c 224 § 4; 2005 c 42 § 4; 2004 c 248 § 4; 2003 c 317 § 3; 2001 c 253 § 15; 2000 c 107 § 216.

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Prior: 1998 c 191 § 38; 1998 c 87 § 2; 1996 c 101 § 7; 1989 c 314 § 4; 1987 c 506 § 25; 1984 c 258 § 334; prior: 1983 1st ex.s. c 8 § 2; 1983 c 284 § 1; 1981 c 310 § 2; 1980 c 78 § 30; 1979 c 56 § 1; 1973 1st ex.s. c 200 § 12 (Referendum Bill No. 33); 1969 ex.s. c 199 § 33; 1955 c 36 § 77.12.170; prior: 1947 c 275 § 27; Rem. Supp. 1947 § 5992-37.]

**Reviser's note:** This section was amended by 2005 c 42 § 4, 2005 c 224 § 4, 2005 c 225 § 4, and by 2005 c 418 § 3, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—2003 c 317:** See note following RCW 77.32.560.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1998 c 87:** See note following RCW 77.32.380.

**Findings—1996 c 101:** See note following RCW 77.32.530.

**Finding—1989 c 314:** See note following RCW 77.15.098.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**Effective dates—1981 c 310:** "(1) Sections 9 and 10 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981.

(2) Section 13 of this act shall take effect on May 1, 1982.

(3) Sections 8, 11, 12, and 14 of this act shall take effect on July 1, 1982.

(4) All other sections of this act shall take effect on January 1, 1982." [1981 c 310 § 32.]

**Legislative intent—1981 c 310:** "The legislature finds that abundant deer and elk populations are in the best interest of the state, and for many reasons the state's deer and elk populations have apparently declined. The legislature further finds that antlerless deer and elk seasons have been an issue of great controversy throughout the state, and that antlerless deer and elk seasons may contribute to a further decline in the state's deer and elk populations." [1981 c 310 § 1.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.177 Disposition of moneys collected—Proceeds from sale of food fish or shellfish—Unanticipated receipts.** (1) Except as provided in this title, state and county officers receiving the following moneys shall deposit them in the state general fund:

- (a) The sale of commercial licenses required under this title, except for licenses issued under RCW 77.65.490; and
- (b) Moneys received for damages to food fish or shellfish.

(2) The director shall make weekly remittances to the state treasurer of moneys collected by the department.

(3) All fines and forfeitures collected or assessed by a district court for a violation of this title or rule of the department shall be remitted as provided in chapter 3.62 RCW.

(4) Proceeds from the sale of food fish or shellfish taken in test fishing conducted by the department, to the extent that these proceeds exceed the estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270 to reimburse the department for unanticipated costs for test fishing operations in excess of the allowance in the budget approved by the legislature.

(5) Proceeds from the sale of salmon carcasses and salmon eggs from state general funded hatcheries by the department of general administration shall be deposited in the

regional fisheries enhancement group account established in RCW 77.95.090.

(6) Moneys received by the commission under RCW 77.12.039, to the extent these moneys exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for the specific purpose for which the moneys were received, unless the moneys were received in settlement of a claim for damages to food fish or shellfish, in which case the moneys may be expended for the conservation of these resources.

(7) Proceeds from the sale of herring spawn on kelp fishery licenses by the department, to the extent those proceeds exceed estimates in the budget approved by the legislature, may be allocated as unanticipated receipts under RCW 43.79.270. Allocations under this subsection shall be made only for herring management, enhancement, and enforcement. [2001 c 253 § 16; 2000 c 107 § 10; 1996 c 267 § 3; 1995 c 367 § 11; 1993 c 340 § 48; 1989 c 176 § 4; 1987 c 202 § 230; 1984 c 258 § 332; 1983 1st ex.s. c 46 § 23; 1979 c 151 § 175; 1977 ex.s. c 327 § 33; 1975 1st ex.s. c 223 § 1; 1969 ex.s. c 199 § 31; 1969 ex.s. c 16 § 1; 1965 ex.s. c 72 § 2; 1955 c 12 § 75.08.230. Prior: 1951 c 271 § 2; 1949 c 112 § 25; Rem. Supp. 1949 § 5780-223. Formerly RCW 75.08.230.]

**Intent—1996 c 267:** "It is the intent of this legislation to begin to make the statutory changes required by the fish and wildlife commission in order to successfully implement Referendum Bill No. 45." [1996 c 267 § 1.]

**Effective date—1996 c 267:** "This act shall take effect July 1, 1996." [1996 c 267 § 36.]

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**77.12.184 Deposit of moneys from various activities—Production of regulation booklets.** (1) The department shall deposit all moneys received from the following activities into the \*state wildlife fund:

(a) The sale of interpretive, recreational, historical, educational, and informational literature and materials;

(b) The sale of advertisements in regulation pamphlets and other appropriate mediums; and

(c) Enrollment fees in department-sponsored educational training events.

(2) Moneys collected under subsection (1) of this section shall be spent primarily for producing regulation booklets for users and for the development, production, reprinting, and distribution of informational and educational materials. The department may also spend these moneys for necessary expenses associated with training activities, and other activities as determined by the director.

(3) Regulation pamphlets may be subsidized through appropriate advertising, but must be made available free of charge to the users.

(4) The director may enter into joint ventures with other agencies and organizations to generate revenue for providing public information and education on wildlife and hunting and fishing rules. [2000 c 252 § 1.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**77.12.190 Diversion of \*wildlife fund moneys prohibited.** Moneys in the \*state wildlife fund may be used only for the purposes of this title, including the payment of principal and interest on bonds issued for capital projects. [1991 sp.s. c 31 § 17; 1987 c 506 § 27; 1980 c 78 § 34; 1955 c 36 § 77.12.190. Prior: 1947 c 275 § 28; Rem. Supp. 1947 § 5992-38.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Severability—1991 sp.s. c 31:** See RCW 43.991.900.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.201 Counties may elect to receive an amount in lieu of taxes—County to record collections for violations of law or rules—Deposit.** The legislative authority of a county may elect, by giving written notice to the director and the treasurer prior to January 1st of any year, to obtain for the following year an amount in lieu of real property taxes on game lands as provided in RCW 77.12.203. Upon the election, the county shall keep a record of all fines, forfeitures, reimbursements, and costs assessed and collected, in whole or in part, under this title for violations of law or rules adopted pursuant to this title and shall monthly remit an amount equal to the amount collected to the state treasurer for deposit in the public safety and education account established under RCW 43.08.250. The election shall continue until the department is notified differently prior to January 1st of any year. [1987 c 506 § 29. Prior: 1984 c 258 § 335; 1984 c 214 § 1; 1980 c 78 § 36; 1977 ex.s. c 59 § 1; 1965 ex.s. c 97 § 2.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Effective date—1984 c 214:** "This act takes effect on January 1, 1985." [1984 c 214 § 3.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.203 In lieu payments authorized—Procedure—Game lands defined.** (1) Notwithstanding RCW 84.36.010 or other statutes to the contrary, the director shall pay by April 30th of each year on game lands in each county, if requested by an election under RCW 77.12.201, an amount in lieu of real property taxes equal to that amount paid on similar parcels of open space land taxable under chapter 84.34 RCW or the greater of seventy cents per acre per year or the amount paid in 1984 plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. This amount shall not be assessed or paid on department buildings, structures, facili-

ties, game farms, fish hatcheries, tidelands, or public fishing areas of less than one hundred acres.

(2) "Game lands," as used in this section and RCW 77.12.201, means those tracts one hundred acres or larger owned in fee by the department and used for wildlife habitat and public recreational purposes. All lands purchased for wildlife habitat, public access or recreation purposes with federal funds in the Snake River drainage basin shall be considered game lands regardless of acreage.

(3) This section shall not apply to lands transferred after April 23, 1990, to the department from other state agencies.

(4) The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 14; 1990 1st ex.s. c 15 § 11; 1984 c 214 § 2; 1980 c 78 § 37; 1965 ex.s. c 97 § 3.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Limitations—1990 1st ex.s. c 15:** "Amounts saved by operation of section 11 of this act during the 1989-91 fiscal biennium may be used only for financing capital facilities." [1990 1st ex.s. c 15 § 12.]

**Severability—1990 1st ex.s. c 15:** See note following RCW 43.99H.010.

**Effective date—1984 c 214:** See note following RCW 77.12.201.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.204 Grazing lands—Fish and wildlife goals—Implementation.** The department of fish and wildlife shall implement practices necessary to meet the standards developed under \*RCW 79.01.295 on agency-owned and managed agricultural and grazing lands. The standards may be modified on a site-specific basis as necessary and as determined by the department of fish and wildlife to achieve the goals established under \*RCW 79.01.295(1). Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to \*RCW 79.01.295.

This section shall in no way prevent the department of fish and wildlife from managing its lands according to the provisions of RCW 77.04.012, 77.12.210, or rules adopted pursuant to this chapter. [2001 c 253 § 17; 2000 c 107 § 217; 1993 sp.s. c 4 § 6.]

**\*Reviser's note:** RCW 79.01.295 was recodified as RCW 79.13.610 pursuant to 2003 c 334 § 557.

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

**77.12.210 Department property—Management, sale.** The director shall maintain and manage real or personal property owned, leased, or held by the department and shall control the construction of buildings, structures, and improvements in or on the property. The director may adopt rules for the operation and maintenance of the property.

The commission may authorize the director to sell, lease, convey, or grant concessions upon real or personal property under the control of the department. This includes the author-

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ity to sell timber, gravel, sand, and other materials or products from real property held by the department, and to sell or lease the department's real or personal property or grant concessions or rights-of-way for roads or utilities in the property. Oil and gas resources owned by the state which lie below lands owned, leased, or held by the department shall be offered for lease by the commissioner of public lands pursuant to chapter 79.14 RCW with the proceeds being deposited in the \*state wildlife fund: PROVIDED, That the commissioner of public lands shall condition such leases at the request of the department to protect wildlife and its habitat.

If the commission determines that real or personal property held by the department cannot be used advantageously by the department, the director may dispose of that property if it is in the public interest.

If the state acquired real property with use limited to specific purposes, the director may negotiate terms for the return of the property to the donor or grantor. Other real property shall be sold to the highest bidder at public auction. After appraisal, notice of the auction shall be published at least once a week for two successive weeks in a newspaper of general circulation within the county where the property is located at least twenty days prior to sale.

Proceeds from the sales shall be deposited in the \*state wildlife fund. [2000 c 107 § 218; 1987 c 506 § 30; 1980 c 78 § 38; 1969 ex.s. c 73 § 1; 1955 c 36 § 77.12.210. Prior: 1947 c 275 § 30; Rem. Supp. 1947 § 5992-40.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.220 Acquisition or transfer of property.** For purposes of this title, the commission may make agreements to obtain real or personal property or to transfer or convey property held by the state to the United States or its agencies or instrumentalities, units of local government of this state, public service companies, or other persons, if in the judgment of the commission and the attorney general the transfer and conveyance is consistent with public interest. For purposes of this section, "local government" means any city, town, county, special district, municipal corporation, or quasi-municipal corporation.

If the commission agrees to a transfer or conveyance under this section or to a sale or return of real property under RCW 77.12.210, the director shall certify, with the attorney general, to the governor that the agreement has been made. The certification shall describe the real property. The governor then may execute and the secretary of state attest and deliver to the appropriate entity or person the instrument necessary to fulfill the agreement. [2000 c 107 § 219; 1987 c 506 § 31; 1980 c 78 § 39; 1955 c 36 § 77.12.220. Prior: 1949 c 205 § 3; 1947 c 275 § 31; Rem. Supp. 1949 § 5992-41.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.230 Local assessments against department property.** The director may pay lawful local improvement district assessments for projects that may benefit wildlife or wildlife-oriented recreation made against lands held by the state for department purposes. The payments may be made from money appropriated from the \*state wildlife fund to the department. [1987 c 506 § 32; 1980 c 78 § 40; 1955 c 36 § 77.12.230. Prior: 1947 c 275 § 32; Rem. Supp. 1947 § 5992-42.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.240 Authority to take wildlife—Disposition.** The director may authorize the removal or killing of wildlife that is destroying or injuring property, or when it is necessary for wildlife management or research.

The director or other employees of the department shall dispose of wildlife taken or possessed by them under this title in the manner determined by the director to be in the best interest of the state. Proceeds from sales shall be deposited in the state treasury to be credited to the \*state wildlife fund. [1989 c 197 § 1; 1987 c 506 § 33; 1980 c 78 § 41; 1955 c 36 § 77.12.240. Prior: 1947 c 275 § 33; Rem. Supp. 1947 § 5992-43.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.260 Agreements to prevent damage to private property.** The director may make written agreements to prevent damage to private property by wildlife. The department may furnish money, material, or labor under these agreements. [1987 c 506 § 34; 1980 c 78 § 43; 1955 c 36 § 77.12.260. Prior: 1949 c 238 § 1; 1947 c 275 § 35; Rem. Supp. 1949 § 5992-45.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.262 Fish and wildlife officers compensation insurance—Medical aid.** The director shall provide compensation insurance for fish and wildlife officers, insuring these employees against injury or death in the performance of enforcement duties not covered under the workers' compensation act of the state. The beneficiaries and the compensation and benefits under the compensation insurance shall be the same as provided in chapter 51.32 RCW, and the compensation insurance also shall provide for medical aid and hospitalization to the extent and amount as provided in RCW 51.36.010 and 51.36.020. [2000 c 107 § 8; 1983 1st ex.s. c 46 § 20; 1971 ex.s. c 289 § 73; 1953 c 207 § 14. Formerly RCW 75.08.206, 43.25.047.]

**Effective date—Severability—1971 ex.s. c 289:** See RCW 51.98.060 and 51.98.070.

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**77.12.264 Fish and wildlife officers—Relieved from active duty when injured—Compensation.** The director shall relieve from active duty fish and wildlife officers who are injured in the performance of their official duties to such an extent as to be incapable of active service. While relieved from active duty, the employees shall receive one-half of their salary less any compensation received through the provisions of RCW 41.26.470, 41.40.200, 41.40.220, and 77.12.262. [2006 c 39 § 2; 2001 c 253 § 18; 2000 c 107 § 9; 1983 1st ex.s. c 46 § 22; 1957 c 216 § 1. Formerly RCW 75.08.208, 75.08.024.]

**Effective date—2006 c 39:** See note following RCW 41.26.470.

**77.12.275 Agreements with department of defense.** The commission may negotiate agreements with the United States department of defense to coordinate fishing in state waters over which the department of defense has assumed control. [1995 1st sp.s. c 2 § 7 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 8; 1955 c 12 § 75.08.025. Prior: 1953 c 207 § 11. Formerly RCW 75.08.025.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.285 Agreements with United States to protect Columbia River fish—Fish cultural stations and protective devices.** (1) The commission may enter into agreements with and receive funds from the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices in the Columbia River basin for improvement of feeding and spawning conditions for fish, for the protection of migratory fish from irrigation projects and for facilitating free migration of fish over obstructions.

(2) The director and the department may acquire by gift, purchase, lease, easement, or condemnation the use of lands where the construction or improvement is to be carried on by the United States. [2000 c 107 § 6; 1995 1st sp.s. c 2 § 8 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 23; 1987 c 506 § 94; 1983 1st ex.s. c 46 § 12; 1955 c 12 § 75.16.060. Prior: 1949 c 112 § 52; Rem. Supp. 1949 § 5780-326. Formerly RCW 75.08.055, 75.16.060.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.12.315 Dogs harassing deer and elk—Declaration of emergency—Taking dogs into custody or destroying—Immunity.** If the director determines that a severe problem exists in an area of the state because deer and elk are being pursued, harassed, attacked or killed by dogs, the director may declare by emergency rule that an emergency exists and specify the area where it is lawful for fish and wildlife officers to take into custody or destroy the dogs if necessary. Fish

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and wildlife officers who take into custody or destroy a dog pursuant to this section are immune from civil or criminal liability arising from their actions. [2000 c 107 § 221; 1987 c 506 § 40; 1980 c 78 § 49; 1971 ex.s. c 183 § 1.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.320 Agreements for purposes related to fish, shellfish, and wildlife—Acceptance of compensation, gifts, grants.** (1) The commission may make agreements with persons, political subdivisions of this state, or the United States or its agencies or instrumentalities, regarding fish, shellfish, and wildlife-oriented recreation and the propagation, protection, conservation, and control of fish, shellfish, and wildlife.

(2) The director may make written agreements with the owners or lessees of real or personal property to provide for the use of the property for fish, shellfish, and wildlife-oriented recreation. The director may adopt rules governing the conduct of persons in or on the real property.

(3) The director may accept compensation for fish, shellfish, and wildlife losses or gifts or grants of personal property for use by the department. [2001 c 253 § 19; 1987 c 506 § 41; 1980 c 78 § 50; 1975 1st ex.s. c 207 § 1; 1974 ex.s. c 67 § 1; 1955 c 36 § 77.12.320. Prior: 1947 c 275 § 37; Rem. Supp. 1947 § 5992-47.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.323 Special wildlife account—Investments.** (1) There is established in the \*state wildlife fund a special wildlife account. Moneys received under RCW 77.12.320 as now or hereafter amended as compensation for wildlife losses shall be deposited in the state treasury to be credited to the special wildlife account.

(2) The director may advise the state treasurer and the state investment board of a surplus in the special wildlife account above the current needs. The state investment board may invest and reinvest the surplus, as the commission deems appropriate, in an investment authorized by RCW 43.84.150 or in securities issued by the United States government as defined by RCW 43.84.080 (1) and (4). Income received from the investments shall be deposited to the credit of the special wildlife account. [1987 c 506 § 42; 1982 c 10 § 15. Prior: 1981 c 3 § 43; 1980 c 78 § 51; 1975 1st ex.s. c 207 § 2.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Effective dates—Severability—1981 c 3:** See notes following RCW 43.33A.010.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.325 Cooperation with Oregon to assure yields of Columbia river fish, shellfish, and wildlife.** The com-

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mission may cooperate with the Oregon fish and wildlife commission in the adoption of rules to ensure an annual yield of fish, shellfish, and wildlife on the Columbia river and to prevent the taking of fish, shellfish, and wildlife at places or times that might endanger fish, shellfish, and wildlife. [2001 c 253 § 20; 1980 c 78 § 52; 1959 c 315 § 2.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.330 Exclusive fishing waters for youths.** The commission may establish by rule exclusive fishing waters for minors within specified ages. [1980 c 78 § 53; 1955 c 36 § 77.12.330. Prior: 1947 c 275 § 38; Rem. Supp. 1947 § 5992-48.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.360 Withdrawal of state land from lease—Compensation.** Upon written request of the department, the department of natural resources may withdraw from lease state-owned lands described in the request. The request shall bear the endorsement of the county legislative authority if the lands were acquired under \*RCW 76.12.030 or 76.12.080. Withdrawals shall conform to the state outdoor recreation plan. If the lands are held for the benefit of the common school fund or another fund, the department shall pay compensation equal to the lease value of the lands to the appropriate fund. [1980 c 78 § 54; 1969 ex.s. c 129 § 3; 1955 c 36 § 77.12.360. Prior: 1947 c 130 § 1; Rem. Supp. 1947 § 8136-10.]

**\*Reviser's note:** RCW 76.12.030 and 76.12.080 were recodified as RCW 79.22.040 and 79.22.020, respectively, by 2003 c 334 § 245.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.370 Withdrawal of state land from lease—County procedures, approval, hearing.** Prior to the forwarding of a request needing endorsement under RCW 77.12.360, the director shall present the request to the legislative authority of the county in which the lands are located for its approval. The legislative authority, before acting on the request, may call a public hearing. The hearing shall take place within thirty days after presentation of the request to the legislative authority.

The director shall publish notice of the public hearing called by the legislative authority in a newspaper of general circulation within the county at least once a week for two successive weeks prior to the hearing. The notice shall contain a copy of the request and the time and place of the hearing.

The chairman of the county legislative authority shall preside at the public hearing. The proceedings shall be informal and all persons shall have a reasonable opportunity to be heard.

Within ten days after the hearing, the county legislative authority shall endorse its decision on the request for withdrawal. The decision is final and not subject to appeal. [1987 c 506 § 43; 1980 c 78 § 55; 1955 c 36 § 77.12.370. Prior: 1947 c 130 § 2; Rem. Supp. 1947 § 8136-11.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.380 Withdrawal of state land from lease—Actions by commissioner of public lands.** Upon receipt of a request under RCW 77.12.360, the commissioner of public lands shall determine if the withdrawal would benefit the people of the state. If the withdrawal would be beneficial, the commissioner shall have the lands appraised for their lease value. Before withdrawal, the department shall transmit to the commissioner a voucher authorizing payment from the \*state wildlife fund in favor of the fund for which the lands are held. The payment shall equal the amount of the lease value for the duration of the withdrawal. [1987 c 506 § 44; 1980 c 78 § 56; 1955 c 36 § 77.12.380. Prior: 1947 c 130 § 3; Rem. Supp. 1947 § 8136-12.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.390 Withdrawal of state land from lease—Payment.** Upon receipt of a voucher under RCW 77.12.380, the commissioner of public lands shall withdraw the lands from lease. The commissioner shall forward the voucher to the state treasurer, who shall draw a warrant against the \*state wildlife fund in favor of the fund for which the withdrawn lands are held. [1987 c 506 § 45; 1980 c 78 § 57; 1973 c 106 § 35; 1955 c 36 § 77.12.390. Prior: 1947 c 130 § 4; Rem. Supp. 1947 § 8136-13.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.420 Improvement of conditions for growth of game fish.** The director may spend moneys to improve natural growing conditions for fish by constructing fishways, installing screens, and removing obstructions to migratory fish. The eradication of undesirable fish shall be authorized by the commission. The director may enter into cooperative agreements with state, county, municipal, and federal agencies, and with private individuals for these purposes. [1987 c 506 § 46; 1980 c 78 § 59; 1955 c 36 § 77.12.420. Prior: 1947 c 127 § 1; Rem. Supp. 1947 § 5944-1.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.451 Director may take or sell fish or shellfish—Restrictions on sale of salmon.** (1) The director may take or remove any species of fish or shellfish from the waters or beaches of the state.

(2) The director may sell food fish or shellfish caught or taken during department test fishing operations.

(3) The director shall not sell inedible salmon for human consumption. Salmon and carcasses may be given to state

institutions or schools or to economically depressed people, unless the salmon are unfit for human consumption. Salmon not fit for human consumption may be sold by the director for animal food, fish food, or for industrial purposes.

(4) In the sale of surplus salmon from state hatcheries, the division of purchasing shall require that a portion of the surplus salmon be processed and returned to the state by the purchaser. The processed salmon shall be fit for human consumption and in a form suitable for distribution to individuals. The division of purchasing shall establish the required percentage at a level that does not discourage competitive bidding for the surplus salmon. The measure of the percentage is the combined value of all of the surplus salmon sold. The department of social and health services shall distribute the processed salmon to economically depressed individuals and state institutions pursuant to rules adopted by the department of social and health services. [1990 c 36 § 1; 1985 c 28 § 1; 1983 1st ex.s. c 46 § 26; 1979 c 141 § 382; 1969 ex.s. c 16 § 2; 1965 ex.s. c 72 § 1; 1955 c 12 § 75.12.130. Prior: 1949 c 112 § 41; Rem. Supp. 1949 § 5780-315. Formerly RCW 75.08.255, 75.12.130.]

**77.12.453 Salmon fishing by Wanapum (Sokulk) Indians.** The director may issue permits to members of the Wanapum band of Indians to take salmon for ceremonial and subsistence purposes. The department shall establish the areas in which the permits are valid and shall regulate the times for and manner of taking the salmon. This section does not create a right to fish commercially. [1983 1st ex.s. c 46 § 27; 1981 c 251 § 2. Formerly RCW 75.08.265, 75.12.310.]

**Legislative findings—1981 c 251:** "The legislature finds that the Sokulk Indians, otherwise known as the Wanapum band of Indians, have made a significant effort to maintain their traditional tribal culture, including the activity of taking salmon for ceremonial and subsistence purposes. The legislature further finds that previously the state has encouraged ceremonial and subsistence fishing by the Wanapums by chapter 210, Laws of 1939 and other permission. Therefore, the intent of the legislature in enacting RCW 75.08.265 is to recognize the cultural importance of salmon fishing to only the Wanapum Indians by authorizing these people a ceremonial and subsistence fishery, while also preserving the state's ability to conserve and manage the salmon resource." [1983 1st ex.s. c 46 § 62; 1981 c 251 § 1. Formerly RCW 75.12.300.]

**77.12.455 Prevention and suppression of diseases and pests.** The commission may prohibit the introduction, transportation or transplanting of fish, shellfish, organisms, material, or other equipment which in the commission's judgment may transmit any disease or pests affecting fish or shellfish. [2001 c 253 § 22; 1995 1st sp.s. c 2 § 16 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 29; 1955 c 12 § 75.16.030. Prior: 1949 c 112 § 43; Rem. Supp. 1949 § 5780-317. Formerly RCW 75.08.285, 75.16.030.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.12.459 Release and recapture of salmon or steelhead prohibited.** A person other than the United States, an Indian tribe recognized as such by the federal government, the state, a subdivision of the state, or a municipal corporation or an agency of such a unit of government shall not

release salmon or steelhead trout into the public waters of the state and subsequently to recapture and commercially harvest such salmon or trout. This section shall not prevent any person from rearing salmon or steelhead trout in pens or in a confined area under circumstances where the salmon or steelhead trout are confined and never permitted to swim freely in open water. [1998 c 190 § 74; 1985 c 457 § 12. Formerly RCW 75.08.300.]

**77.12.465 Abandoned or derelict vessels.** The director has the authority, subject to the processes and limitation outlined in chapter 79.100 RCW, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above publicly or privately owned aquatic lands within the jurisdiction of the department. [2002 c 286 § 19.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**77.12.467 Wildlife rehabilitation program—Requirements to receive funding—Reports accounting for all expenditures of state funds—Permitted expenditures—Adoption of rules.** (1) The director shall establish a wildlife rehabilitation program to help support the critical role licensed wildlife rehabilitators play in protecting the public by capturing, testing for disease, and caring for sick, injured, and orphaned wildlife in Washington state. The director shall contract for wildlife rehabilitation services with up to four people in each of the department's six administrative regions. Applicants may submit only one request every two years and must reside in the administrative region for which they have applied. The contracts must be for a term of two years.

(2) In order to receive funding, the wildlife rehabilitator must: (a) Be properly licensed in wildlife rehabilitation under state and federal law; and (b) furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol to include a national criminal background check. The applicant must pay for the cost of the criminal background check. If the background check reveals that the applicant has been convicted of a felony or gross misdemeanor, the applicant is ineligible to receive funding.

(3) The department must require that contractors submit detailed reports accounting for all expenditures of state funds. The reports must be submitted to the department on a quarterly basis. The department may require the contractor to submit to an inspection of the rehabilitation facility to ensure compliance with department rules governing wildlife rehabilitation. Expenditures that are permitted under this program as they specifically relate to wildlife rehabilitation include: (a) Reimbursement for diagnostic and lab support services; (b) purchase and maintenance of proper restraints and equipment used in the capture, transportation, temporary housing, and release of wildlife; (c) reimbursement of contracted veterinary services; (d) reimbursement of the cost of food, medication, and other consumables; and (e) reimbursement of the cost of continuing education. The department shall give priority to applications submitted that provide for the rehabilitation of endangered or threatened species. Funds may not be used to rehabilitate either nonnative species or nuisance ani-

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mals, or both, including, but not limited to the following: Eastern gray squirrels (*Sciurus carolinensis*); opossum (*Didelphis virginiana*); raccoons (*Procyon lotor*); striped skunk (*Mephitis mephitis*); spotted skunk (*Spilogale putorius*); Eastern cottontail rabbit (*Sylvilagus floridanus*); domestic rabbit (*Oryctolagus cuniculus*); European starling (*Sturnus vulgaris*); and house sparrow (*Passer domesticus*).

(4) The department may adopt any rules as are necessary to carry out this section. [2007 c 246 § 4.]

**Finding—2007 c 246:** "The legislature finds that licensed wildlife rehabilitators often work closely with local law enforcement, animal control officers, wildlife enforcement officers, and wildlife biologists at the state and federal levels to aid in the safe capture, testing for disease, medical treatment, rehabilitation, and release of wildlife. The state recognizes the critical role licensed wildlife rehabilitators play in capturing and caring for the sick, injured, and orphaned wildlife of Washington state." [2007 c 246 § 1.]

**77.12.469 Renewal of wildlife rehabilitation licenses—Adoption of rules.** The department must develop a process for renewing wildlife rehabilitation licenses. All wildlife rehabilitation licenses issued by the department prior to January 1, 2006, must be renewed by January 1, 2010. The department may adopt rules as necessary to implement this section. [2007 c 246 § 5.]

**Finding—2007 c 246:** See note following RCW 77.12.467.

**77.12.471 Wildlife rehabilitation account.** The wildlife rehabilitation account is created in the state treasury. All receipts from moneys directed to the account from RCW 46.16.606 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the support of the wildlife rehabilitation program created under RCW 77.12.467. [2007 c 246 § 3.]

**Finding—2007 c 246:** See note following RCW 77.12.467.

**77.12.540 Public shooting grounds—Effect of filing—Use for booming.** Upon filing a certificate with the commissioner of public lands that shows that lands will be used for public shooting grounds by the department, the lands shall be withdrawn from sale or lease and then may be used as public shooting grounds under control of the department. The commissioner of public lands may also use the lands for booming purposes. [1980 c 78 § 128; 1955 c 36 § 77.40.080. Prior: 1945 c 179 § 2; Rem. Supp. 1945 § 7993-5b. Formerly RCW 77.40.080.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.550 Tidelands used as public shooting grounds—Diversion.** Tidelands granted to the department to be used as public shooting grounds shall revert to the state if used for another purpose. The department shall certify the reversion to the commissioner of public lands who shall then supervise and control the lands as provided in Title 79 RCW. [1980 c 78 § 126; 1955 c 36 § 77.40.050. Prior: 1941 c 190 § 3; Rem. Supp. 1941 § 7993-8. Formerly RCW 77.40.050.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.560 Tidelands used as public shooting grounds—Rules.** The commission may adopt rules regarding the use of the tidelands as shooting grounds. [1980 c 78 § 127; 1955 c 36 § 77.40.060. Prior: 1941 c 190 § 4; Rem. Supp. 1941 § 7993-9. Formerly RCW 77.40.060.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.570 Game farm licenses—Rules—Exemption.** The commission shall establish the qualifications and conditions for issuing a game farm license. The director shall adopt rules governing the operation of game farms. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 49; 1985 c 457 § 22; 1980 c 78 § 98; 1975 1st ex.s. c 15 § 2; 1970 ex.s. c 29 § 14; 1955 c 36 § 77.28.020. Prior: 1947 c 275 § 82; Rem. Supp. 1947 § 5992-91. Formerly RCW 77.28.020.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.580 Game farms—Authority to dispose of eggs.** A licensed game farmer may purchase, sell, give away, or dispose of the eggs of game birds or game fish lawfully possessed as provided by rule of the director. [1987 c 506 § 50; 1980 c 78 § 99; 1955 c 36 § 77.28.070. Prior: 1947 c 275 § 87; Rem. Supp. 1947 § 5992-96. Formerly RCW 77.28.070.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.590 Game farms—Tagging of products—Exemption.** Wildlife given away, sold, or transferred by a licensed game farmer shall have attached to each wildlife member, package, or container, a tag, seal, or invoice as required by rule of the director. Private sector cultured aquatic products as defined in RCW 15.85.020 are exempt from regulation under this section. [1987 c 506 § 51; 1985 c 457 § 23; 1980 c 78 § 100; 1955 c 36 § 77.28.080. Prior: 1947 c 275 § 88; Rem. Supp. 1947 § 5992-97. Formerly RCW 77.28.080.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.600 Game farms—Shipping of wildlife—Exemption.** A common carrier may transport wildlife shipped by a licensed game farmer if the wildlife is tagged, sealed, or invoiced as provided in RCW 77.12.590. Packages containing wildlife shall have affixed to them tags or labels showing the name of the licensee and the consignee. For purposes of this section, wildlife does not include private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, this exemption from the definition of wildlife applies only if the aquatic products are identified in conformance with those rules. [1985 c 457 § 24; 1980 c 78 § 101; 1955 c 36 § 77.28.090. Prior: 1947 c

275 § 89; Rem. Supp. 1947 § 5992-98. Formerly RCW 77.28.090.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.605 Whidbey Island game farm—Sale of property.** (1) The department shall endeavor to sell the property known as Whidbey Island game farm, Island county.

(2) If the sale takes place one year or less from May 7, 1999, the property may be sold only to a nonprofit corporation, a consortium of nonprofit corporations, or a municipal corporation that intends to preserve, to the extent practicable, the property for purposes of undeveloped open space and historical preservation.

(3) If the sale takes place more than one year after May 7, 1999, the conditions in subsection (2) of this section do not apply. [1999 c 205 § 1.]

**Effective date—1999 c 205:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 1999]." [1999 c 205 § 3.]

**77.12.610 Check stations—Purpose.** The purposes of RCW 77.12.610 through 77.12.630 are to facilitate the department's gathering of biological data for managing wildlife, fish, and shellfish resources of this state and to protect these resources by assuring compliance with Title 77 RCW, and rules adopted thereunder, in a manner designed to minimize inconvenience to the public. [2000 c 107 § 225; 1982 c 155 § 1.]

**77.12.620 Check stations—Stopping for inspection.** The department is authorized to require hunters and fishermen occupying a motor vehicle approaching or entering a check station to stop and produce for inspection: (1) Any wildlife, fish, shellfish, or seaweed in their possession; (2) licenses, permits, tags, stamps, or catch record cards, required under Title 77 RCW, or rules adopted thereunder. For these purposes, the department is authorized to operate check stations which shall be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. [2000 c 107 § 226; 1982 c 155 § 2.]

**77.12.630 Check stations—Other inspections, powers.** The powers conferred by RCW 77.12.610 through 77.12.630 are in addition to all other powers conferred by law upon the department. Nothing in RCW 77.12.610 through 77.12.630 shall be construed to prohibit the department from operating wildlife information stations at which persons shall not be required to stop and report, or from executing arrests, searches, or seizures otherwise authorized by law. [2000 c 107 § 227; 1982 c 155 § 4.]

**77.12.650 Protection of bald eagles and their habitats—Cooperation required.** The department shall cooperate with other local, state, and federal agencies and governments to protect bald eagles and their essential habitats through existing governmental programs, including but not limited to:

(1) The natural heritage program managed by the department of natural resources under chapter 79.70 RCW;

(2) The natural area preserve program managed by the department of natural resources under chapter 79.70 RCW;

(3) The shoreline management master programs adopted by local governments and approved by the department of ecology under chapter 90.58 RCW. [1987 c 506 § 52; 1984 c 239 § 2.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Legislative declaration—1984 c 239:** "The legislature hereby declares that the protection of the bald eagle is consistent with a societal concern for the perpetuation of natural life cycles, the sensitivity and vulnerability of particular rare and distinguished species, and the quality of life of humans." [1984 c 239 § 1.]

#### **77.12.655 Habitat buffer zones for bald eagles—**

**Rules.** The department, in accordance with chapter 34.05 RCW, shall adopt and enforce necessary rules defining the extent and boundaries of habitat buffer zones for bald eagles. Rules shall take into account the need for variation of the extent of the zone from case to case, and the need for protection of bald eagles. The rules shall also establish guidelines and priorities for purchase or trade and establishment of conservation easements and/or leases to protect such designated properties. The department shall also adopt rules to provide adequate notice to property owners of their options under RCW 77.12.650 and this section. [2000 c 107 § 228; 1990 c 84 § 3; 1984 c 239 § 3.]

**Legislative declaration—1984 c 239:** See note following RCW 77.12.650.

**77.12.670 Migratory bird stamp/migratory bird license validations—Deposit and use of revenues.** (1) The migratory bird stamp to be produced by the department shall use the design as provided by the migratory waterfowl art committee.

(2) All revenue derived from the sale of migratory bird license validations or stamps by the department to any person hunting waterfowl or to any stamp collector shall be deposited in the \*state wildlife fund and shall be used only for that portion of the cost of printing and production of the stamps for migratory waterfowl hunters as determined by subsection (4) of this section, and for those migratory waterfowl projects specified by the director of the department for the acquisition and development of migratory waterfowl habitat in the state and for the enhancement, protection, and propagation of migratory waterfowl in the state. Migratory bird license validation and stamp funds may not be used on lands controlled by private hunting clubs or on private lands that charge a fee for public access. Migratory bird license validation and stamp funds may be used for migratory waterfowl projects on private land where public hunting is provided by written permission or on areas established by the department as waterfowl hunting closures.

(3) All revenue derived from the sale of the license validation and stamp by the department to persons hunting solely nonwaterfowl migratory birds shall be deposited in the \*state wildlife fund and shall be used only for that portion of the cost of printing and production of the stamps for nonwaterfowl migratory bird hunters as determined by subsection (4) of this section, and for those nonwaterfowl migratory bird projects specified by the director for the acquisition and

development of nonwaterfowl migratory bird habitat in the state and for the enhancement, protection, and propagation of nonwaterfowl migratory birds in the state.

(4) With regard to the revenue from license validation and stamp sales that is not the result of sales to stamp collectors, the department shall determine the proportion of migratory waterfowl hunters and solely nonwaterfowl migratory bird hunters by using the yearly migratory bird hunter harvest information program survey results or, in the event that these results are not available, other similar survey results. A two-year average of the most recent survey results shall be used to determine the proportion of the revenue attributed to migratory waterfowl hunters and the proportion attributed to solely nonwaterfowl migratory bird hunters for each fiscal year. For fiscal year 1998-99 and for fiscal year 1999-2000, ninety-six percent of the stamp revenue shall be attributed to migratory waterfowl hunters and four percent of the stamp revenue shall be attributed to solely nonwaterfowl migratory game hunters.

(5) Acquisition shall include but not be limited to the acceptance of gifts of real estate or any interest therein or the rental, lease, or purchase of real estate or any interest therein. If the department acquires any fee interest, leasehold, or rental interest in real property under this section, it shall allow the general public reasonable access to that property and shall, if appropriate, ensure that the deed or other instrument creating the interest allows such access to the general public. If the department obtains a covenant in real property in its favor or an easement or any other interest in real property under this section, it shall exercise its best efforts to ensure that the deed or other instrument creating the interest grants to the general public in the form of a covenant running with the land reasonable access to the property. The private landowner from whom the department obtains such a covenant or easement shall retain the right of granting access to the lands by written permission, but may not charge a fee for access.

(6) The department may produce migratory bird stamps in any given year in excess of those necessary for sale in that year. The excess stamps may be sold to the migratory waterfowl art committee for sale to the public. [2002 c 283 § 2; 1998 c 191 § 32; 1987 c 506 § 53; 1985 c 243 § 4.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Effective date—1998 c 191:** See note following RCW 77.32.050.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.12.680 Migratory waterfowl art committee—Membership—Terms—Vacancies—Chairman—Review of expenditures—Compensation.** (1) There is created the migratory waterfowl art committee which shall be composed of nine members.

(2)(a) The committee shall consist of one member appointed by the governor, six members appointed by the director, one member appointed by the chairman of the state arts commission, and one member appointed by the director of the department of agriculture.

(b) The member appointed by the director of the department of agriculture shall represent statewide farming interests.

(c) The member appointed by the chairman of the state arts commission shall be knowledgeable in the area of fine art reproduction.

(d) The members appointed by the governor and the director shall be knowledgeable about waterfowl and waterfowl management. The six members appointed by the director shall represent, respectively:

- (i) An eastern Washington sports group;
- (ii) A western Washington sports group;
- (iii) A group with a major interest in the conservation and propagation of migratory waterfowl;
- (iv) A statewide conservation organization;
- (v) A statewide sports hunting group; and
- (vi) The general public.

The members of the committee shall serve three-year staggered terms and at the expiration of their term shall serve until qualified successors are appointed. Of the nine members, three shall serve initial terms of four years, three shall serve initial terms of three years, and three shall serve initial terms of two years. The appointees of the governor, the chairman of the state arts commission, and the director of agriculture shall serve the initial terms of four years. Vacancies shall be filled for unexpired terms consistent with this section. A chairman shall be elected annually by the committee. The committee shall review the director's expenditures of the previous year of both the stamp money and the prints and related artwork money. Members of the committee shall serve without compensation. [1987 c 506 § 54; 1985 c 243 § 5.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.12.690 Migratory waterfowl art committee—Duties—Deposit and use of funds—Audits.** The migratory waterfowl art committee is responsible for the selection of the annual migratory bird stamp design and shall provide the design to the department. If the committee does not perform this duty within the time frame necessary to achieve proper and timely distribution of the stamps to license dealers, the director shall initiate the art work selection for that year. The committee shall create collector art prints and related artwork, utilizing the same design as provided to the department. The administration, sale, distribution, and other matters relating to the prints and sales of stamps with prints and related artwork shall be the responsibility of the migratory waterfowl art committee.

The total amount brought in from the sale of prints and related artwork shall be deposited in the \*state wildlife fund. The costs of producing and marketing of prints and related artwork, including administrative expenses mutually agreed upon by the committee and the director, shall be paid out of the total amount brought in from sales of those same items. Net funds derived from the sale of prints and related artwork shall be used by the director to contract with one or more appropriate individuals or nonprofit organizations for the development of waterfowl propagation projects within Washington which specifically provide waterfowl for the Pacific flyway. The department shall not contract with any individual or organization that obtains compensation for allowing waterfowl hunting except if the individual or organization does not permit hunting for compensation on the subject property.

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The migratory waterfowl art committee shall have an annual audit of its finances conducted by the state auditor and shall furnish a copy of the audit to the commission. [1998 c 245 § 158; 1998 c 191 § 33; 1987 c 506 § 55; 1985 c 243 § 6.]

**Reviser's note:** \*(1) The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

(2) This section was amended by 1998 c 191 § 33 and by 1998 c 245 § 158, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1998 c 191:** See note following RCW 77.32.050.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.12.702 Rockfish research and stock assessment program—Report to the legislature—Rockfish research account.** (1) The department is directed to develop and implement a rockfish research and stock assessment program. Using funds from the rockfish research account created in subsection (2) of this section, the department must conduct Puget Sound basin and coastal surveys with new and existing technology to estimate the current abundance and future recovery of rockfish populations and other groundfish species. The stock assessment must include an evaluation of the potential for marine fish enhancement. Beginning December 2008, and every two years thereafter, the department shall report to the appropriate committees of the legislature on the status of the stock assessment program.

(2) The rockfish research account is created in the custody of the state treasurer. All receipts from surcharges assessed on commercial and recreational fishing licenses for the purposes of rockfish research must be deposited into the account. Expenditures from the account may be used only for rockfish research, including stock assessments. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 442 § 2.]

**Findings—Intent—2007 c 442:** "(1) The legislature finds that:

(a) Seven rockfish stocks, including canary and yelloweye rockfish, have been designated under federal law by the national marine fisheries services as overfished on the west coast.

(b) The department of fish and wildlife has classified certain rockfish species within Puget Sound as critically depressed. These common species of rockfish have undergone dramatic declines in Puget Sound and the coast during the past three decades.

(c) The Pacific fishery management council and the department of fish and wildlife have eliminated the directed commercial fisheries and greatly reduced the recreational fishing opportunity for these species.

(d) Due to the interactions of these depleted stocks with the healthier ones, commercial and recreational fisheries have been severely constrained in recent years in order to rebuild the populations of these overfished rockfish. For many of these stocks there have been no recent stock assessments, or the current assessments are based on poor data. Improved survey information is essential for assessing abundance and to monitor progress toward rebuilding efforts on the coast and in Puget Sound.

(e) Department of fish and wildlife staff have been developing underwater robot technology or remote operated vehicles to scientifically estimate the abundance of rockfish populations in both the nearshore and in deep waters. These new assessment techniques, coupled with existing bottom trawl surveys, will be used to estimate current abundance and future recovery of rockfish populations along the coast of Washington and in Puget Sound.

(2) Therefore, the legislature intends to implement a targeted surcharge on commercial licenses issued by the department of fish and wildlife that provides for the retention or landing of ground fish, and a targeted surcharge

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on recreational saltwater fishing licenses. Funds derived from the surcharge will be used by the department of fish and wildlife solely for the purpose of conducting rockfish research and stock assessments." [2007 c 442 § 1.]

**Effective date—2007 c 442:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 442 § 6.]

**77.12.710 Game fish production—Double by year 2000.** The legislature hereby directs the department to determine the feasibility and cost of doubling the statewide game fish production by the year 2000. The department shall seek to equalize the effort and investment expended on anadromous and resident game fish programs. The department shall provide the legislature with a specific plan for legislative approval that will outline the feasibility of increasing game fish production by one hundred percent over current levels by the year 2000. The plan shall contain specific provisions to increase both hatchery and naturally spawning game fish to a level that will support the production goal established in this section consistent with department policies. Steelhead trout, searun cutthroat trout, resident trout, and warmwater fish producing areas of the state shall be included in the plan.

The plan shall include the following critical elements:

- (1) Methods of determining current catch and production, and catch and production in the year 2000;
- (2) Methods of involving fishing groups, including Indian tribes, in a cooperative manner;
- (3) Methods for using low capital cost projects to produce game fish as inexpensively as possible;
- (4) Methods for renovating and modernizing all existing hatcheries and rearing ponds to maximize production capability;
- (5) Methods for increasing the productivity of natural spawning game fish;
- (6) Application of new technology to increase hatchery and natural productivity;
- (7) Analysis of the potential for private contractors to produce game fish for public fisheries;
- (8) Methods to optimize public volunteer efforts and cooperative projects for maximum efficiency;
- (9) Methods for development of trophy game fish fisheries;
- (10) Elements of coordination with the Pacific Northwest Power Council programs to ensure maximum Columbia river benefits;
- (11) The role that should be played by private consulting companies in developing and implementing the plan;
- (12) Coordination with federal fish and wildlife agencies, Indian tribes, and department fish production programs;
- (13) Future needs for game fish predator control measures;
- (14) Development of disease control measures;
- (15) Methods for obtaining access to waters currently not available to anglers; and
- (16) Development of research programs to support game fish management and enhancement programs.

The department, in cooperation with the department of revenue, shall assess various funding mechanisms and make recommendations to the legislature in the plan. The department, in cooperation with the department of community, trade, and economic development, shall prepare an analysis

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of the economic benefits to the state that will occur when the game fish production is increased by one hundred percent in the year 2000. [1998 c 245 § 159; 1995 c 399 § 208; 1993 sp.s. c 2 § 70; 1990 c 110 § 2.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Finding—1990 c 110:** "The legislature finds that the anadromous and resident game fish resource of the state can be greatly increased to benefit recreational fishermen and the economy of the state. Investments in the increase of anadromous and resident game fish stocks will provide benefits many times the cost of the program and will act as a catalyst for many additional benefits in the tourism and associated industries, while enhancing the livability of the state." [1990 c 110 § 1.]

**77.12.722 Canada goose hunting—Season or bag limit restriction.** For the purposes of establishing a season or bag limit restriction on Canada goose hunting, the commission shall not consider leg length or bill length of dusky Canada geese (*Branta canadensis occidentalis*). [2000 c 107 § 259; 1998 c 190 § 119; 1996 c 207 § 3; 1987 c 506 § 59; 1983 c 3 § 196; 1981 c 310 § 3; 1980 c 78 § 70; 1977 c 44 § 1; 1955 c 36 § 77.16.020. Prior: 1947 c 275 § 41; Rem. Supp. 1947 § 5992-50. Formerly RCW 77.16.020.]

**Intent—1996 c 207:** See note following RCW 77.08.010.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.12.755 Ranked inventory of fish passage barriers.** In coordination with the department of natural resources and lead entity groups, the department must establish a ranked inventory of fish passage barriers on land owned by small forest landowners based on the principle of fixing the worst first within a watershed consistent with the fish passage priorities of the forest and fish report. The department shall first gather and synthesize all available existing information about the locations and impacts of fish passage barriers in Washington. This information must include, but not be limited to, the most recently available limiting factors analysis conducted pursuant to RCW 77.85.060(2), the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available. The inventory of fish passage barriers must be kept current and at a minimum be updated by the beginning of each calendar year. Nothing in this section grants the department or others additional right of entry onto private property. [2003 c 311 § 10.]

**Findings—Effective date—2003 c 311:** See notes following RCW 76.09.020.

**77.12.760 Steelhead trout fishery.** Steelhead trout shall be managed solely as a recreational fishery for non-Indian fishermen under the rule-setting authority of the fish and wildlife commission.

Commercial non-Indian steelhead fisheries are not authorized. [1993 sp.s. c 2 § 78.]

**Effective date**—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

**Severability**—1993 sp.s. c 2: See RCW 43.300.901.

**77.12.765 Tilton and Cowlitz rivers—Proposals to reinstate salmon and steelhead.** The director shall develop proposals to reinstate the natural salmon and steelhead trout fish runs in the Tilton and upper Cowlitz rivers in accordance with RCW 77.04.120(3). [2000 c 107 § 206; 1993 sp.s. c 2 § 65; 1985 c 208 § 2. Formerly RCW 77.04.100.]

**Effective date**—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

**Severability**—1993 sp.s. c 2: See RCW 43.300.901.

**77.12.790 Eastern Washington pheasant enhancement program—Purpose.** There is created within the department the eastern Washington pheasant enhancement program. The purpose of the program is to improve the harvest of pheasants by releasing pen-reared rooster pheasants on sites accessible for public hunting and by providing grants for habitat enhancement on public or private lands under agreement with the department. The department may either purchase rooster pheasants from private contractors, or produce rooster pheasants from department-sanctioned cooperative projects, whichever is less expensive, provided that the pheasants released meet minimum department standards for health and maturity. Any surplus hen pheasants from pheasant farms or projects operated by the department or the department of corrections for this enhancement program shall be made available to landowners who voluntarily open their lands to public pheasant hunting. Pheasants produced for the eastern Washington pheasant enhancement program must not detrimentally affect the production or operation of the department's western Washington pheasant release program. The release of pheasants for hunting purposes must not conflict with or supplant other department efforts to improve upland bird habitat or naturally produced upland birds. [1997 c 422 § 2.]

**Findings**—1997 c 422: "The legislature finds that pheasant populations in eastern Washington have greatly decreased from their historic high levels and that pheasant hunting success rates have plummeted. The number of pheasant hunters has decreased due to reduced hunting success. There is an opportunity to enhance the pheasant population by release of pen-reared pheasants and habitat enhancements to create increased hunting opportunities on publicly owned and managed lands." [1997 c 422 § 1.]

**77.12.800 Pheasant hunting—Opportunities for juvenile hunters.** The commission must establish special pheasant hunting opportunities for juvenile hunters in eastern Washington for the 1998 season and future seasons. [1997 c 422 § 3.]

**Findings**—1997 c 422: See note following RCW 77.12.790.

**77.12.810 Small game hunting license—Disposition of fee.** As provided in RCW 77.32.440, a portion of each small game hunting license fee shall be deposited in the eastern Washington pheasant enhancement account created in RCW 77.12.820. [1998 c 191 § 30; 1997 c 422 § 4.]

**Effective date**—1998 c 191: See note following RCW 77.32.400.

**Findings**—1997 c 422: See note following RCW 77.12.790.

**77.12.820 Eastern Washington pheasant enhancement account—Created—Use of moneys.** The eastern Washington pheasant enhancement account is created in the custody of the state treasurer. All receipts under RCW 77.12.810 must be deposited in the account. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the eastern Washington pheasant enhancement program. The department may use moneys from the account to improve pheasant habitat or to purchase or produce pheasants. Not less than eighty percent of expenditures from the account must be used to purchase or produce pheasants. The eastern Washington pheasant enhancement account funds must not be used for the purchase of land. The account may be used to offer grants to improve pheasant habitat on public or private lands that are open to public hunting. The department may enter partnerships with private landowners, nonprofit corporations, cooperative groups, and federal or state agencies for the purposes of pheasant habitat enhancement in areas that will be available for public hunting. [1997 c 422 § 5.]

**Findings**—1997 c 422: See note following RCW 77.12.790.

**77.12.850 Definitions.** The definitions in this section apply throughout RCW 77.12.850 through 77.12.860 unless the context clearly requires otherwise.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in this title, and includes:

Scientific Name	Common Name
<i>Oncorhynchus tshawytscha</i>	Chinook salmon
<i>Oncorhynchus kisutch</i>	Coho salmon
<i>Oncorhynchus keta</i>	Chum salmon
<i>Oncorhynchus gorbuscha</i>	Pink salmon
<i>Oncorhynchus nerka</i>	Sockeye salmon

(2) "Department" means the department of fish and wildlife.

(3) "Committee" means the salmon stamp selection committee created in RCW 77.12.856.

(4) "Stamp" means the stamp created under the Washington salmon stamp program and the Washington junior salmon stamp program, created in RCW 77.12.850 through 77.12.860. [1999 c 342 § 2.]

**Finding**—1999 c 342: "The legislature finds that salmon recovery in Washington state will involve everyone and will require funds to accomplish recovery measures. Several species of salmon in Washington are, or are expected to be, listed as threatened or endangered under the federal endangered species act. At present, these species include chinook, chum, bull trout and coho. To bring attention to the importance of the recovery of salmon and their place in Washington's heritage, raise funds for salmon recovery projects, and involve citizens of all ages, the Washington salmon stamp and Washington junior salmon stamp programs are created." [1999 c 342 § 1.]

**77.12.852 Washington salmon stamp program—Creation.** (1) The Washington salmon stamp program is created in the department. The purpose of the program is the creation of a stamp that will portray a salmonid species native to Washington and will be used for stamps, prints, and posters that can be sold in a wide range of prices and editions to appeal to citizens and collectors interested in supporting salmon restoration. The proceeds from the sale of the Wash-

ington salmon stamp shall be used for protection, preservation, and restoration of salmonid habitat in Washington.

(2) Every year the department will announce competition, open to all Washington artists, for the creation of the year's Washington salmon stamp. The department will market the stamp and prints through a wide distribution method including web sites, license sites, and at public events.

(3) The winning artist will receive a monetary award and a certain number of artist proof prints. [1999 c 342 § 3.]

**Finding—1999 c 342:** See note following RCW 77.12.850.

**77.12.854 Washington junior salmon stamp program—Creation.** (1) The Washington junior salmon stamp program is created in the department. The purpose of the program is the creation of a stamp that will portray a salmonid species native to Washington and will be used for stamps, prints, and posters that can be sold in a wide range of prices and editions to appeal to citizens and collectors interested in supporting salmon restoration.

(2) Every year the department will announce a competition for the Washington junior salmon stamp program among Washington K-12 students. The top winner will receive a scholarship award. [1999 c 342 § 4.]

**Finding—1999 c 342:** See note following RCW 77.12.850.

**77.12.856 Salmon stamp selection committee—Creation.** The salmon stamp selection committee is created. The committee is comprised of five individuals selected by the governor who will judge and select the winning entrant for the Washington salmon stamp program and Washington junior salmon stamp program. The governor will select names from a collection of names forwarded from the department and from the state arts commission in the following categories: Artist, not competing in the salmon stamp program; art collector; fish biologist; printer; and public school teacher. [1999 c 342 § 5.]

**Finding—1999 c 342:** See note following RCW 77.12.850.

**77.12.858 Deposit of receipts—Expenditures.** All receipts from the salmon stamp program created under RCW 77.12.850 through 77.12.860 must be deposited into the regional fisheries enhancement salmonid recovery account created under RCW 77.95.130. Expenditures from the account may be used only for the purposes specified in RCW 77.95.130 and chapter 342, Laws of 1999. The department shall report biennially to the legislature on the amount of money the salmon stamp program has generated. [2000 c 107 § 230; 1999 c 342 § 6.]

**Finding—1999 c 342:** See note following RCW 77.12.850.

**77.12.860 Stamp design—Department's rule-making authority.** The department is granted the authority to establish by rule the method for selecting appropriate designs for the Washington salmon stamp program and Washington junior salmon stamp program. The stamp shall be designed and produced in accordance with department rules. [1999 c 342 § 7.]

**Finding—1999 c 342:** See note following RCW 77.12.850.

**77.12.865 Derelict fishing gear—Guidelines for removal and disposal.** (1) As used in this section and RCW 77.12.870, "derelict fishing gear" includes lost or abandoned fishing nets, fishing lines, crab pots, shrimp pots, and other commercial and recreational fishing equipment. The term does not include lost or abandoned vessels.

(2) The department, in partnership with the Northwest straits commission, the department of natural resources, and other interested parties, must publish guidelines for the safe removal and disposal of derelict fishing gear. The guidelines must be completed by August 31, 2002, and made available to any person interested in derelict fishing gear removal.

(3) Derelict fishing gear removal conducted in accordance with the guidelines prepared in subsection (2) of this section is not subject to permitting under RCW 77.55.021. [2005 c 146 § 1004; 2002 c 20 § 2.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Purpose—2002 c 20:** "The legislature finds that fishing gear that is lost or abandoned may continue to catch marine organisms long after the gear is lost. The purpose of this act is to develop safe, effective methods to remove derelict fishing gear, eliminate regulatory barriers to gear removal, and discourage future losses of fishing gear." [2002 c 20 § 1.]

**77.12.870 Derelict fishing gear database.** (1) The department, in consultation with the Northwest straits commission, the department of natural resources, and other interested parties, must create and maintain a database of known derelict fishing gear, including the type of gear and its location.

(2) A person who loses or abandons commercial fishing gear within the waters of the state is encouraged to report the location of the loss and the type of gear lost to the department within forty-eight hours of the loss.

(3) The department, in consultation with fishing industry groups and tribal comanagers, must evaluate methods to reduce future losses of fishing gear and report the results of this evaluation to the appropriate legislative committees by January 1, 2003. [2002 c 20 § 3.]

**Finding—Purpose—2002 c 20:** See note following RCW 77.12.865.

**77.12.875 Prohibited aquatic animal species—Infested state waters.** (1) The commission may designate by rule state waters as infested if the director determines that these waters contain a prohibited aquatic animal species.

(2) The commission, in consultation with the department of ecology, may designate state waters as infested if it is determined that these waters contain an invasive aquatic plant species.

(3) The department shall work with the aquatic nuisance species committee and its member agencies to create educational materials informing the public of state waters that are infested with invasive species, and advise them of applicable rules and practices designed to reduce the spread of the invasive species infesting the waters. [2002 c 281 § 5.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**77.12.878 Infested waters—Rapid response plan.** (1) The director shall create a rapid response plan in cooperation with the aquatic nuisance species committee and its member agencies that describes actions to be taken when a prohibited

aquatic animal species is found to be infesting a water body. These actions include eradication or control programs where feasible and containment of infestation where practical through notification, public education, and the enforcement of regulatory programs.

(2) The commission may adopt rules to implement the rapid response plan.

(3) The director, the department of ecology, and the Washington state parks and recreation commission may post signs at water bodies that are infested with aquatic animal species that are classified as prohibited aquatic animal species under RCW 77.12.020 or with invasive species of the plant kingdom. The signs should identify the prohibited plant and animal species present and warn users of the water body of the hazards and penalties for possessing and transporting these species. Educational signs may be placed at uninfested sites. [2002 c 281 § 6.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**77.12.879 Aquatic invasive species prevention account—Aquatic invasive species prevention program for recreational and commercial watercraft—Enforcement program—Check stations—Training—Report to the legislature.** (1) The aquatic invasive species prevention account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the aquatic invasive species prevention account may be appropriated to the department to develop an aquatic invasive species prevention program for recreational and commercial watercraft. Funds must be expended as follows:

- (a) To inspect recreational and commercial watercraft;
- (b) To educate general law enforcement officers on how to enforce state laws relating to preventing the spread of aquatic invasive species;
- (c) To evaluate and survey the risk posed by recreational and commercial watercraft in spreading aquatic invasive species into Washington state waters;
- (d) To evaluate the risk posed by float planes in spreading aquatic invasive species into Washington state waters; and
- (e) To implement an aquatic invasive species early detection and rapid response plan. The plan must address the treatment and immediate response to the introduction to Washington waters of aquatic invasive species. Agency and public review of the plan must be conducted under chapter 43.21C RCW, the state environmental policy act. If the implementation measures or actions would have a probable significant adverse environmental impact, a detailed statement under chapter 43.21C RCW must be prepared on the plan.

(3) Funds in the aquatic invasive species enforcement account created in RCW 43.43.400 may be appropriated to the department and Washington state patrol to develop an aquatic invasive species enforcement program for recreational and commercial watercraft. The department shall provide training to Washington state patrol employees work-

ing at port of entry weigh stations on how to inspect recreational and commercial watercraft for the presence of aquatic invasive species. The department is authorized to require persons transporting recreational and commercial watercraft to stop at check stations. Check stations must be plainly marked by signs, operated by at least one uniformed fish and wildlife officer, and operated in a safe manner. Any person stopped at a check station who possesses a recreational or commercial watercraft that is contaminated with aquatic invasive species is exempt from the criminal penalties found in RCW 77.15.253 and 77.15.290, and forfeiture under RCW 77.15.070, if that person complies with all department directives for the proper decontamination of the watercraft and equipment.

(4) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2007 c 350 § 3; 2005 c 464 § 3.]

**Findings—Intent—2005 c 464:** See note following RCW 88.02.050.

**77.12.880 Wildlife program management.** The department shall manage wildlife programs in a manner that provides for public opportunities to view wildlife and supports nature-based and wildlife viewing tourism without impairing the state's wildlife resources. [2003 c 153 § 3.]

**Findings—2003 c 153:** See note following RCW 43.330.090.

**77.12.882 Aquatic invasive species—Inspection of recreational and commercial watercraft—Rules—Signage.** (1) The department shall adopt rules governing how and when the owners of recreational and commercial watercraft may request an inspection of the watercraft for the presence of aquatic invasive species. The department may coordinate with other states on inspection requirements and may determine when other state inspections meet Washington standards.

(2) The department shall develop and post signs warning vessel owners of the threat of aquatic invasive species, the penalties associated with introduction of an aquatic invasive species, and the contact information for obtaining a free inspection. The signs should provide enough information for the public to discern whether the vessel has been operated in an area that would warrant the need for an inspection. The department shall consult with the state patrol and the department of transportation regarding proper placement and authorization for sign posting.

(3) All port districts, privately or publicly owned marinas, state parks, and all state agencies or political subdivisions that own or lease a boat launch must display a sign provided by the department as described under subsection (2) of this section. Signs must be posted in a location near the boat launch to provide maximum visibility to the public.

(4) The department must coordinate with the Washington state parks and recreation commission to include such information in all boating publications provided to the public. The department shall also include the information on the department's internet site. [2007 c 350 § 4.]

**77.12.885 Reported predatory wildlife interactions—Web site posting.** The department shall post on its internet web site all reported predatory wildlife interactions, including reported human safety confrontations or sightings as well as the known details of reported depredations by predatory wildlife on humans, pets, or livestock, within ten days of receiving the report. The posted material must include, but is not limited to, the location and time, the known details, and a running summary of such reported interactions by identified specie and interaction type within each affected county. For the purposes of this section and RCW 42.56.430, "predatory wildlife" means grizzly bears, wolves, and cougars. [2007 c 293 § 2.]

### Chapter 77.15 RCW

#### FISH AND WILDLIFE ENFORCEMENT CODE

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**77.15.005 Finding—Intent.** The legislature finds that merger of the departments of fisheries and wildlife resulted in two criminal codes applicable to fish and wildlife, and that it has become increasingly difficult to administer and enforce the two criminal codes. Furthermore, laws defining crimes involving fish and wildlife have evolved over many years of changing uses and management objectives for fish and wildlife. The resulting two codes make it difficult for citizens to

comply with the law and unnecessarily complicate enforcement of laws against violators.

The legislature intends by chapter 190, Laws of 1998 to revise and recodify the criminal laws governing fish and wildlife, ensuring that all people involved with fish and wildlife are able to know and understand the requirements of the laws and the risks of violation. Additionally, the legislature intends to create a more uniform approach to criminal laws governing fish and wildlife and to the laws authorizing prosecution, sentencing, and punishments, including repealing crimes that are redundant to other provisions of the criminal code.

Chapter 190, Laws of 1998 is not intended to alter existing powers of the commission or the director to adopt rules or exercise powers over fish and wildlife. In some places reference is made to violation of department rules, but this is intended to conform with current powers of the commission, director, or both, to adopt rules governing fish and wildlife activities. [1998 c 190 § 1.]

**77.15.010 Exemption for department actions.** A person is not guilty of a crime under this chapter if the person is an officer, employee, or agent of the department lawfully acting in the course of his or her authorized duties. [1998 c 190 § 2.]

**77.15.020 Authority to define violation of rule as infraction.** If the commission or director has authority to adopt a rule that is punishable as a crime under this chapter, then the commission or director may provide that violation of the rule shall be punished with notice of infraction under RCW 7.84.030. Neither the commission nor the director have the authority to adopt a rule providing that a violation punishable as an infraction shall be a crime. [2005 c 321 § 2; 1998 c 190 § 3.]

**77.15.030 Individual animal unlawfully taken—Separate offense.** Where it is unlawful to hunt, take, fish, possess, or traffic in big game or protected or endangered fish or wildlife, then each individual animal unlawfully taken or possessed is a separate offense. [1999 c 258 § 1; 1998 c 190 § 4.]

**77.15.040 Jurisdiction.** District courts have jurisdiction concurrent with superior courts for misdemeanors and gross misdemeanors committed in violation of this chapter and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in violation of this chapter. Venue for offenses occurring in offshore waters shall be in a county bordering on the Pacific Ocean, or the county where fish or wildlife from the offense are landed. [1998 c 190 § 5.]

**77.15.050 "Conviction" defined.** Unless the context clearly requires otherwise, as used in this chapter, "conviction" means a final conviction in a state or municipal court or an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court. A plea of guilty, or a finding of guilt for a violation of this title or rule of the commission or director constitutes a conviction regardless of

whether the imposition of sentence is deferred or the penalty is suspended. [1998 c 190 § 6.]

**77.15.060 Reference to chapters 7.84 and 9A.20 RCW.** Crimes defined by this chapter shall be punished as infractions, misdemeanors, gross misdemeanors, or felonies, based on the classification of crimes set out in chapters 7.84 and 9A.20 RCW. [1998 c 190 § 7.]

**77.15.065 Authority of attorney general if prosecuting attorney defaults.** If the prosecuting attorney of the county in which a violation of this title or rule of the department occurs fails to file an information against the alleged violator, the attorney general upon request of the commission may file an information in the superior court of the county and prosecute the case in place of the prosecuting attorney. The commission may request prosecution by the attorney general if thirty days have passed since the commission informed the county prosecuting attorney of the alleged violation. [1996 c 267 § 9; 1983 1st ex.s. c 46 § 41; 1949 c 112 § 24; Rem. Supp. 1949 § 5780-222. Formerly RCW 75.10.100, 75.08.275, 43.25.070.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**77.15.070 Civil forfeiture of property used for violation of chapter.** (1) Fish and wildlife officers and ex officio fish and wildlife officers may seize without warrant boats, airplanes, vehicles, motorized implements, conveyances, gear, appliances, or other articles they have probable cause to believe have been held with intent to violate or used in violation of this title or rule of the commission or director. However, fish and wildlife officers or ex officio fish and wildlife officers may not seize any item or article, other than for evidence, if under the circumstances, it is reasonable to conclude that the violation was inadvertent. The property seized is subject to forfeiture to the state under this section regardless of ownership. Property seized may be recovered by its owner by depositing with the department or into court a cash bond or equivalent security equal to the value of the seized property but not more than one hundred thousand dollars. Such cash bond or security is subject to forfeiture in lieu of the property. Forfeiture of property seized under this section is a civil forfeiture against property and is intended to be a remedial civil sanction.

(2) In the event of a seizure of property under this section, jurisdiction to begin the forfeiture proceedings shall commence upon seizure. Within fifteen days following the seizure, the seizing authority shall serve a written notice of intent to forfeit property on the owner of the property seized and on any person having any known right or interest in the property seized. Notice may be served by any method authorized by law or court rule, including service by certified mail with return receipt requested. Service by mail is deemed complete upon mailing within the fifteen-day period following the seizure.

(3) Persons claiming a right of ownership or right to possession of property are entitled to a hearing to contest forfeiture. Such a claim shall specify the claim of ownership or possession and shall be made in writing and served on the

director within forty-five days of the seizure. If the seizing authority has complied with notice requirements and there is no claim made within forty-five days, then the property shall be forfeited to the state.

(4) If any person timely serves the director with a claim to property, the person shall be afforded an opportunity to be heard as to the person's claim or right. The hearing shall be before the director or director's designee, or before an administrative law judge appointed under chapter 34.12 RCW, except that a person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the property seized is more than five thousand dollars. The department may settle a person's claim of ownership prior to the administrative hearing.

(5) The hearing to contest forfeiture and any subsequent appeal shall be as provided for in chapter 34.05 RCW, the administrative procedure act. The seizing authority has the burden to demonstrate that it had reason to believe the property was held with intent to violate or was used in violation of this title or rule of the commission or director. The person contesting forfeiture has the burden of production and proof by a preponderance of evidence that the person owns or has a right to possess the property and:

(a) That the property was not held with intent to violate or used in violation of this title; or

(b) If the property is a boat, airplane, or vehicle, that the illegal use or planned illegal use of the boat, airplane, or vehicle occurred without the owner's knowledge or consent, and that the owner acted reasonably to prevent illegal uses of such boat, airplane, or vehicle.

(6) A forfeiture of a conveyance encumbered by a perfected security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission. No security interest in seized property may be perfected after seizure.

(7) If seized property is forfeited under this section the department may retain it for official use unless the property is required to be destroyed, or upon application by any law enforcement agency of the state, release such property to the agency for the use of enforcing this title, or sell such property, and deposit the proceeds to the fish and wildlife enforcement reward account created in RCW 77.15.425. [2005 c 406 § 2; 2000 c 107 § 231; 1998 c 190 § 69.]

**77.15.075 Enforcement authority of fish and wildlife officers.** (1) Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this title, rules of the department, and other statutes as prescribed by the legislature. Fish and wildlife officers who are not ex officio officers shall have and exercise, throughout the state, such police powers and duties as are vested in sheriffs and peace officers generally. An applicant for a fish and wildlife officer position must be a citizen of the United States of America who can read and write the English language. All fish and wildlife officers employed after June 13, 2002, must successfully complete the basic law enforcement academy course, known as the basic course, sponsored by the criminal justice training commission, or the basic law enforcement equivalency certification, known as the equivalency course, provided by the criminal justice training commission. All officers employed on June 13, 2002, must have successfully completed the basic

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course, the equivalency course, or the supplemental course in criminal law enforcement, known as the supplemental course, offered under chapter 155, Laws of 1985. Any officer who has not successfully completed the basic course, the equivalency course, or the supplemental course must complete the basic course or the equivalency course within fifteen months of June 13, 2002.

(2) Fish and wildlife officers are peace officers.

(3) Any liability or claim of liability under chapter 4.92 RCW that arises out of the exercise or alleged exercise of authority by a fish and wildlife officer rests with the department unless the fish and wildlife officer acts under the direction and control of another agency or unless the liability is otherwise assumed under an agreement between the department and another agency.

(4) Fish and wildlife officers may serve and execute warrants and processes issued by the courts. [2003 c 388 § 3; 2002 c 128 § 4; 2000 c 107 § 212; 1998 c 190 § 112; 1993 sp.s. c 2 § 67; 1988 c 36 § 50; 1987 c 506 § 16; 1985 c 155 § 2; 1980 c 78 § 17. Formerly RCW 77.12.055.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.080 Fish and wildlife officers—Inspection authority.** (1) Based upon articulable facts that a person is engaged in fishing, harvesting, or hunting activities, fish and wildlife officers have the authority to temporarily stop the person and check for valid licenses, tags, permits, stamps, or catch record cards, and to inspect all fish, shellfish, seaweed, and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title, and may request the person to write his or her signature for comparison with the signature on the license. Failure to comply with the request is prima facie evidence that the person is not the person named on the license. For licenses purchased over the internet or telephone, fish and wildlife officers may require the person, if age eighteen or older, to exhibit a driver's license or other photo identification.

(2) Based upon articulable facts that a person is transporting a prohibited aquatic animal species or any aquatic plant, fish and wildlife officers and ex officio fish and wildlife officers have the authority to temporarily stop the person and inspect the watercraft to ensure that the watercraft and associated equipment are not transporting prohibited aquatic animal species or aquatic plants. [2002 c 281 § 8. Prior: 2001 c 306 § 1; 2001 c 253 § 23; 2000 c 107 § 233; 1998 c 190 § 113.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**77.15.085 Seizure without warrant.** Fish and wildlife officers and ex officio fish and wildlife officers may seize without a warrant wildlife, fish, and shellfish they have probable cause to believe have been taken, transported, or possessed in violation of this title or rule of the commission or director. [2000 c 107 § 232.]

**77.15.090 Search, arrest warrant—Issuance—Execution.** On a showing of probable cause that there has been a violation of any fish, seaweed, shellfish, or wildlife law of the state of Washington, or upon a showing of probable cause to believe that evidence of such violation may be found at a place, a court shall issue a search warrant or arrest warrant. Fish and wildlife officers may execute any such arrest or search warrant reasonably necessary to their duties under this title and may seize fish, seaweed, shellfish, and wildlife or any evidence of a crime and the fruits or instrumentalities of a crime as provided by warrant. The court may have a building, enclosure, vehicle, vessel, container, or receptacle opened or entered and the contents examined. [2001 c 253 § 24; 2000 c 107 § 234; 1998 c 190 § 117; 1980 c 78 § 26; 1955 c 36 § 77.12.120. Prior: 1947 c 275 § 22; Rem. Supp. 1947 § 5992-32. Formerly RCW 77.12.120.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.092 Arrest without warrant.** Fish and wildlife officers and ex officio fish and wildlife officers may arrest without warrant persons found violating the law or rules adopted pursuant to this title. [2000 c 107 § 213; 1998 c 190 § 114; 1987 c 506 § 19; 1980 c 78 § 20; 1971 ex.s. c 173 § 2; 1961 c 68 § 3; 1955 c 36 § 77.12.080. Prior: 1947 c 275 § 18; Rem. Supp. 1947 § 5992-28. Formerly RCW 77.12.080.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.094 Search without warrant—Seizure of evidence, property—Limitation.** Fish and wildlife officers and ex officio fish and wildlife officers may make a reasonable search without warrant of a vessel, conveyances, vehicles, containers, packages, or other receptacles for fish, seaweed, shellfish, and wildlife which they have reason to believe contain evidence of a violation of law or rules adopted pursuant to this title and seize evidence as needed for law enforcement. This authority does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. Seizure of property as evidence of a crime does not preclude seizure of the property for forfeiture as authorized by law. [2001 c 253 § 25; 2000 c 107 § 214; 1998 c 190 § 115; 1987 c 506 § 20; 1980 c 78 § 21; 1955 c 36 § 77.12.090. Prior: 1947 c 275 § 19; Rem. Supp. 1947 § 5992-29. Formerly RCW 77.12.090.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.096 Inspection without warrant—Commercial fish and wildlife entities—Limitations.** Fish and wildlife officers may inspect without warrant at reasonable times and in a reasonable manner the premises, containers, fishing

equipment, fish, seaweed, shellfish, and wildlife, and records required by the department of any commercial fisher or wholesale dealer or fish buyer. Fish and wildlife officers may similarly inspect without warrant the premises, containers, fishing equipment, fish, shellfish, and wildlife, and records required by the department of any shipping agent or other person placing or attempting to place fish, shellfish, or wildlife into interstate commerce, any cold storage plant that the department has probable cause to believe contains fish, shellfish, or wildlife, or of any taxidermist or fur buyer. Fish and wildlife officers may inspect without warrant the records required by the department of any retail outlet selling fish, shellfish, or wildlife, and, if the officers have probable cause to believe a violation of this title or rules of the commission has occurred, they may inspect without warrant the premises, containers, and fish, shellfish, and wildlife of any retail outlet selling fish, shellfish, or wildlife. Authority granted under this section does not extend to quarters in a boat, building, or other property used exclusively as a private domicile, does not extend to transitory residences in which a person has a reasonable expectation of privacy, and does not allow search and seizure without a warrant if the thing or place is protected from search without warrant within the meaning of Article I, section 7 of the state Constitution. [2002 c 128 § 5; 2001 c 253 § 26; 1998 c 190 § 116; 1982 c 152 § 1; 1980 c 78 § 22. Formerly RCW 77.12.095.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.098 Willful misconduct/gross negligence—Civil liability.** (1) An authorized state, county, or municipal officer may be subject to civil liability under RCW 77.15.070 for willful misconduct or gross negligence in the performance of his or her duties.

(2) The director, the fish and wildlife commission, or the department may be subject to civil liability for their willful or reckless misconduct in matters involving the seizure and forfeiture of personal property involved with fish or wildlife offenses. [2000 c 107 § 215; 1993 sp.s. c 2 § 68; 1989 c 314 § 3. Formerly RCW 77.12.103.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Finding—1989 c 314:** "In order to improve the enforcement of wildlife laws it is important to increase the penalties upon poachers by seizing the conveyances and gear that are used in poaching activities and to cause forfeiture of those items to the department." [1989 c 314 § 1.]

**77.15.100 Forfeited wildlife and articles—Disposition—Department authority—Sale.** (1) Unless otherwise provided in this title, fish, shellfish, or wildlife unlawfully taken or possessed, or involved in a violation shall be forfeited to the state upon conviction. Unless already held by, sold, destroyed, or disposed of by the department, the court shall order such fish or wildlife to be delivered to the department. Where delay will cause loss to the value of the property and a ready wholesale buying market exists, the department may sell property to a wholesale buyer at a fair market value.

(2) When seized property is forfeited to the department, the department may retain it for official use unless the property is required to be destroyed, or upon application by any

law enforcement agency of the state, release the property to the agency for the use of enforcing this title, or sell such property and deposit the proceeds into the \*state wildlife fund established under RCW 77.12.170. Any sale of other property shall be at public auction or after public advertisement reasonably designed to obtain the highest price. The time, place, and manner of holding the sale shall be determined by the director. The director may contract for the sale to be through the department of general administration as state surplus property, or, except where not justifiable by the value of the property, the director shall publish notice of the sale once a week for at least two consecutive weeks before the sale in at least one newspaper of general circulation in the county in which the sale is to be held. [2000 c 107 § 235; 1998 c 190 § 63.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

#### **77.15.110 Acting for commercial purposes—When—**

**Proof.** (1) For purposes of this chapter, a person acts for commercial purposes if the person engages in conduct that relates to commerce in fish, seaweed, shellfish, or wildlife or any parts thereof. Commercial conduct may include taking, delivering, selling, buying, or trading fish, seaweed, shellfish, or wildlife where there is present or future exchange of money, goods, or any valuable consideration. Evidence that a person acts for commercial purposes includes, but is not limited to, the following conduct:

- (a) Using gear typical of that used in commercial fisheries;
- (b) Exceeding the bag or possession limits for personal use by taking or possessing more than three times the amount of fish, seaweed, shellfish, or wildlife allowed;
- (c) Delivering or attempting to deliver fish, seaweed, shellfish, or wildlife to a person who sells or resells fish, seaweed, shellfish, or wildlife including any licensed or unlicensed wholesaler;
- (d) Taking fish or shellfish using a vessel designated on a commercial fishery license or using gear not authorized in a personal use fishery;
- (e) Using a commercial fishery license;
- (f) Selling or dealing in raw furs; or
- (g) Performing taxidermy service on fish, shellfish, or wildlife belonging to another person for a fee or receipt of goods or services.

(2) For purposes of this chapter, the value of any fish, seaweed, shellfish, or wildlife may be proved based on evidence of legal or illegal sales involving the person charged or any other person, of offers to sell or solicitation of offers to sell by the person charged or by any other person, or of any market price for the fish, seaweed, shellfish, or wildlife including market price for farm-raised game animals. The value assigned to specific fish, seaweed, shellfish, or wildlife by RCW 77.15.420 may be presumed to be the value of such fish, seaweed, shellfish, or wildlife. It is not relevant to proof of value that the person charged misrepresented that the fish, seaweed, shellfish, or wildlife was taken in compliance with law if the fish, seaweed, shellfish, or wildlife was unlawfully taken and had no lawful market value. [2002 c 127 § 2; 2001 c 253 § 27; 1998 c 190 § 8.]

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**Intent—2002 c 127:** "The legislature intends to clarify that when a crime under chapter 77.15 RCW requires proof that a person acted for commercial purposes, that element refers to engaging in particular conduct that is commercial in nature and the element does not imply that a particular state of mind must exist. This act revises the existing definition of that element to confirm that the element is fulfilled by engaging in commercial conduct and to eliminate any implication that a particular mental state of mind must be shown. Examples are given of the type of conduct that may be considered as evidence that a person acts for a commercial purpose; however, these examples do not create a conclusive presumption that a person acts for a commercial purpose." [2002 c 127 § 1.]

**77.15.120 Endangered fish or wildlife—Unlawful taking—Penalty.** (1) A person is guilty of unlawful taking of endangered fish or wildlife in the second degree if the person hunts, fishes, possesses, maliciously harasses or kills fish or wildlife, or maliciously destroys the nests or eggs of fish or wildlife and the fish or wildlife is designated by the commission as endangered, and the taking has not been authorized by rule of the commission.

(2) A person is guilty of unlawful taking of endangered fish or wildlife in the first degree if the person has been:

- (a) Convicted under subsection (1) of this section or convicted of any crime under this title involving the killing, possessing, harassing, or harming of endangered fish or wildlife; and
- (b) Within five years of the date of the prior conviction the person commits the act described by subsection (1) of this section.

(3)(a) Unlawful taking of endangered fish or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful taking of endangered fish or wildlife in the first degree is a class C felony. The department shall revoke any licenses or tags used in connection with the crime and order the person's privileges to hunt, fish, trap, or obtain licenses under this title to be suspended for two years. [2000 c 107 § 236; 1998 c 190 § 13.]

**77.15.130 Protected fish or wildlife—Unlawful taking—Penalty.** (1) A person is guilty of unlawful taking of protected fish or wildlife if:

- (a) The person hunts, fishes, possesses, or maliciously kills protected fish or wildlife, or the person possesses or maliciously destroys the eggs or nests of protected fish or wildlife, and the taking has not been authorized by rule of the commission; or
- (b) The person violates any rule of the commission regarding the taking, harming, harassment, possession, or transport of protected fish or wildlife.

(2) Unlawful taking of protected fish or wildlife is a misdemeanor. [1998 c 190 § 14.]

**77.15.140 Unclassified fish or wildlife—Unlawful taking—Penalty.** (1) A person is guilty of unlawful taking of unclassified fish or wildlife if:

- (a) The person kills, hunts, fishes, takes, holds, possesses, transports, or maliciously injures or harms fish or wildlife that is not classified as big game, game fish, game animals, game birds, food fish, shellfish, protected wildlife, or endangered wildlife; and
- (b) The act violates any rule of the commission or the director.

(2) Unlawful taking of unclassified fish or wildlife is a misdemeanor. [1998 c 190 § 15.]

**77.15.150 Poison or explosives—Unlawful use—Penalty.** (1) A person is guilty of unlawful use of poison or explosives if:

(a) The person lays out, sets out, or uses a drug, poison, or other deleterious substance that kills, injures, harms, or endangers fish, shellfish, or wildlife, except if the person is using the substance in compliance with federal and state laws and label instructions; or

(b) The person lays out, sets out, or uses an explosive that kills, injures, harms, or endangers fish, shellfish, or wildlife, except if authorized by law or permit of the director.

(2) Unlawful use of poison or explosives is a gross misdemeanor. [2001 c 253 § 28; 1998 c 190 § 16.]

**77.15.160 Infractions—Record catch—Barbed hooks—Other rule violations.** A person is guilty of an infraction, which shall be cited and punished as provided under chapter 7.84 RCW, if the person:

(1) Fails to immediately record a catch of fish or shellfish on a catch record card required by RCW 77.32.430, or required by rule of the commission under this title; or

(2) Fishes for personal use using barbed hooks in violation of any rule; or

(3) Violates any other rule of the commission or director that is designated by rule as an infraction. [2000 c 107 § 237; 1998 c 190 § 17.]

**77.15.170 Waste of fish and wildlife—Penalty.** (1) A person is guilty of waste of fish and wildlife in the second degree if:

(a) The person kills, takes, or possesses fish, shellfish, or wildlife and the value of the fish, shellfish, or wildlife is greater than twenty dollars but less than two hundred fifty dollars; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

(2) A person is guilty of waste of fish and wildlife in the first degree if:

(a) The person kills, takes, or possesses fish, shellfish, or wildlife having a value of two hundred fifty dollars or more or wildlife classified as big game; and

(b) The person recklessly allows such fish, shellfish, or wildlife to be wasted.

(3)(a) Waste of fish and wildlife in the second degree is a misdemeanor.

(b) Waste of fish and wildlife in the first degree is a gross misdemeanor. Upon conviction, the department shall revoke any license or tag used in the crime and shall order suspension of the person's privileges to engage in the activity in which the person committed waste of fish and wildlife in the first degree for a period of one year.

(4) It is prima facie evidence of waste if a processor purchases or engages a quantity of food fish, shellfish, or game fish that cannot be processed within sixty hours after the food fish, game fish, or shellfish are taken from the water, unless the food fish, game fish, or shellfish are preserved in good marketable condition. [1999 c 258 § 5; 1998 c 190 § 21.]

**77.15.180 Unlawful interference with fishing or hunting gear—Penalty.** (1) A person is guilty of unlawful interference with fishing or hunting gear in the second degree if the person:

(a) Takes or releases a wild animal from another person's trap without permission;

(b) Springs, pulls up, damages, possesses, or destroys another person's trap without the owner's permission; or

(c) Interferes with recreational gear used to take fish or shellfish.

(2) Unlawful interference with fishing or hunting gear in the second degree is a misdemeanor.

(3) A person is guilty of unlawful interference with fishing or hunting gear in the first degree if the person:

(a) Takes or releases fish or shellfish from commercial fishing gear without the owner's permission; or

(b) Intentionally destroys or interferes with commercial fishing gear.

(4) Unlawful interference with fishing or hunting gear in the first degree is a gross misdemeanor.

(5) A person is not in violation of unlawful interference with fishing or hunting gear if the person removes a trap placed on property owned, leased, or rented by the person. [2001 c 253 § 29; 1998 c 190 § 22.]

**77.15.190 Unlawful trapping—Penalty.** (1) A person is guilty of unlawful trapping if the person:

(a) Sets out traps that are capable of taking wild animals, game animals, or furbearing mammals and does not possess all licenses, tags, or permits required under this title;

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the trapping of wild animals; or

(c) Fails to identify the owner of the traps or devices by neither (i) attaching a metal tag with the owner's department-assigned identification number or the name and address of the trapper legibly written in numbers or letters not less than one-eighth inch in height nor (ii) inscribing into the metal of the trap such number or name and address.

(2) Unlawful trapping is a misdemeanor. [1999 c 258 § 9; 1998 c 190 § 34.]

**77.15.191 Revocation of trapper's license—Placement of unauthorized traps.** The director may revoke the trapper's license of a person placing unauthorized traps on private property and may remove those traps. [2000 c 107 § 268; 1987 c 372 § 4. Formerly RCW 77.65.470, 77.32.199.]

**77.15.192 Definitions.** The definitions in this section apply throughout RCW 77.15.194 through 77.15.198.

(1) "Animal" means any nonhuman vertebrate.

(2) "Body-gripping trap" means a trap that grips an animal's body or body part. Body-gripping trap includes, but is not limited to, steel-jawed leghold traps, padded-jaw leghold traps, Conibear traps, neck snares, and nonstrangling foot snares. Cage and box traps, suitcase-type live beaver traps, and common rat and mouse traps are not considered body-gripping traps.

(3) "Person" means a human being and, where appropriate, a public or private corporation, an unincorporated associ-

ation, a partnership, a government, or a governmental instrumentality.

(4) "Raw fur" means a pelt that has not been processed for purposes of retail sale.

(5) "Animal problem" means any animal that threatens or damages timber or private property or threatens or injures livestock or any other domestic animal. [2001 c 1 § 2 (Initiative Measure No. 713, approved November 7, 2000).]

**Finding—2001 c 1 (Initiative Measure No. 713):** "The people of the state of Washington find that this act is necessary in order to protect people and domestic pets and to protect and conserve wildlife from the dangers of cruel and indiscriminate steel-jawed leghold traps and poisons, and to encourage the use of humane methods of trapping when trapping is necessary to ensure public health and safety, protect livestock or property, safeguard threatened and endangered species, or conduct field research on wildlife." [2001 c 1 § 1 (Initiative Measure No. 713, approved November 7, 2000).]

**Severability—2001 c 1 (Initiative Measure No. 713):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 1 § 6 (Initiative Measure No. 713, approved November 7, 2000).]

**77.15.194 Unlawful traps—Penalty.** (1) It is unlawful to use or authorize the use of any steel-jawed leghold trap, neck snare, or other body-gripping trap to capture any mammal for recreation or commerce in fur.

(2) It is unlawful to knowingly buy, sell, barter, or otherwise exchange, or offer to buy, sell, barter, or otherwise exchange the raw fur of a mammal or a mammal that has been trapped in this state with a steel-jawed leghold trap or any other body-gripping trap, whether or not pursuant to permit.

(3) It is unlawful to use or authorize the use of any steel-jawed leghold trap or any other body-gripping trap to capture any animal, except as provided in subsections (4) and (5) of this section.

(4) Nothing in this section prohibits the use of a Conibear trap in water, a padded leghold trap, or a nonstrangling type foot snare with a special permit granted by the director under (a) through (d) of this subsection. Issuance of the special permits shall be governed by rules adopted by the department and in accordance with the requirements of this section. Every person granted a special permit to use a trap or device listed in this subsection shall check the trap or device at least every twenty-four hours.

(a) Nothing in this section prohibits the director, in consultation with the department of social and health services or the United States department of health and human services from granting a permit to use traps listed in this subsection for the purpose of protecting people from threats to their health and safety.

(b) Nothing in this section prohibits the director from granting a special permit to use traps listed in this subsection to a person who applies for such a permit in writing, and who establishes that there exists on a property an animal problem that has not been and cannot be reasonably abated by the use of nonlethal control tools, including but not limited to guard animals, electric fencing, or box and cage traps, or if such nonlethal means cannot be reasonably applied. Upon making a finding in writing that the animal problem has not been and cannot be reasonably abated by nonlethal control tools or if the tools cannot be reasonably applied, the director may

authorize the use, setting, placing, or maintenance of the traps for a period not to exceed thirty days.

(c) Nothing in this section prohibits the director from granting a special permit to department employees or agents to use traps listed in this subsection where the use of the traps is the only practical means of protecting threatened or endangered species as designated under RCW 77.08.010.

(d) Nothing in this section prohibits the director from issuing a permit to use traps listed in this subsection, excluding Conibear traps, for the conduct of legitimate wildlife research.

(5) Nothing in this section prohibits the United States fish and wildlife service, its employees or agents, from using a trap listed in subsection (4) of this section where the fish and wildlife service determines, in consultation with the director, that the use of such traps is necessary to protect species listed as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.).

(6) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 374; 2001 c 1 § 3 (Initiative Measure No. 713, approved November 7, 2000).]

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

**Finding—Severability—2001 c 1 (Initiative Measure No. 713):** See notes following RCW 77.15.192.

**77.15.196 Unlawful poison—Penalty.** (1) It is unlawful to poison or attempt to poison any animal using sodium fluoroacetate, also known as compound 1080, or sodium cyanide.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 375; 2001 c 1 § 4 (Initiative Measure No. 713, approved November 7, 2000).]

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

**Finding—Severability—2001 c 1 (Initiative Measure No. 713):** See notes following RCW 77.15.192.

**77.15.198 Violation of RCW 77.15.194 or 77.15.196—Penalty.** In addition to appropriate criminal penalties, the director shall revoke the trapping license of any person convicted of a violation of RCW 77.15.194 or 77.15.196. The director shall not issue the violator a trapping license for a period of five years following the revocation. Following a subsequent conviction for a violation of RCW 77.15.194 or 77.15.196 by the same person, the director shall not issue a trapping license to the person at any time. [2003 c 53 § 376; 2001 c 1 § 5 (Initiative Measure No. 713, approved November 7, 2000).]

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

**Finding—Severability—2001 c 1 (Initiative Measure No. 713):** See notes following RCW 77.15.192.

**77.15.210 Obstructing the taking of fish, shellfish, or wildlife—Penalty.** (1) A person is guilty of obstructing the taking of fish[, shellfish,] or wildlife if the person:

(a) Harasses, drives, or disturbs fish, shellfish, or wildlife with the intent of disrupting lawful pursuit or taking thereof; or

(b) Harasses, intimidates, or interferes with an individual engaged in the lawful taking of fish, shellfish, or wildlife or lawful predator control with the intent of disrupting lawful pursuit or taking thereof.

(2) Obstructing the taking of fish, shellfish, or wildlife is a gross misdemeanor.

(3) It is an affirmative defense to a prosecution for obstructing the taking of fish, shellfish, or wildlife that the person charged was:

(a) Interfering with a person engaged in hunting outside the legally established hunting season; or

(b) Preventing or attempting to prevent unauthorized trespass on private property.

(4) The person raising a defense under subsection (3) of this section has the burden of proof by a preponderance of the evidence. [2001 c 253 § 30; 1998 c 190 § 24.]

**77.15.212 Damages due to violation of RCW 77.15.210—Civil action.** Any person who is damaged by any act prohibited in RCW 77.15.210 may bring a civil action to enjoin further violations, and recover damages sustained, including a reasonable attorneys' fee. The trial court may increase the award of damages to an amount not to exceed three times the damages sustained. A party seeking civil damages under this section may recover upon proof of a violation by a preponderance of the evidence. The state of Washington may bring a civil action to enjoin violations of this section. [2000 c 107 § 238.]

**77.15.220 Unlawful posting—Penalty.** (1) A person is guilty of unlawful posting if the individual posts signs preventing hunting or fishing on any land not owned or leased by the individual, or without the permission of the person who owns, leases, or controls the land posted.

(2) Unlawful posting is a misdemeanor. [1998 c 190 § 25.]

**77.15.230 Department lands or facilities—Unlawful use—Penalty.** (1) A person is guilty of unlawful use of department lands or facilities if the person enters upon, uses, or remains upon department-owned or department-controlled lands or facilities in violation of any rule of the department.

(2) Unlawful use of department lands or facilities is a misdemeanor. [1999 c 258 § 6; 1998 c 190 § 26.]

**77.15.240 Unlawful use of dogs—Public nuisance—Penalty.** (1) A person is guilty of unlawful use of dogs if the person:

(a) Negligently fails to prevent a dog under the person's control from pursuing or injuring deer, elk, or an animal classified as endangered under this title;

(b) Uses the dog to hunt deer or elk; or

(c) During the closed season for a species of game animal or game bird, negligently fails to prevent the dog from pursuing such animal or destroying the nest of a game bird.

(2) Unlawful use of dogs is a misdemeanor. A dog that is the basis for a violation of this section may be declared a public nuisance. [1998 c 190 § 30.]

**77.15.245 Unlawful practices—Black bear baiting—Exceptions—Illegal hunting—Use of dogs—Exceptions—Penalties.** (1) Notwithstanding the provisions of RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to take, hunt, or attract black bear with the aid of bait.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear with the aid of bait by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety.

(b) Nothing in this subsection shall be construed to prevent the establishment and operation of feeding stations for black bear in order to prevent damage to commercial timberland.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of bait to attract black bear for scientific purposes.

(d) As used in this subsection, "bait" means a substance placed, exposed, deposited, distributed, scattered, or otherwise used for the purpose of attracting black bears to an area where one or more persons hunt or intend to hunt them.

(2) Notwithstanding RCW 77.12.240, 77.36.020, 77.36.030, or any other provisions of law, it is unlawful to hunt or pursue black bear, cougar, bobcat, or lynx with the aid of a dog or dogs.

(a) Nothing in this subsection shall be construed to prohibit the killing of black bear, cougar, bobcat, or lynx with the aid of a dog or dogs by employees or agents of county, state, or federal agencies while acting in their official capacities for the purpose of protecting livestock, domestic animals, private property, or the public safety. A dog or dogs may be used by the owner or tenant of real property consistent with a permit issued and conditioned by the director.

(b) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the pursuit, capture and relocation, of black bear, cougar, bobcat, or lynx for scientific purposes.

(c) Nothing in this subsection shall be construed to prohibit the director from issuing a permit or memorandum of understanding to a public agency, university, or scientific or educational institution for the use of a dog or dogs for the killing of black bear, cougar, or bobcat, for the protection of a state and/or federally listed threatened or endangered species.

(3)(a) Notwithstanding subsection (2) of this section, the commission shall authorize the use of dogs only in selected areas within a game management unit to address a public safety need presented by one or more cougar. This authority may only be exercised after the commission has determined that no other practical alternative to the use of dogs exists, and after the commission has adopted rules describing the conditions in which dogs may be used. Conditions that may warrant the use of dogs within a game management unit include, but are not limited to, confirmed cougar/human safety incidents, confirmed cougar/livestock and cougar/pet

depredations, and the number of cougar capture attempts and relocations.

(b) The department shall post on their internet web site the known details of all reported cougar/human, cougar/pet, or cougar/livestock interactions within ten days of receiving the report. The posted material must include, but is not limited to, the location and time of all reported sightings, and the known details of any cougar/livestock incidents.

(4) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor. In addition to appropriate criminal penalties, the department shall revoke the hunting license of a person who violates subsection (1) or (2) of this section and order the suspension of wildlife hunting privileges for a period of five years following the revocation. Following a subsequent violation of subsection (1) or (2) of this section by the same person, a hunting license shall not be issued to the person at any time. [2005 c 107 § 1; 2001 c 253 § 31. Prior: 2000 c 248 § 1; 2000 c 107 § 260; 1997 c 1 § 1 (Initiative Measure No. 655, approved November 5, 1996). Formerly RCW 77.16.360.]

**Effective date—2000 c 248:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000]." [2000 c 248 § 2.]

**Severability—1997 c 1 (Initiative Measure No. 655):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 1 § 2 (Initiative Measure No. 655, approved November 5, 1996).]

**77.15.250 Unlawful release of fish, shellfish, or wildlife—Penalty—Unlawful release of deleterious exotic wildlife—Penalty.** (1)(a) A person is guilty of unlawfully releasing, planting, or placing fish, shellfish, or wildlife if the person knowingly releases, plants, or places live fish, shellfish, wildlife, or aquatic plants within the state, and the fish, shellfish, or wildlife have not been classified as deleterious wildlife. This subsection does not apply to a release of game fish into private waters for which a game fish stocking permit has been obtained, or the planting of fish or shellfish by permit of the commission.

(b) A violation of this subsection is a gross misdemeanor. In addition, the department shall order the person to pay all costs the department incurred in capturing, killing, or controlling the fish, shellfish, aquatic plants, or wildlife released or its progeny. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, controlling the fish, shellfish, aquatic plants, or wildlife released or their progeny, or restoration of habitat necessitated by the unlawful release.

(2)(a) A person is guilty of unlawful release of deleterious exotic wildlife if the person knowingly releases, plants, or places live fish, shellfish, or wildlife within the state and such fish, shellfish, or wildlife has been classified as deleterious exotic wildlife by rule of the commission.

(b) A violation of this subsection is a class C felony. In addition, the department shall also order the person to pay all costs the department incurred in capturing, killing, or controlling the fish, shellfish, or wildlife released or its progeny. This does not affect the existing authority of the department to bring a separate civil action to recover costs of capturing, killing, controlling the fish, shellfish, or wildlife released or

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their progeny, or restoration of habitat necessitated by the unlawful release. [2001 c 253 § 32; 1998 c 190 § 31.]

**77.15.253 Unlawful use of prohibited aquatic animal species—Penalty.** (1) A person is guilty of unlawful use of a prohibited aquatic animal species if he or she possesses, imports, purchases, sells, propagates, transports, or releases a prohibited aquatic animal species within the state, except as provided in this section.

(2) Unless otherwise prohibited by law, a person may:

(a) Transport prohibited aquatic animal species to the department, or to another destination designated by the director, in a manner designated by the director, for purposes of identifying a species or reporting the presence of a species;

(b) Possess a prohibited aquatic animal species if he or she is in the process of removing it from watercraft or equipment in a manner specified by the department;

(c) Release a prohibited aquatic animal species if the species was caught while fishing and it is being immediately returned to the water from which it came; or

(d) Possess, transport, or release a prohibited aquatic animal species as the commission may otherwise prescribe.

(3) Unlawful use of a prohibited aquatic animal species is a gross misdemeanor. A subsequent violation of subsection (1) of this section within five years is a class C felony.

(4) A person is guilty of unlawful release of a regulated aquatic animal species if he or she releases a regulated aquatic animal species into state waters, unless allowed by the commission.

(5) Unlawful release of a regulated aquatic animal species is a gross misdemeanor.

(6) A person is guilty of unlawful release of an unlisted aquatic animal species if he or she releases an unlisted aquatic animal species into state waters without requesting a commission designation under RCW 77.12.020.

(7) Unlawful release of an unlisted aquatic animal species is a gross misdemeanor.

(8) This section does not apply to:

(a) The transportation or release of organisms in ballast water;

(b) A person stopped at an aquatic invasive species check station who possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive species, if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or

(c) A person who has voluntarily submitted a recreational or commercial watercraft for inspection by the department and has received a receipt verifying that the watercraft has not been contaminated since its last use. [2007 c 350 § 5; 2002 c 281 § 4.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**77.15.260 Unlawful trafficking in fish, shellfish, or wildlife—Penalty.** (1) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the second degree if the person traffics in fish, shellfish, or wildlife with a wholesale value of less than two hundred fifty dollars and:

(a) The fish or wildlife is classified as game, food fish, shellfish, game fish, or protected wildlife and the trafficking is not authorized by statute or rule of the department; or

(b) The fish, shellfish, or wildlife is unclassified and the trafficking violates any rule of the department.

(2) A person is guilty of unlawful trafficking in fish, shellfish, or wildlife in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The fish, shellfish, or wildlife has a value of two hundred fifty dollars or more; or

(b) The fish, shellfish, or wildlife is designated as an endangered species or deleterious exotic wildlife and such trafficking is not authorized by any statute or rule of the department.

(3)(a) Unlawful trafficking in fish, shellfish, or wildlife in the second degree is a gross misdemeanor.

(b) Unlawful trafficking in fish, shellfish, or wildlife in the first degree is a class C felony. [2001 c 253 § 33; 1998 c 190 § 42.]

**77.15.270 Providing false information—Penalty.** (1)

A person is guilty of providing false information regarding fish, shellfish, or wildlife if the person knowingly provides false or misleading information required by any statute or rule to be provided to the department regarding the taking, delivery, possession, transportation, sale, transfer, or any other use of fish, shellfish, or wildlife.

(2) Providing false information regarding fish, shellfish, or wildlife is a gross misdemeanor. [2001 c 253 § 34; 1998 c 190 § 46.]

**77.15.280 Reporting of fish or wildlife harvest—Rules violation—Penalty.** (1) A person is guilty of violating rules requiring reporting of fish or wildlife harvest if the person:

(a) Fails to make a harvest log report of a commercial fish or shellfish catch in violation of any rule of the commission or the director;

(b) Fails to maintain a trapper's report or taxidermist ledger in violation of any rule of the commission or the director;

(c) Fails to submit any portion of a big game animal for a required inspection required by rule of the commission or the director; or

(d) Fails to return a catch record card to the department as required by rule of the commission or director, except for catch record cards officially endorsed for Puget Sound Dungeness crab.

(2) Violating rules requiring reporting of fish or wildlife harvest is a misdemeanor. [2008 c 244 § 2; 2005 c 418 § 2; 1998 c 190 § 47.]

**77.15.290 Unlawful transportation of fish or wildlife—Unlawful transport of aquatic plants—Penalty.** (1) A person is guilty of unlawful transportation of fish or wildlife in the second degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish, shellfish, or wildlife and the transportation does not involve big game, endangered fish or wildlife,

deleterious exotic wildlife, or fish, shellfish, or wildlife having a value greater than two hundred fifty dollars; or

(b) Possesses but fails to affix or notch a big game transport tag as required by rule of the commission or director.

(2) A person is guilty of unlawful transportation of fish or wildlife in the first degree if the person:

(a) Knowingly imports, moves within the state, or exports fish, shellfish, or wildlife in violation of any rule of the commission or the director governing the transportation or movement of fish, shellfish, or wildlife and the transportation involves big game, endangered fish or wildlife, deleterious exotic wildlife, or fish, shellfish, or wildlife with a value of two hundred fifty dollars or more; or

(b) Knowingly transports shellfish, shellstock, or equipment used in commercial culturing, taking, handling, or processing shellfish without a permit required by authority of this title.

(3)(a) Unlawful transportation of fish or wildlife in the second degree is a misdemeanor.

(b) Unlawful transportation of fish or wildlife in the first degree is a gross misdemeanor.

(4) A person is guilty of unlawful transport of aquatic plants if the person transports aquatic plants on any state or public road, including forest roads, except as provided in this section.

(5) Unless otherwise prohibited by law, a person may transport aquatic plants:

(a) To the department, or to another destination designated by the director, in a manner designated by the department, for purposes of identifying a species or reporting the presence of a species;

(b) When legally obtained for aquarium use, wetland or lakeshore restoration, or ornamental purposes;

(c) When transporting a commercial aquatic plant harvester to a suitable location for purposes of removing aquatic plants;

(d) In a manner that prevents their unintentional dispersal, to a suitable location for disposal, research, or educational purposes; or

(e) As the commission may otherwise prescribe.

(6) Unlawful transport of aquatic plants is a misdemeanor.

(7) This section does not apply to: (a) Any person stopped at an aquatic invasive species check station who possesses a recreational or commercial watercraft that is contaminated with an aquatic invasive species if that person complies with all department directives for the proper decontamination of the watercraft and equipment; or (b) any person who has voluntarily submitted a recreational or commercial watercraft for inspection by the department or its designee and has received a receipt verifying that the watercraft has not been contaminated since its last use. [2007 c 350 § 6; 2002 c 281 § 7; 2001 c 253 § 35; 1998 c 190 § 48.]

**Purpose—2002 c 281:** See note following RCW 77.08.010.

**77.15.293 Unlawfully avoiding aquatic invasive species check stations—Penalty.** (1) A person is guilty of unlawfully avoiding aquatic invasive species check stations if the person fails to:

(a) Obey check station signs; or

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer.

(2) Unlawfully avoiding aquatic invasive species check stations is a gross misdemeanor. [2007 c 350 § 7.]

**77.15.300 Unlawful hydraulic project activities—**

**Penalty.** (1) A person is guilty of unlawfully undertaking hydraulic project activities if the person constructs any form of hydraulic project or performs other work on a hydraulic project and:

(a) Fails to have a hydraulic project approval required under chapter 77.55 RCW for such construction or work; or

(b) Violates any requirements or conditions of the hydraulic project approval for such construction or work.

(2) Unlawfully undertaking hydraulic project activities is a gross misdemeanor. [2000 c 107 § 239; 1998 c 190 § 52.]

**77.15.310 Unlawful failure to use or maintain approved fish guard on water diversion device—Penalty.**

(1) A person is guilty of unlawful failure to use or maintain an approved fish guard on a diversion device if the person owns, controls, or operates a device used for diverting or conducting water from a lake, river, or stream and:

(a) The device is not equipped with a fish guard, screen, or bypass approved by the director as required by \*RCW 77.55.040 or 77.55.320; or

(b) The person knowingly fails to maintain or operate an approved fish guard, screen, or bypass so as to effectively screen or prevent fish from entering the intake.

(2) Unlawful failure to use or maintain an approved fish guard, screen, or bypass on a diversion device is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day that a diversion device is operated without an approved or maintained fish guard, screen, or bypass is a separate offense. [2003 c 39 § 38; 2000 c 107 § 240; 1998 c 190 § 53.]

**\*Reviser's note:** RCW 77.55.040 and 77.55.320 were recodified as RCW 77.57.010 and 77.57.070, respectively, pursuant to 2005 c 146 § 1002.

**77.15.320 Unlawful failure to provide, maintain, or operate fishway for dam or other obstruction—Penalty.**

(1) A person is guilty of unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction if the person owns, operates, or controls a dam or other obstruction to fish passage on a river or stream and:

(a) The dam or obstruction is not provided with a durable and efficient fishway approved by the director as required by \*RCW 77.55.060;

(b) Fails to maintain a fishway in efficient operating condition; or

(c) Fails to continuously supply a fishway with a sufficient supply of water to allow the free passage of fish.

(2) Unlawful failure to provide, maintain, or operate a fishway for dam or other obstruction is a gross misdemeanor. Following written notification to the person from the department that there is a violation, each day of unlawful failure to provide, maintain, or operate a fishway is a separate offense. [2000 c 107 § 241; 1998 c 190 § 54.]

**\*Reviser's note:** RCW 77.55.060 was recodified as RCW 77.57.030 pursuant to 2005 c 146 § 1002.

(2008 Ed.)

**77.15.330 Unlawful hunting or fishing contests—Penalty.** (1) A person is guilty of unlawfully holding a hunting or fishing contest if the person:

(a) Conducts, holds, or sponsors a hunting contest, a fishing contest involving game fish, or a competitive field trial using live wildlife without the permit required by RCW 77.65.480; or

(b) Violates any rule of the commission or the director applicable to a hunting contest, fishing contest involving game fish, or a competitive field trial using live wildlife.

(2) Unlawfully holding a hunting or fishing contest is a misdemeanor. [2001 c 253 § 36; 1998 c 190 § 56.]

**77.15.340 Unlawful operation of a game farm—Penalty.** (1) A person is guilty of unlawful operation of a game farm if the person (a) operates a game farm without the license required by RCW 77.65.480; or (b) violates any rule of the commission or the director applicable to game farms under RCW 77.12.570, 77.12.580, and 77.12.590.

(2) Unlawful operation of a game farm is a gross misdemeanor. [2001 c 253 § 37; 1998 c 190 § 57.]

**77.15.350 Inspection and disease control of aquatic farms—Rules violation—Penalty.** (1) A person is guilty of violating a rule regarding inspection and disease control of aquatic farms if the person:

(a) Violates any rule adopted under chapter 77.115 RCW regarding the inspection and disease control program for an aquatic farm; or

(b) Fails to register or report production from an aquatic farm as required by chapter 77.115 RCW.

(2) A violation of a rule regarding inspection and disease control of aquatic farms is a misdemeanor. [2000 c 107 § 242; 1998 c 190 § 58.]

**77.15.360 Unlawful interfering in department operations—Penalty.** (1) A person is guilty of unlawful interfering in department operations if the person prevents department employees from carrying out duties authorized by this title, including but not limited to interfering:

(a) In the operation of department vehicles, vessels, or aircraft; or

(b) With the collection of samples of tissue, fluids, or other bodily parts of fish, wildlife, and shellfish under RCW 77.12.071.

(2) Unlawful interfering in department operations is a gross misdemeanor. [2007 c 337 § 3; 2000 c 107 § 243; 1998 c 190 § 61.]

**Intent—Finding—2007 c 337:** See note following RCW 77.12.071.

**77.15.370 Unlawful recreational fishing in the first degree—Penalty.** (1) A person is guilty of unlawful recreational fishing in the first degree if:

(a) The person takes, possesses, or retains two times or more than the bag limit or possession limit of fish or shellfish allowed by any rule of the director or commission setting the amount of food fish, game fish, or shellfish that can be taken, possessed, or retained for noncommercial use;

(b) The person fishes in a fishway;

(c) The person shoots, gaffs, snags, snares, spears, dip-nets, or stones fish or shellfish in state waters, or possesses fish or shellfish taken by such means, unless such means are authorized by express rule of the commission or director; or

(d) The person fishes for or possesses a fish listed as threatened or endangered in 50 C.F.R. Sec. 17.11 (2002), unless fishing for or possession of such fish is specifically allowed under federal or state law.

(2) Unlawful recreational fishing in the first degree is a gross misdemeanor. [2005 c 406 § 3; 2001 c 253 § 38; 1998 c 190 § 19.]

**77.15.380 Unlawful recreational fishing in the second degree—Penalty.** (1) A person is guilty of unlawful recreational fishing in the second degree if the person fishes for, takes, possesses, or harvests fish or shellfish and:

(a) The person does not have and possess the license or the catch record card required by chapter 77.32 RCW for such activity; or

(b) The action violates any rule of the commission or the director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or any other rule addressing the manner or method of fishing or possession of fish, except for use of a net to take fish as provided for in RCW 77.15.580.

(2) Unlawful recreational fishing in the second degree is a misdemeanor. [2001 c 253 § 39; 2000 c 107 § 244; 1998 c 190 § 18.]

**77.15.390 Seaweed—Unlawful taking—Penalty.** (1) A person is guilty of unlawful taking of seaweed if the person takes, possesses, or harvests seaweed and:

(a) The person does not have and possess the license required by chapter 77.32 RCW for taking seaweed; or

(b) The action violates any rule of the department or the department of natural resources regarding seasons, possession limits, closed areas, closed times, or any other rule addressing the manner or method of taking, possessing, or harvesting of seaweed.

(2) Unlawful taking of seaweed is a misdemeanor. This does not affect rights of the state to recover civilly for trespass, conversion, or theft of state-owned valuable materials. [2001 c 253 § 40; 2000 c 107 § 245; 1998 c 190 § 20.]

**77.15.400 Unlawful hunting of wild birds—Violation of a rule requiring nontoxic shot—Penalty.** (1) A person is guilty of unlawful hunting of wild birds in the second degree if the person:

(a) Hunts for, takes, or possesses a wild bird and the person does not have and possess all licenses, tags, stamps, and permits required under this title;

(b) Maliciously destroys, takes, or harms the eggs or nests of a wild bird except when authorized by permit;

(c) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas, closed times, or other rule addressing the manner or method of hunting or possession of wild birds; or

(d) Possesses a wild bird taken during a closed season for that wild bird or taken from a closed area for that wild bird.

(2) A person is guilty of unlawful hunting of wild birds in the first degree if the person takes or possesses two times or more than the possession or bag limit for wild birds allowed by rule of the commission or director.

(3)(a) Unlawful hunting of wild birds in the second degree is a misdemeanor.

(b) Unlawful hunting of wild birds in the first degree is a gross misdemeanor.

(4) In addition to the penalties set forth in this section, if a person, other than a youth as defined in RCW 77.08.010 for hunting purposes, violates a rule adopted by the commission under the authority of this title that requires the use of non-toxic shot, upon conviction:

(a) The court shall require a payment of one thousand dollars as a criminal wildlife penalty assessment that must be paid to the clerk of the court and distributed to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425. The criminal wildlife penalty assessment must be imposed regardless of and in addition to any sentence, fine, or costs imposed for violating this section. The criminal wildlife penalty assessment must be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect; and

(b) The department shall revoke the hunting license of the person and order a suspension of small game hunting privileges for two years. [2006 c 148 § 1; 2001 c 253 § 41; 1999 c 258 § 2; 1998 c 190 § 9.]

**77.15.410 Unlawful hunting of big game—Penalty.** (1) A person is guilty of unlawful hunting of big game in the second degree if the person:

(a) Hunts for, takes, or possesses big game and the person does not have and possess all licenses, tags, or permits required under this title;

(b) Violates any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, closed times, or any other rule governing the hunting, taking, or possession of big game; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(2) A person is guilty of unlawful hunting of big game in the first degree if the person was previously convicted of any crime under this title involving unlawful hunting, killing, possessing, or taking big game, and within five years of the date that the prior conviction was entered the person:

(a) Hunts for big game and does not have and possess all licenses, tags, or permits required under this title;

(b) Acts in violation of any rule of the commission or director regarding seasons, bag or possession limits, closed areas including game reserves, or closed times; or

(c) Possesses big game taken during a closed season for that big game or taken from a closed area for that big game.

(3)(a) Unlawful hunting of big game in the second degree is a gross misdemeanor. Upon conviction of an offense involving killing or possession of big game taken during a period of time when hunting for the particular species is not permitted, or in excess of the bag or possession limit, the department shall revoke all hunting licenses and tags and order a suspension of hunting privileges for two years.

(b) Unlawful hunting of big game in the first degree is a class C felony. Upon conviction, the department shall revoke all hunting licenses or tags and the department shall order the person's hunting privileges suspended for ten years. [2005 c 406 § 4; 1999 c 258 § 3; 1998 c 190 § 10.]

**77.15.420 Illegally taken or possessed wildlife—Criminal wildlife penalty assessed.** (1) If a person is convicted of violating RCW 77.15.410 and that violation results in the death of wildlife listed in this section, the court shall require payment of the following amounts for each animal killed or possessed. This shall be a criminal wildlife penalty assessment that shall be paid to the clerk of the court and distributed each month to the state treasurer for deposit in the fish and wildlife enforcement reward account created in RCW 77.15.425.

- (a) Moose, mountain sheep, mountain goat, and all wildlife species classified as endangered by rule of the commission, except for mountain caribou and grizzly bear as listed under (d) of this subsection . . . . . \$4,000
- (b) Elk, deer, black bear, and cougar . . . . . \$2,000
- (c) Trophy animal elk and deer . . . . . \$6,000
- (d) Mountain caribou, grizzly bear, and trophy animal mountain sheep. . . . . \$12,000

(2) No forfeiture of bail may be less than the amount of the bail established for hunting during closed season plus the amount of the criminal wildlife penalty assessment in subsection (1) of this section.

(3) For the purpose of this section a "trophy animal" is:

- (a) A buck deer with four or more antler points on both sides, not including eyeguards;
- (b) A bull elk with five or more antler points on both sides, not including eyeguards; or
- (c) A mountain sheep with a horn curl of three-quarter curl or greater.

For purposes of this subsection, "eyeguard" means an antler protrusion on the main beam of the antler closest to the eye of the animal.

(4) If two or more persons are convicted of illegally possessing wildlife in subsection (1) of this section, the criminal wildlife penalty assessment shall be imposed on them jointly and separately.

(5) The criminal wildlife penalty assessment shall be imposed regardless of and in addition to any sentence, fines, or costs otherwise provided for violating any provision of this title. The criminal wildlife penalty assessment shall be included by the court in any pronouncement of sentence and may not be suspended, waived, modified, or deferred in any respect. This section may not be construed to abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(6) A defaulted criminal wildlife penalty assessment may be collected by any means authorized by law for the enforcement of orders of the court or collection of a fine or costs, including but not limited to vacation of a deferral of sentencing or vacation of a suspension of sentence.

(7) A person assessed a criminal wildlife penalty assessment under this section shall have his or her hunting license revoked and all hunting privileges suspended until the penalty assessment is paid through the registry of the court in which the penalty assessment was assessed.

(8) The criminal wildlife penalty assessments provided in subsection (1) of this section shall be doubled in the following instances:

- (a) When a person is convicted of spotlighting big game under RCW 77.15.450;
- (b) When a person commits a violation that requires payment of a wildlife penalty assessment within five years of a prior gross misdemeanor or felony conviction under this title;
- (c) When the person killed the animal in question with the intent of bartering, selling, or otherwise deriving economic profit from the animal or the animal's parts; or
- (d) When a person kills the animal under the supervision of a licensed guide. [2005 c 406 § 5; 1998 c 190 § 62.]

**77.15.425 Fish and wildlife enforcement reward account.** The fish and wildlife enforcement reward account is created in the custody of the state treasurer. All receipts from criminal wildlife penalty assessments under RCW 77.15.420 and 77.15.400 must be deposited into the account. The department may accept money or personal property from persons under conditions requiring the property or money to be used consistent with the intent of expenditures from the fish and wildlife enforcement reward account. Expenditures from the account may be used only for investigation and prosecution of fish and wildlife offenses, to provide rewards to persons informing the department about violations of this title and rules adopted under this title, and for other valid enforcement uses as determined by the commission. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2006 c 148 § 2; 2005 c 406 § 1.]

**77.15.430 Unlawful hunting of wild animals—Penalty.** (1) A person is guilty of unlawful hunting of wild animals in the second degree if the person:

- (a) Hunts for, takes, or possesses a wild animal that is not classified as big game, and does not have and possess all licenses, tags, or permits required by this title;
- (b) Violates any rule of the commission or director regarding seasons, bag or possession limits but less than two times the bag or possession limit, closed areas including game reserves, closed times, or other rule addressing the manner or method of hunting or possession of wild animals not classified as big game; or
- (c) Possesses a wild animal that is not classified as big game taken during a closed season for that wild animal or from a closed area for that wild animal.

(2) A person is guilty of unlawful hunting of wild animals in the first degree if the person takes or possesses two times or more than the possession or bag limit for wild animals that are not classified as big game animals as allowed by rule of the commission or director.

(3)(a) Unlawful hunting of wild animals in the second degree is a misdemeanor.

(b) Unlawful hunting of wild animals in the first degree is a gross misdemeanor. [1999 c 258 § 4; 1998 c 190 § 11.]

**77.15.440 Weapons, traps, or dogs on game reserves—Unlawful use—Penalty.** (1) A person is guilty of unlawful use of weapons, traps, or dogs on game reserves if:

(a) The person uses firearms, other hunting weapons, or traps on a game reserve; or

(b) The person negligently allows a dog upon a game reserve.

(2) This section does not apply to persons on a public highway or if the conduct is authorized by rule of the department.

(3) This section does not apply to a person in possession of a handgun if the person in control of the handgun possesses a valid concealed pistol license and the handgun is concealed on the person.

(4) Unlawful use of weapons, traps, or dogs on game reserves is a misdemeanor. [1998 c 190 § 12.]

**77.15.450 Spotighting big game—Penalty.** (1) A person is guilty of spotighting big game in the second degree if the person hunts big game with the aid of a spotlight, other artificial light, or night vision equipment while in possession or control of a firearm, bow and arrow, or cross bow. For purposes of this section, "night vision equipment" includes electronic light amplification devices, thermal imaging devices, and other comparable equipment used to enhance night vision.

(2) A person is guilty of spotighting big game in the first degree if:

(a) The person has any prior conviction for gross misdemeanor or felony for a crime under this title involving big game including but not limited to subsection (1) of this section or RCW 77.15.410; and

(b) Within ten years of the date that such prior conviction was entered the person commits the act described by subsection (1) of this section.

(3)(a) Spotighting big game in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke all hunting licenses and tags and order a suspension of the person's hunting privileges for two years.

(b) Spotighting big game in the first degree is a class C felony. Upon conviction, the department shall order suspension of all privileges to hunt wildlife for a period of ten years.

(4) A person convicted under this section shall be assessed a criminal wildlife penalty assessment as provided in RCW 77.15.420. [2005 c 406 § 6; 1998 c 190 § 27.]

**77.15.460 Loaded firearm in vehicle—Unlawful use or possession—Penalty.** (1) A person is guilty of unlawful possession of a loaded firearm in a motor vehicle if:

(a) The person carries, transports, conveys, possesses, or controls a rifle or shotgun in or on a motor vehicle; and

(b) The rifle or shotgun contains shells or cartridges in the magazine or chamber, or is a muzzle-loading firearm that is loaded and capped or primed.

(2) A person is guilty of unlawful use of a loaded firearm if the person negligently shoots a firearm from, across, or along the maintained portion of a public highway.

(3) Unlawful possession of a loaded firearm in a motor vehicle or unlawful use of a loaded firearm is a misdemeanor.

(4) This section does not apply if the person:

(a) Is a law enforcement officer who is authorized to carry a firearm and is on duty within the officer's respective jurisdiction;

(b) Possesses a disabled hunter's permit as provided by RCW 77.32.237 and complies with all rules of the department concerning hunting by persons with disabilities.

(5) For purposes of this section, a firearm shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the firearm. [1999 c 258 § 7; 1998 c 190 § 28.]

**77.15.470 Wildlife check stations or field inspections—Unlawful avoidance—Penalty.** (1) A person is guilty of unlawfully avoiding wildlife check stations or field inspections if the person fails to:

(a) Obey check station signs;

(b) Stop and report at a check station if directed to do so by a uniformed fish and wildlife officer; or

(c) Produce for inspection upon request by a fish and wildlife officer: (i) Hunting or fishing equipment; (ii) seaweed, fish, shellfish, or wildlife; or (iii) licenses, permits, tags, stamps, or catch record cards required by this title.

(2) Unlawfully avoiding wildlife check stations or field inspections is a gross misdemeanor.

(3) Wildlife check stations may not be established upon interstate highways or state routes. [2000 c 107 § 246; 1998 c 190 § 29.]

**77.15.480 Certain devices declared public nuisances.** Articles or devices unlawfully used, possessed, or maintained for catching, taking, killing, attracting, or decoying wildlife, fish, and shellfish are public nuisances. If necessary, fish and wildlife officers and ex officio fish and wildlife officers may seize, abate, or destroy these public nuisances without warrant or process. [2001 c 253 § 42; 2000 c 107 § 247; 1980 c 78 § 27; 1955 c 36 § 77.12.130. Prior: 1947 c 275 § 23; Rem. Supp. 1947 § 5992-33. Formerly RCW 77.12.130.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.500 Commercial fishing without a license—Penalty.** (1) A person is guilty of commercial fishing without a license in the second degree if the person fishes for, takes, or delivers food fish, shellfish, or game fish while acting for commercial purposes and:

(a) The person does not hold a fishery license or delivery license under chapter 77.65 RCW for the food fish or shellfish; or

(b) The person is not a licensed operator designated as an alternate operator on a fishery or delivery license under chapter 77.65 RCW for the food fish or shellfish.

(2) A person is guilty of commercial fishing without a license in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves taking, delivery, or possession of food fish or shellfish with a value of two hundred fifty dollars or more; or

(b) The violation involves taking, delivery, or possession of food fish or shellfish from an area that was closed to the taking of such food fish or shellfish by any statute or rule.

(3)(a) Commercial fishing without a license in the second degree is a gross misdemeanor.

(b) Commercial fishing without a license in the first degree is a class C felony. [2000 c 107 § 248; 1998 c 190 § 35.]

**77.15.510 Commercial fish guiding or chartering without a license—Penalty.** (1) A person is guilty of commercial fish guiding or chartering without a license if:

(a) The person operates a charter boat and does not hold the charter boat license required for the food fish taken;

(b) The person acts as a professional salmon guide and does not hold a professional salmon guide license; or

(c) The person acts as a game fish guide and does not hold a game fish guide license.

(2) Commercial fish guiding or chartering without a license is a gross misdemeanor. [2001 c 253 § 43; 1998 c 190 § 36.]

**77.15.520 Commercial fishing—Unlawful gear or methods—Penalty.** (1) A person is guilty of commercial fishing using unlawful gear or methods if the person acts for commercial purposes and takes or fishes for any fish or shellfish using any gear or method in violation of a rule of the department specifying, regulating, or limiting the gear or method for taking, fishing, or harvesting of such fish or shellfish.

(2) Commercial fishing using unlawful gear or methods is a gross misdemeanor. [1998 c 190 § 37.]

**77.15.530 Unlawful use of a nondesignated vessel—Penalty.** (1) A person who holds a fishery license required by chapter 77.65 RCW, or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 77.65 RCW, is guilty of unlawful use of a nondesignated vessel if the person takes, fishes for, or delivers from that fishery using a vessel not designated on the person's license, when vessel designation is required by chapter 77.65 RCW.

(2) Unlawful use of a nondesignated vessel is a gross misdemeanor.

(3) A nondesignated vessel may be used, subject to appropriate notification to the department and in accordance with rules established by the commission, when a designated vessel is inoperative because of accidental damage or mechanical breakdown.

(4) If the person commits the act described by subsection (1) of this section and the vessel designated on the person's fishery license was used by any person in the fishery on the same day, then the violation for using a nondesignated vessel is a class C felony. Upon conviction the department shall order revocation and suspension of all commercial fishing privileges under chapter 77.65 RCW for a period of one year. [2000 c 107 § 249; 1998 c 190 § 38.]

(2008 Ed.)

**77.15.540 Unlawful use of a commercial fishery license—Penalty.** (1) A person who holds a fishery license required by chapter 77.65 RCW, or who holds an operator's license and is designated as an alternate operator on a fishery license required by chapter 77.65 RCW, is guilty of unlawful use of a commercial fishery license if the person:

(a) Does not have the commercial fishery license or operator's license in possession during fishing or delivery; or

(b) Violates any rule of the department regarding the use, possession, display, or presentation of the person's license, decals, or vessel numbers.

(2) Unlawful use of a commercial fishery license is a misdemeanor. [2000 c 107 § 250; 1998 c 190 § 39.]

**77.15.550 Violation of commercial fishing area or time—Penalty.** (1) A person is guilty of violating commercial fishing area or time in the second degree if the person acts for commercial purposes and takes, fishes for, possesses, delivers, or receives fish or shellfish:

(a) At a time not authorized by statute or rule;

(b) From an area that was closed to the taking of such fish or shellfish for commercial purposes by statute or rule; or

(c) If such fish or shellfish do not conform to the special restrictions or physical descriptions established by rule of the department.

(2) A person is guilty of violating commercial fishing area or time in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The person acted with knowledge that the area or time was not open to the taking or fishing of fish or shellfish for commercial purposes; and

(b) The violation involved two hundred fifty dollars or more worth of fish or shellfish.

(3)(a) Violating commercial fishing area or time in the second degree is a gross misdemeanor.

(b) Violating commercial fishing area or time in the first degree is a class C felony. [2001 c 253 § 44; 1999 c 258 § 10; 1998 c 190 § 40.]

**77.15.552 Qualifying commercial fishing violations.**

(1) If a person is convicted of two or more qualifying commercial fishing violations within a three-year period, the person's privileges to participate in the commercial fishery to which the violations applied may be suspended by the director for up to one year. A commercial fishery license that is suspended under this section may not be transferred after the director issues a notice of suspension, or used by an alternative operator or transferred during the period of suspension, if the person who is the subject of the suspension notice is the person who owns the commercial fishery license.

(2) For the purposes of this section only, "qualifying commercial fishing violation" means either:

(a) A conviction under RCW 77.15.500, 77.15.510, 77.15.520, 77.15.530, 77.15.550(1)(a), 77.15.570, 77.15.580, or 77.15.590;

(b) A gross misdemeanor or felony involving commercial fish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold fish, other than shellfish, groundfish, or coastal pelagic species of baitfish totals greater than six

percent, by weight, of the harvest available for inspection at the time of citation and the cumulative value of the unlawfully harvested fish is more than two hundred fifty dollars at the time of citation;

(c) A gross misdemeanor or felony involving commercial groundfish or coastal pelagic baitfish harvest, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued under this title, if: (i) The quantity of unlawfully harvested, possessed, bought, or sold groundfish or coastal pelagic baitfish totals greater than ten percent, by weight, of the harvest available for inspection at the time of citation and has a cumulative value greater than five hundred dollars; or (ii) the quantity, by weight, of the unlawfully commercially harvested groundfish or coastal pelagic baitfish is ten percent greater than the landing allowances provided under rules adopted by the department for species categorized as over-fished by the national marine fisheries service; or

(d) A gross misdemeanor or felony involving commercial shellfish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold shellfish: (i) Totals greater than six percent of the harvest available for inspection at the time of citation; and (ii) totals fifty or more individual shellfish.

(3)(a) The director may refer a person convicted of one qualifying commercial fishing violation to the license suspension review committee if the director feels that the qualifying commercial fishing violation was of a severe enough magnitude to justify suspension of the individual's license renewal privileges.

(b) The director may refer any person convicted of one egregious shellfish violation to the license suspension review committee.

(c) For the purposes of this section only, "egregious shellfish violation" means a gross misdemeanor or felony involving commercial shellfish harvesting, buying, or selling that is unlawful under the terms of the license, this title, or the rules issued pursuant to this title, if the quantity of unlawfully harvested, possessed, bought, or sold shellfish: (i) Totals more than twenty percent of the harvest available for inspection at the time of citation; (ii) totals five hundred or more individual shellfish; and (iii) is valued at two thousand five hundred dollars or more.

(4) A person who has a commercial fishing license suspended or revoked under this section may file an appeal with the license suspension review committee pursuant to RCW 77.15.554. An appeal must be filed within thirty-one days of notice of license suspension or revocation. If an appeal is filed, the suspension or revocation issued by the department does not take effect until after the license suspension review committee has delivered an opinion. If no appeal is filed within thirty-one days of notice of license suspension or revocation, the right to an appeal is considered waived. All suspensions ordered under this section take effect either thirty-one days following the conviction for the second qualifying commercial fishing violation, or upon a decision pursuant to RCW 77.15.554, whichever is later.

(5) A fishing privilege suspended under this section is in addition to the statutory penalties assigned to the underlying crime.

(6) For the purposes of this section only, the burden is on the state to show the dollar amount or the percent of a harvest that is comprised of unlawfully harvested, bought, or sold individual fish or shellfish. [2003 c 386 § 3.]

**Findings—Intent—2003 c 386:** See note following RCW 77.15.700.

**77.15.554 License suspension review committee.** (1) The license suspension review committee is created. The license suspension review committee may only hear appeals from commercial fishers who have had a license revoked or suspended pursuant to RCW 77.15.552.

(2)(a) The license suspension review committee is composed of five voting members and up to four alternates.

(b) Two of the members must be appointed by the director and may be department employees.

(c) Three members, and up to four alternates, must be peer-group members, who are individuals owning a commercial fishing license issued by the department. If a peer-group member appears before the license suspension review committee because of a qualifying commercial fishing violation, the member must recuse himself or herself from the proceedings relating to that violation. No two voting peer-group members may reside in the same county. All peer-group members must be appointed by the commission, who may accept recommendations from professional organizations that represent commercial fishing interests or from the legislative authority of any Washington county.

(d) All license suspension review committee members serve a two-year renewable term.

(e) The commission may develop minimum member standards for service on the license suspension review committee, and standards for terminating a member before the expiration of his or her term.

(3) The license suspension review committee must convene and deliver an opinion on a license renewal suspension within three months of appeal or of referral from the department. The director shall consider the committee's opinion and make a decision and may issue, not issue, or modify the license suspension.

(4) The license suspension review committee shall collect the information and hear the testimony that it feels necessary to deliver an opinion on the proper length, if any, of a suspension of a commercial license. The opinion may be based on extenuating circumstances presented by the individual convicted of the qualifying commercial fishing violation or considerations of the type and magnitude of violations that have been committed by the individual. The maximum length of any suspension may not exceed one year.

(5) All opinions of the license suspension review committee must be by a majority vote of all voting members. Alternate committee members may only vote when one of the voting members is unavailable, has been recused, or has decided not to vote on the case before the committee. Non-voting alternates may be present and may participate at all license suspension review committee meetings.

(6) Members of the license suspension review committee serve as volunteers, and are not eligible for compensation other than travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(7) Staff of the license suspension review committee must be provided by the department. [2003 c 386 § 4.]

**Findings—Intent—2003 c 386:** See note following RCW 77.15.700.

**77.15.560 Commercial fish, shellfish harvest or delivery—Failure to report—Penalty.** (1) Except as provided in RCW 77.15.640, a person is guilty of failing to report a commercial fish or shellfish harvest or delivery if the person acts for commercial purposes and takes or delivers any fish or shellfish, and the person:

(a) Fails to sign a fish-receiving ticket that documents the delivery of fish or shellfish or otherwise documents the taking or delivery; or

(b) Fails to report or document the taking, landing, or delivery as required by any rule of the department.

(2) Failing to report a commercial fish harvest or delivery is a gross misdemeanor.

(3) For purposes of this section, "delivery" of fish or shellfish occurs when there is a transfer or conveyance of title or control from the person who took, fished for, or otherwise harvested the fish or shellfish. [1998 c 190 § 41.]

**77.15.565 Wholesale fish dealers—Accounting of commercial harvest—Penalties.** Since violation of the rules of the department relating to the accounting of the commercial harvest of food fish and shellfish result in damage to the resources of the state, liability for damage to food fish and shellfish resources is imposed on a wholesale fish dealer or the holder of a direct retail endorsement for violation of a provision in chapter 77.65 RCW or a rule of the department related to the accounting of the commercial harvest of food fish and shellfish and shall be for the actual damages or for damages imposed as follows:

(1) For violation of rules requiring the timely presentation to the department of documents relating to the accounting of commercial harvest, fifty dollars for each of the first fifteen documents in a series and ten dollars for each subsequent document in the same series. If documents relating to the accounting of commercial harvest of food fish and shellfish are lost or destroyed and the wholesale dealer or holder of a direct retail endorsement notifies the department in writing within seven days of the loss or destruction, the director shall waive the requirement for timely presentation of the documents.

(2) For violation of rules requiring accurate and legible information relating to species, value, harvest area, or amount of harvest, twenty-five dollars for each of the first five violations of this subsection following July 28, 1985, and fifty dollars for each violation after the first five violations.

(3) For violations of rules requiring certain signatures, fifty dollars for each of the first two violations and one hundred dollars for each subsequent violation. For the purposes of this subsection, each signature is a separate requirement.

(4) For other violations of rules relating to the accounting of the commercial harvest, fifty dollars for each separate violation. [2002 c 301 § 6; 2000 c 107 § 12; 1996 c 267 § 14; 1985 c 248 § 5. Formerly RCW 75.10.150.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

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*Wholesale fish dealers—Documentation of commercial harvest: RCW 77.65.310.*

**77.15.568 Secondary commercial fish receiver's failure to account for commercial harvest—Penalty.** (1) A person is guilty of a secondary commercial fish receiver's failure to account for commercial harvest if:

(a) The person sells fish or shellfish at retail, stores or holds fish or shellfish for another in exchange for valuable consideration, ships fish or shellfish in exchange for valuable consideration, or brokers fish or shellfish in exchange for valuable consideration;

(b) The fish or shellfish were required to be entered on a Washington fish receiving ticket or a Washington aquatic farm production annual report; and

(c) The person fails to maintain records of each receipt of fish or shellfish, as required under subsections (3) through (5) of this section, at the location where the fish or shellfish are being sold, at the location where the fish or shellfish are being stored or held, or at the principal place of business of the shipper or broker.

(2) This section does not apply to a wholesale fish dealer, a fisher selling under a direct retail sale endorsement, or a registered aquatic farmer.

(3) Records of the receipt of fish or shellfish required to be kept under this section must be in the English language and be maintained for three years from the date fish or shellfish are received, shipped, or brokered.

(4) Records maintained by persons that retail or broker must include the following:

(a) The name, address, and phone number of the wholesale fish dealer, fisher selling under a direct retail sale endorsement, or aquatic farmer or shellstock shipper from whom the fish or shellfish were purchased or received;

(b) The Washington fish receiving ticket number documenting original receipt or aquatic farm production quarterly report documenting production, if available;

(c) The date of purchase or receipt; and

(d) The amount and species of fish or shellfish purchased or received.

(5) Records maintained by persons that store, hold, or ship fish or shellfish for others must state the following:

(a) The name, address, and phone number of the person and business from whom the fish or shellfish were received;

(b) The date of receipt; and

(c) The amount and species of fish or shellfish received.

(6) A secondary commercial fish receiver's failure to account for commercial harvest is a misdemeanor. [2007 c 337 § 4; 2003 c 336 § 1.]

**Intent—Finding—2007 c 337:** See note following RCW 77.12.071.

**77.15.570 Participation of non-Indians in Indian fishery forbidden—Exceptions, definitions, penalty.** (1) Except as provided in subsection (3) of this section, it is unlawful for a person who is not a treaty Indian fisherman to participate in the taking of fish or shellfish in a treaty Indian fishery, or to be on board a vessel, or associated equipment, operating in a treaty Indian fishery. A violation of this subsection is a gross misdemeanor.

(2) A person who violates subsection (1) of this section with the intent of acting for commercial purposes, including

any sale of catch, control of catch, profit from catch, or payment for fishing assistance, is guilty of a class C felony. Upon conviction, the department shall order revocation of any license and a one-year suspension of all commercial fishing privileges requiring a license under chapter 77.65 or 77.70 RCW.

(3)(a) The spouse, forebears, siblings, children, and grandchildren of a treaty Indian fisherman may assist the fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(b) Other treaty Indian fishermen with off-reservation treaty fishing rights in the same usual and accustomed places, whether or not the fishermen are members of the same tribe or another treaty tribe, may assist a treaty Indian fisherman in exercising treaty Indian fishing rights when the treaty Indian fisherman is present at the fishing site.

(c) Biologists approved by the department may be on board a vessel operating in a treaty Indian fishery.

(4) For the purposes of this section:

(a) "Treaty Indian fisherman" means a person who may exercise treaty Indian fishing rights as determined under *United States v. Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), or *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon 1969), and post-trial orders of those courts;

(b) "Treaty Indian fishery" means a fishery open to only treaty Indian fishermen by tribal or federal regulation;

(c) "To participate" and its derivatives mean an effort to operate a vessel or fishing equipment, provide immediate supervision in the operation of a vessel or fishing equipment, or otherwise assist in the fishing operation, to claim possession of a share of the catch, or to represent that the catch was lawfully taken in an Indian fishery.

(5) A violation of this section constitutes illegal fishing and is subject to the suspensions provided for commercial fishing violations. [2000 c 107 § 251; 1998 c 190 § 49; 1983 1st ex.s. c 46 § 63; 1982 c 197 § 1. Formerly RCW 75.12.320.]

**77.15.580 Unlawful use of net to take fish—Penalty.**

(1) A person is guilty of unlawful use of a net to take fish in the second degree if the person:

(a) Lays, sets, uses, or controls a net or other device or equipment capable of taking fish from the waters of this state, except if the person has a valid license for such fishing gear from the director under this title and is acting in accordance with all rules of the commission and director; or

(b) Fails to return unauthorized fish to the water immediately while otherwise lawfully operating a net under a valid license.

(2) A person is guilty of unlawful use of a net to take fish in the first degree if the person:

(a) Commits the act described by subsection (1) of this section; and

(b) The violation occurs within five years of entry of a prior conviction for a gross misdemeanor or felony under this title involving fish, other than a recreational fishing violation, or involving unlawful use of nets.

(3)(a) Unlawful use of a net to take fish in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any license held under this title allowing commercial net fishing used in connection with the crime.

(b) Unlawful use of a net to take fish in the first degree is a class C felony. Upon conviction, the department shall order a one-year suspension of all commercial fishing privileges requiring a license under this title.

(4) Notwithstanding subsections (1) and (2) of this section, it is lawful to use a landing net to land fish otherwise legally hooked. [2000 c 107 § 252; 1998 c 190 § 50.]

**77.15.590 Commercial fishing vessel—Unlawful use for recreational or charter fishing—Penalty.** (1) A person is guilty of unlawful use of a commercial fishing vessel, except as may be authorized by rule of the commission, for recreational or charter fishing if the person uses, operates, or controls a vessel on the same day for both:

(a) Charter or recreational fishing; and

(b) Commercial fishing or shellfish harvesting.

(2) Unlawful use of a commercial fishing vessel for recreational or charter fishing is a gross misdemeanor. [1998 c 190 § 51.]

**77.15.600 Engaging in commercial wildlife activity without a license—Penalty.** (1) A person is guilty of engaging in commercial wildlife activity without a license if the person:

(a) Deals in raw furs for commercial purposes and does not hold a fur dealer license required by chapter 77.65 RCW; or

(b) Practices taxidermy for commercial purposes and does not hold a taxidermy license required by chapter 77.65 RCW.

(2) Engaging in commercial wildlife activities without a license is a gross misdemeanor. [2001 c 253 § 45; 1999 c 258 § 8; 1998 c 190 § 32.]

**77.15.610 Unlawful use of a commercial wildlife license—Penalty.** (1) A person who holds a fur buyer's license or taxidermy license is guilty of unlawful use of a commercial wildlife license if the person:

(a) Fails to have the license in possession while engaged in fur buying or practicing taxidermy for commercial purposes; or

(b) Violates any rule of the department regarding the use, possession, display, or presentation of the taxidermy or fur buyer's license.

(2) Unlawful use of a commercial wildlife license is a misdemeanor. [1998 c 190 § 33.]

**77.15.620 Engaging in fish dealing activity—Unlicensed—Penalty.** (1) A person is guilty of engaging in fish dealing activity without a license in the second degree if the person:

(a) Engages in the commercial processing of fish or shellfish, including custom canning or processing of personal use fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(1) or 77.65.480 for anadromous game fish, or a direct retail endorsement under RCW 77.65.510;

(b) Engages in the wholesale selling, buying, or brokering of food fish or shellfish and does not hold a wholesale

dealer's or buying license required by RCW 77.65.280(2) or 77.65.480 for anadromous game fish;

(c) Is a fisher who lands and sells his or her catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state and does not hold a direct retail endorsement required by RCW 77.65.510; or

(d) Engages in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish and does not hold a wholesale dealer's license required by RCW 77.65.280(4) or 77.65.480 for anadromous game fish.

(2) Engaging in fish dealing activity without a license in the second degree is a gross misdemeanor.

(3) A person is guilty of engaging in fish dealing activity without a license in the first degree if the person commits the act described by subsection (1) of this section and the violation involves fish or shellfish worth two hundred fifty dollars or more. Engaging in fish dealing activity without a license in the first degree is a class C felony. [2002 c 301 § 7; 2000 c 107 § 253; 1998 c 190 § 43.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**77.15.630 Fish buying and dealing licenses—Unlawful use—Penalty.** (1) A person who holds a fish dealer's license required by RCW 77.65.280, an anadromous game fish buyer's license required by RCW 77.65.480, or a fish buyer's license required by RCW 77.65.340 is guilty of unlawful use of fish buying and dealing licenses in the second degree if the person:

(a) Possesses or receives fish or shellfish for commercial purposes worth less than two hundred fifty dollars; and

(b) Fails to document such fish or shellfish with a fish-receiving ticket required by statute or rule of the department.

(2) A person is guilty of unlawful use of fish buying and dealing licenses in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The violation involves fish or shellfish worth two hundred fifty dollars or more;

(b) The person acted with knowledge that the fish or shellfish were taken from a closed area, at a closed time, or by a person not licensed to take such fish or shellfish for commercial purposes; or

(c) The person acted with knowledge that the fish or shellfish were taken in violation of any tribal law.

(3)(a) Unlawful use of fish buying and dealing licenses in the second degree is a gross misdemeanor.

(b) Unlawful use of fish buying and dealing licenses in the first degree is a class C felony. Upon conviction, the department shall suspend all privileges to engage in fish buying or dealing for two years. [2000 c 107 § 254; 1998 c 190 § 44.]

**77.15.640 Wholesale fish buying and dealing—Rules violations—Penalty.** (1) A person who holds a wholesale fish dealer's license required by RCW 77.65.280, an anadromous game fish buyer's license required by RCW 77.65.480, a fish buyer's license required by RCW 77.65.340, or a direct retail endorsement under RCW 77.65.510 is guilty of violating rules governing wholesale fish buying and dealing if the person:

(a) Fails to possess or display his or her license when engaged in any act requiring the license;

(b) Fails to display or uses the license in violation of any rule of the department;

(c) Files a signed fish-receiving ticket but fails to provide all information required by rule of the department; or

(d) Violates any other rule of the department regarding wholesale fish buying and dealing.

(2) Violating rules governing wholesale fish buying and dealing is a gross misdemeanor. [2002 c 301 § 8; 2000 c 107 § 255; 1998 c 190 § 45.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**77.15.650 Unlawful purchase or use of a license—Penalty.** (1) A person is guilty of unlawful purchase or use of a license in the second degree if the person buys, holds, uses, displays, transfers, or obtains any license, tag, permit, or approval required by this title and the person:

(a) Uses false information to buy, hold, use, display, or obtain a license, permit, tag, or approval;

(b) Acquires, holds, or buys in excess of one license, permit, or tag for a license year if only one license, permit, or tag is allowed per license year;

(c) Except as authorized under RCW 77.32.565, uses or displays a license, permit, tag, or approval that was issued to another person;

(d) Except as authorized under RCW 77.32.565, permits or allows a license, permit, tag, or approval to be used or displayed by another person not named on the license, permit, tag, or approval;

(e) Acquires or holds a license while privileges for the license are revoked or suspended.

(2) A person is guilty of unlawful purchase or use of a license in the first degree if the person commits the act described by subsection (1) of this section and the person was acting with intent that the license, permit, tag, or approval be used for any commercial purpose. A person is presumed to be acting with such intent if the violation involved obtaining, holding, displaying, or using a license or permit for participation in any commercial fishery issued under this title or a license authorizing fish or wildlife buying, trafficking, or wholesaling.

(3)(a) Unlawful purchase or use of a license in the second degree is a gross misdemeanor. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a two-year suspension of participation in the activities for which the person unlawfully obtained, held, or used a license.

(b) Unlawful purchase or use of a license in the first degree is a class C felony. Upon conviction, the department shall revoke any unlawfully used or held licenses and order a five-year suspension of participation in any activities for which the person unlawfully obtained, held, or used a license.

(4) For purposes of this section, a person "uses" a license, permit, tag, or approval if the person engages in any activity authorized by the license, permit, tag, or approval held or possessed by the person. Such uses include but are not limited to fishing, hunting, taking, trapping, delivery or landing fish or wildlife, and selling, buying, or wholesaling of fish or wildlife.

(5) Any license obtained in violation of this section is void upon issuance and is of no legal effect. [2008 c 10 § 2; 2000 c 107 § 256; 1998 c 190 § 59.]

**Short title—2008 c 10:** See note following RCW 77.32.565.

**77.15.660 Unlawful use of scientific permit—Penalty.**

(1) A person is guilty of unlawful use of a scientific permit if the person:

(a) Violates any terms or conditions of a scientific permit issued by the director;

(b) Buys or sells fish or wildlife taken with a scientific permit; or

(c) Violates any rule of the commission or the director applicable to the issuance or use of scientific permits.

(2) Unlawful use of a scientific permit is a gross misdemeanor. [1998 c 190 § 55.]

**77.15.670 Suspension of department privileges—**

**Violation—Penalty.** (1) A person is guilty of violating a suspension of department privileges in the second degree if the person engages in any activity that is licensed by the department and the person's privileges to engage in that activity were revoked or suspended by any court or the department.

(2) A person is guilty of violating a suspension of department privileges in the first degree if the person commits the act described by subsection (1) of this section and:

(a) The suspension of privileges that was violated was a permanent suspension;

(b) The person takes or possesses more than two hundred fifty dollars' worth of unlawfully taken food fish, wildlife, game fish, seaweed, or shellfish; or

(c) The violation involves the hunting, taking, or possession of fish or wildlife classified as endangered or threatened or big game.

(3)(a) Violating a suspension of department privileges in the second degree is a gross misdemeanor. Upon conviction, the department shall order permanent suspension of the person's privileges to engage in such hunting or fishing activities.

(b) Violating a suspension of department privileges in the first degree is a class C felony. Upon conviction, the department shall order permanent suspension of all privileges to hunt, fish, trap, or take wildlife, food fish, or shellfish.

(4) As used in this section, hunting includes trapping with a trapping license. [1999 c 258 § 11; 1998 c 190 § 60.]

**77.15.675 Hunting while intoxicated—Penalty.**

(1) A person is guilty of hunting while under the influence of intoxicating liquor or drugs if the person hunts wild animals or wild birds while under the influence of intoxicating liquor or drugs.

(2) Hunting while under the influence of intoxicating liquor or drugs is a gross misdemeanor. [1999 c 258 § 12; 1980 c 78 § 75; 1955 c 36 § 77.16.070. Prior: 1947 c 275 § 45a; Rem. Supp. 1947 § 5992-55. Formerly RCW 77.16.070.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.15.680 Department authority to suspend privileges—Form and procedure.** (1) If any crime in this chapter is punishable by a suspension of privileges, then the department shall issue an order that specifies the privileges suspended and period when such suspension shall begin and end. The department has no authority to issue licenses, permits, tags, or stamps for the suspended activity until the suspension ends and any license, tag, stamp, or other permission obtained in violation of an order of suspension is void and ineffective.

(2) A court sentence may include a suspension of privileges only if grounds are provided by statute. There is no right to seek reinstatement of privileges from the department during a period of court-ordered suspension.

(3) If this chapter makes revocation or suspension of privileges mandatory, then the department shall impose the punishment in addition to any other punishments authorized by law. [1998 c 190 § 65.]

**77.15.690 Department authority to revoke licenses.**

(1) Upon any conviction of any violation of this chapter, the department may revoke any license, tag, or stamp, or other permit involved in the violation or held by the person convicted, in addition to other penalties provided by law.

(2) If the department orders that a license, tag, stamp, or other permit be revoked, that order is effective upon entry of the order and any such revoked license, tag, stamp, or other permit is void as a result of such order of revocation. The department shall order such license, tag, stamp, or other permit turned over to the department, and shall order the person not to acquire a replacement or duplicate for the remainder of the period for which the revoked license, tag, stamp, or other permit would have been valid. During this period when a license is revoked, the person is subject to punishment under this chapter. If the person appeals the sentence by the court, the revocation shall be effective during the appeal.

(3) If an existing license, tag, stamp, or other permit is voided and revoked under this chapter, the department and its agents shall not be required to refund or restore any fees, costs, or money paid for the license, nor shall any person have any right to bring a collateral appeal under chapter 34.05 RCW to attack the department order. [1998 c 190 § 64.]

**77.15.700 Grounds for department revocation and suspension of privileges.** The department shall impose revocation and suspension of privileges in the following circumstances:

(1) Upon conviction, if directed by statute for an offense;

(2) Upon conviction, if the department finds that actions of the defendant demonstrated a willful or wanton disregard for conservation of fish or wildlife. Such suspension of privileges may be permanent. This subsection (2) does not apply to violations involving commercial fishing;

(3) If a person is convicted twice within ten years for a violation involving unlawful hunting, killing, or possessing big game, the department shall order revocation and suspension of all hunting privileges for two years. RCW 77.12.722 or \*77.16.050 as it existed before June 11, 1998, may comprise one of the convictions constituting the basis for revocation and suspension under this subsection;

(4)(a) If a person is convicted of an offense, has an uncontested notice of infraction, fails to appear at a hearing to contest an infraction, or is found to have committed an infraction three times in ten years involving any violation of recreational hunting or fishing laws or rules, the department shall order a revocation and suspension of all recreational hunting and fishing privileges for two years.

(b) A violation punishable as an infraction counts towards the revocation and suspension of recreational hunting and fishing privileges only where that violation is:

(i) Punishable as a crime on July 24, 2005, and is subsequently decriminalized; or

(ii) One of the following violations, as they exist on July 24, 2005: RCW 77.15.160 (1) or (2); WAC 220-56-116; WAC 220-56-315(11); or WAC 220-56-355 (1) through (4).

(c) The commission may, by rule, designate additional infractions that do not count towards the revocation and suspension of recreational hunting and fishing privileges.

(5) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, except for a violation of RCW 77.15.400 (1) through (3), the department may revoke all hunting licenses and tags and may order a suspension of one or both the deferred education licensee and the nondeferred accompanying person's hunting privileges for one year. [2007 c 163 § 2; 2005 c 321 § 1; 2003 c 386 § 2; 2001 c 253 § 46; 1998 c 190 § 66.]

\*Reviser's note: RCW 77.16.050 was repealed by 1998 c 190 § 124.

**Findings—Intent—2003 c 386:** "(1)(a) The legislature finds that existing law as it relates to the suspension of commercial fishing licenses does not take into account the real-life circumstances faced by the state's commercial fishing fleets. The nature of the commercial fishing industry, together with the complexity of fisheries regulations, is such that honest mistakes can be made by well-meaning and otherwise law-abiding fishers. Commercial fishing violations that occur within an acceptable margin of error should not result in the suspension of fishing privileges. Likewise, fishers facing the possibility of license suspension or revocation deserve the opportunity to explain any extenuating circumstances prior to having his or her professional privileges suspended.

(b) The legislature intends, by creating the license suspension review committee, to provide a fisher with the opportunity to explain any extenuating circumstances that led to a commercial fishing violation. The legislature intends for the license suspension review committee to give serious considerations to the case-specific facts and scenarios leading up to a violation, and for license suspensions to issue only when the facts indicate a willful act that undermines the conservation of fish stocks. Frivolous violations should not result in the suspension of privileges, and should be punished only by the criminal sanctions attached to the underlying crime.

(2)(a) The legislature further finds that gross abuses of fish stocks should not be tolerated. Individuals convicted of even one violation that is egregious in nature, causing serious detriment to a fishery or the competitive disposition of other fishers, should have his or her license suspended and revoked.

(b) The legislature intends for the license suspension review committee to take egregious fisheries' violations seriously. When dealing with individuals convicted of only one violation, the license suspension review committee should only consider suspension for individuals that are convicted of violations that are of a severe magnitude and show a wanton disregard for the public's resource." [2003 c 386 § 1.]

**77.15.710 Conviction for assault—Revocation of licenses and suspension of privileges.** (1) The commission shall revoke all hunting, fishing, or other licenses issued under this title and order a ten-year suspension of all privileges extended under the authority of the department of a per-

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son convicted of assault on a fish and wildlife officer, ex officio officer, employee, agent, or personnel acting for the department, if the employee assaulted was on duty at the time of the assault and carrying out the provisions of this title. The suspension shall be continued beyond this period if any damages to the victim have not been paid by the suspended person.

(2) For the purposes of this section, the definition of assault includes:

(a) RCW 9A.32.030; murder in the first degree;

(b) RCW 9A.32.050; murder in the second degree;

(c) RCW 9A.32.060; manslaughter in the first degree;

(d) RCW 9A.32.070; manslaughter in the second degree;

(e) RCW 9A.36.011; assault in the first degree;

(f) RCW 9A.36.021; assault in the second degree; and

(g) RCW 9A.36.031; assault in the third degree. [2000 c

107 § 257; 1998 c 190 § 67; 1995 1st sp.s. c 2 § 43 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 74; 1991 c 211 § 1. Formerly RCW 77.16.135.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.15.720 Shooting another person, livestock—Director's authority to suspend privileges.** (1) If a person shoots another person or domestic livestock while hunting, the director shall revoke all hunting licenses and suspend all hunting privileges for three years. If the shooting of another person or livestock is the result of criminal negligence or reckless or intentional conduct, then the person's privileges shall be suspended for ten years. The suspension shall be continued beyond these periods if damages owed to the victim or livestock owner have not been paid by the suspended person. A hunting license shall not be reissued to the suspended person unless authorized by the director.

(2) Within twenty days of service of an order suspending privileges or imposing conditions under this section or RCW 77.15.710, a person may petition for administrative review under chapter 34.05 RCW by serving the director with a petition for review. The order is final and unappealable if there is no timely petition for administrative review.

(3) The commission may by rule authorize petitions for reinstatement of administrative suspensions and define circumstances under which reinstatement will be allowed. [2000 c 107 § 258; 1998 c 190 § 68.]

**77.15.730 Wildlife violator compact citations and convictions.** (1) Upon receipt of a report of failure to comply with the terms of a citation issued for a recreational violation from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.75.070, the department shall suspend the violator's recreational license privileges under this title until there is satisfactory evidence of compliance with the terms of the wildlife citation. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of recreational licensing privileges.

(2) Upon receipt of a report of a conviction for a recreational offense from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.75.070, the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of recreational license privileges. [2001 c 253 § 47; 1994 c 264 § 45; 1993 c 82 § 6. Formerly RCW 75.10.220.]

**Revoked licenses—Application—1993 c 82:** See note following RCW 77.75.070.

**77.15.732 Citations from wildlife violator compact party state—Failure to comply.** (1) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.75.070, the department shall suspend the violator's license privileges under this title until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the department. The department shall adopt by rule procedures for the timely notification and administrative review of such suspension of licensing privileges.

(2) Upon receipt of a report of a conviction from the licensing authority of a state that is a party to the wildlife violator compact under RCW 77.75.070, the department shall enter such conviction in its records and shall treat such conviction as if it occurred in the state of Washington for the purposes of suspension, revocation, or forfeiture of license privileges. [2000 c 107 § 263; 1993 c 82 § 5. Formerly RCW 77.21.090.]

**Revoked licenses—Application—1993 c 82:** See note following RCW 77.75.070.

**77.15.740 Protection of southern resident orca whales—Penalty.** (1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) Approach, by any means, within three hundred feet of a southern resident orca whale (*Orcinus orca*);

(b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;

(c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;

(d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or

(e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

(2) A person is exempt from subsection (1) of this section where:

(a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;

(b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;

(c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or

(d) That person is acting pursuant to and consistent with authorization from a state or federal government agency.

(3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.

(4) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sailboats.

(5) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW. [2008 c 225 § 2.]

**Findings—Intent—2008 c 225:** "The legislature finds that the resident population of orca whales in Washington waters (*Orcinus orca*), commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals." [2008 c 225 § 1.]

**Intent—2008 c 225:** "The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW." [2008 c 225 § 3.]

**77.15.900 Short title.** This chapter may be known and cited as the fish and wildlife enforcement code. [1998 c 190 § 126.]

**77.15.901 Captions not law.** Captions used in this chapter are not any part of the law. [1998 c 190 § 127.]

**77.15.902 Savings—1998 c 190.** The enactment of chapter 190, Laws of 1998 does not terminate, or in any way modify, any liability, civil or criminal, that was in existence on June 11, 1998. [1998 c 190 § 129.]

## Chapter 77.18 RCW GAME FISH MITIGATION

### Sections

77.18.050	Planting privately produced trout.
77.18.060	Determination of appropriate waters.

**77.18.050 Planting privately produced trout.** The legislature finds that it is beneficial to improve opportunities for trout fishing in order to satisfy the public's demand for recreational fishing during a time of declining opportunities to catch anadromous salmon and steelhead trout.

Fish farmers can produce trout in a triploid genetic configuration for the purpose of certifying that the fish are sterile and that they cannot interbreed with wild trout. These fish are ideally suited to planting into public lakes and ponds to provide immediate recreational fishing at a reasonable cost. The fish continue to grow throughout their life cycle and have the potential to grow to trophy size.

Planting of these catchable trout can provide increased angler participation, increased fishing license sales, increased tourism activities, and a boost to local economies.

The department of fish and wildlife is authorized to purchase these privately produced fish to supplement existing department trout hatchery production. The planting of these catchable trout in water bodies with water quality sufficient to support fish life must not have an adverse impact on the wild trout population. [1999 c 363 § 1.]

**Report to the legislature—1999 c 363:** "The department of fish and wildlife shall report to the appropriate legislative committees by February 1, 2001, regarding the implementation of this act. The report shall include information regarding the location and number of fish planted, the size of the fish planted, and information relating to the cost-effectiveness of the catchable trout program, including an estimate of new license revenues generated by the programs." [1999 c 363 § 4.]

**Effective date—1999 c 363:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 1999]." [1999 c 363 § 6.]

**77.18.060 Determination of appropriate waters.** The fish and wildlife commission in consultation with the department is authorized to determine which waters of the state are appropriate for this use. In making this determination, the commission shall seek geographic distribution to assure opportunity to fishers statewide.

The commission in consultation with the department will determine the maximum number of fish that may be planted into state waters so as not to compete with the wild populations of fish species in the water body. [2005 c 87 § 1; 1999 c 363 § 2.]

**Report to the legislature—Effective date—1999 c 363:** See notes following RCW 77.18.050.

## Chapter 77.32 RCW LICENSES

### Sections

77.32.007	"Special hunting season" defined.
77.32.010	Recreational license required—Activities—Permit for parking.
77.32.014	Licenses, tags, and stamps—Revocation/privileges suspended for noncompliance with support order.
77.32.025	Establishment of times and places for family fishing with no license or catch record card—Authorized.
77.32.050	Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees—Transaction fee.
77.32.070	Information required from license applicants—Reports on taking/effort to harvest fish, shellfish, and wildlife—Administrative penalty.
77.32.090	Licenses, permits, tags, stamps, and raffle tickets—Rules for form, display, procedures.

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77.32.155	Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.
77.32.237	Disabled hunter permits for persons with a disability.
77.32.238	Adoption of rules defining a person with a disability—Shooting from a motor vehicle—Assistance from licensed hunter.
77.32.240	Scientific permit—Procedures—Penalties—Fee.
77.32.250	Licenses nontransferable.
77.32.256	Duplicate licenses, rebates, permits, tags, and stamps—Fees.
77.32.320	Required licenses, tags—Transport tags for game.
77.32.350	Pheasant or migratory birds—Supplemental permit, stamp—Fees.
77.32.370	Special hunting season permits—Fee.
77.32.380	Fish and wildlife lands vehicle use permit—Improved access facility—Fee—Youth groups—Display—Transfer between vehicles—Penalty.
77.32.400	Persons with a disability—Designated harvester card—Fish and shellfish.
77.32.410	Personal use fishing license—Reciprocity with Oregon in concurrent waters of Columbia river and coastal waters.
77.32.420	Recreational licenses—Nontransferable—Enforcement provisions.
77.32.430	Catch record card—Disposition of funds.
77.32.440	Enhancement programs—Funding levels—Rules—Deposit to warm water game fish account.
77.32.450	Big game hunting license—Fees.
77.32.460	Small game hunting license—Turkey tags—Fees.
77.32.470	Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.
77.32.480	Reduced rate licenses.
77.32.500	Saltwater, freshwater transition areas—Rule-making authority.
77.32.510	Recreational license fees—Disposition of appropriation.
77.32.520	Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection.
77.32.525	Hunting and fishing contests—Field trials for dogs—Rules—Limitation.
77.32.530	Hunting big game—Auction or raffle—Procedure.
77.32.535	Private lands—Raffle authorization to hunt big game.
77.32.540	Hunting and fishing contests—Field trials for dogs—Permit—Rules.
77.32.545	Removal of trap—Identification of traps—Disclosure of identities.
77.32.550	Group fishing permit.
77.32.555	Surcharge to fund biotoxin testing and monitoring.
77.32.560	Watchable wildlife decals.
77.32.565	Hunting and fishing opportunities for a terminally ill person—Provision of a license, tag, permit, or stamp without a fee—Rule-making authority.

**77.32.007 "Special hunting season" defined.** For the purposes of this chapter "special hunting season" means a hunting season established by rule of the commission for the purpose of taking specified wildlife under a special hunting permit. [1984 c 240 § 8.]

**77.32.010 Recreational license required—Activities—Permit for parking.** (1) Except as otherwise provided in this chapter, a recreational license issued by the director is required to hunt for or take wild animals or wild birds, fish for, take, or harvest fish, shellfish, and seaweed. A recreational fishing or shellfish license is not required for carp, smelt, and crawfish, and a hunting license is not required for bullfrogs.

(2) A permit issued by the department is required to park a motor vehicle upon improved department access facilities.

(3) During the 2007-09 fiscal biennium to enable the implementation of the pilot project established in section 307, chapter 329, Laws of 2008, a fishing permit issued to a non-tribal member by the Colville Tribes shall satisfy the license requirements in subsection (1) of this section on the waters of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and a Colville Tribes tribal member identification card shall satisfy the license requirements in subsection (1) of this section on all waters of Lake Rufus Woods. [2008 c 329

§ 923; 2006 c 57 § 1; 2001 c 253 § 49; 2000 c 107 § 264; 1998 c 191 § 7; 1987 c 506 § 76; 1985 c 457 § 25; 1983 c 284 § 2; 1981 c 310 § 7; 1980 c 78 § 103; 1979 ex.s. c 3 § 1; 1959 c 245 § 1; 1955 c 36 § 77.32.010. Prior: 1947 c 275 § 93; Rem. Supp. 1947 § 5992-102.]

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.014 Licenses, tags, and stamps—Revocation/privileges suspended for noncompliance with support order.** Licenses, tags, and stamps issued pursuant to this chapter shall be revoked and the privileges suspended for any period in which a person is certified by the department of social and health services or a court of competent jurisdiction as a person in noncompliance with a support order. Fish and wildlife officers and ex officio fish and wildlife officers shall enforce this section through checks of the department of licensing's computer database. A listing on the department of licensing's database that an individual's license is currently suspended pursuant to RCW 46.20.291(8) shall be prima facie evidence that the individual is in noncompliance with a support order. Presentation of a written release issued by the department of social and health services stating that the person is in compliance with an order shall serve as prima facie proof of compliance with a support order. [2001 c 253 § 50; 2000 c 107 § 265; 1998 c 191 § 8; 1997 c 58 § 881.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**77.32.025 Establishment of times and places for family fishing with no license or catch record card—Authorized.** Notwithstanding RCW 77.32.010, the commission may adopt rules designating times and places for the purposes of family fishing days when licenses and catch record cards are not required to fish or to harvest shellfish. [1998 c 191 § 9; 1996 c 20 § 2; 1987 c 506 § 103.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1996 c 20:** "This act shall take effect July 1, 1996." [1996 c 20 § 3.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**77.32.050 Recreational licenses, permits, tags, stamps, and raffle tickets issued by authorized officials—Rules—Fees—Transaction fee.** All recreational licenses, permits, tags, and stamps required by this title and raffle tickets authorized under chapter 77.12 RCW shall be issued under the authority of the commission. The commission shall adopt rules for the issuance of recreational licenses, permits,

tags, stamps, and raffle tickets, and for the collection, payment, and handling of license fees, terms and conditions to govern dealers, and dealers' fees. A transaction fee on recreational documents issued through an automated licensing system may be set by the commission and collected from licensees. The department may authorize all or part of such fee to be paid directly to a contractor providing automated licensing system services. Fees retained by dealers shall be uniform throughout the state. The department shall authorize dealers to collect and retain dealer fees of at least two dollars for purchase of a standard hunting or fishing recreational license document, except that the commission may set a lower dealer fee for issuance of tags or when a licensee buys a license that involves a stamp or display card format rather than a standard department licensing document form. [2003 c 389 § 1; 2000 c 107 § 266; 1999 c 243 § 2; 1998 c 191 § 10; 1996 c 101 § 8; 1995 c 116 § 1; 1987 c 506 § 77; 1981 c 310 § 16; 1980 c 78 § 106; 1979 ex.s. c 3 § 2; 1955 c 36 § 77.32.050. Prior: 1953 c 75 § 2; 1947 c 275 § 97; Rem. Supp. 1947 § 5992-106.]

**Finding—1999 c 243:** "The legislature finds that recreational license dealers are private businesses that provide the service of license sales in every part of the state. The dealers who sell recreational fishing and hunting licenses for the department of fish and wildlife perform a valuable public service function for those members of the public who purchase licenses as well as a revenue generating function for the department. The modernized fishing and hunting license format will require additional investments by license dealers in employee training and public education." [1999 c 243 § 1.]

**Effective date—1999 c 243:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 243 § 4.]

**Effective date—1998 c 191:** "Sections 10, 24, 31 through 33, 37, 43, and 45 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 27, 1998]." [1998 c 191 § 49.]

**Findings—1996 c 101:** See note following RCW 77.32.530.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.070 Information required from license applicants—Reports on taking/effort to harvest fish, shellfish, and wildlife—Administrative penalty.** (1) Applicants for a license, permit, tag, or stamp shall furnish the information required by the director. However, the director may not require the purchaser of a razor clam license under RCW 77.32.520 to provide any personal information except for proof of residency. The commission may adopt rules requiring licensees or permittees to keep records and make reports concerning the taking of or effort to harvest fish, shellfish, and wildlife. The reporting requirement may be waived where, for any reason, the department is not able to receive the report. The department must provide reasonable options for a licensee to submit information to a live operator prior to the reporting deadline.

(2) The commission may, by rule, set an administrative penalty for failure to comply with rules requiring the reporting of taking or effort to harvest wildlife. The commission

may also adopt rules requiring hunters who have not reported for the previous license year to complete a report and pay the assessed administrative penalty before a new hunting license is issued.

(a) The total administrative penalty per hunter set by the commission must not exceed ten dollars.

(b) By December 31st of each year, the department shall report the rate of hunter compliance with the harvest reporting requirement, the administrative penalty imposed for failing to report, and the amount of administrative penalties collected during that year to the appropriate fiscal and policy committees of the senate and house of representatives.

(3) The commission may, by rule, set an administrative penalty for failure to comply with rules requiring the reporting of data from catch record cards officially endorsed for Puget Sound Dungeness crab. The commission may also adopt rules requiring fishers who possessed a catch record card officially endorsed for Puget Sound Dungeness crab and who have not reported for the previous license year to complete a report and pay the assessed administrative penalty before a new catch record card officially endorsed for Puget Sound Dungeness crab is issued.

(a) The total administrative penalty per fisher set by the commission must not exceed ten dollars.

(b) By December 31st of each year, the department shall report the rate of fisher compliance with the Puget Sound Dungeness crab catch record card reporting requirement, the administrative penalty imposed for failing to report, and the amount of administrative penalties collected during that year to the appropriate fiscal and policy committees of the senate and house of representatives. [2008 c 244 § 1; 2005 c 418 § 1; 2004 c 248 § 3; 1998 c 191 § 11; 1995 c 116 § 3; 1987 c 506 § 79; 1981 c 310 § 18; 1980 c 78 § 108; 1955 c 36 § 77.32.070. Prior: 1947 c 275 § 99; Rem. Supp. 1947 § 5992-108.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.090 Licenses, permits, tags, stamps, and raffle tickets—Rules for form, display, procedures.** The commission may adopt rules pertaining to the form, period of validity, use, possession, and display of licenses, permits, tags, stamps, and raffle tickets required by this chapter. [2000 c 107 § 267; 1998 c 191 § 12; 1996 c 101 § 10; 1995 c 116 § 4; 1987 c 506 § 80; 1981 c 310 § 19; 1980 c 78 § 109; 1955 c 36 § 77.32.090. Prior: 1947 c 275 § 101; Rem. Supp. 1947 § 5992-110.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Findings—1996 c 101:** See note following RCW 77.32.530.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

(2008 Ed.)

**77.32.155 Hunter education training program—Certificate—Deferral—Adoption of rules—Fee.** (1)(a) When purchasing any hunting license, persons under the age of eighteen shall present certification of completion of a course of instruction of at least ten hours in the safe handling of firearms, safety, conservation, and sportsmanship. All persons purchasing any hunting license for the first time, if born after January 1, 1972, shall present such certification.

(b) The director may establish a program for training persons in the safe handling of firearms, conservation, and sportsmanship and shall prescribe the type of instruction and the qualifications of the instructors. The director may cooperate with the National Rifle Association, organized sportsmen's groups, or other public or private organizations when establishing the training program.

(c) Upon the successful completion of a course established under this section, the trainee shall receive a hunter education certificate signed by an authorized instructor. The certificate is evidence of compliance with this section.

(d) The director may accept certificates from other states that persons have successfully completed firearm safety, hunter education, or similar courses as evidence of compliance with this section.

(2)(a) The director may authorize a once in a lifetime, one license year deferral of hunter education training for individuals who are accompanied by a nondeferred Washington-licensed hunter who has held a Washington hunting license for the prior three years and is over eighteen years of age. The commission shall adopt rules for the administration of this subsection to avoid potential fraud and abuse.

(b) The director is authorized to collect an application fee, not to exceed twenty dollars, for obtaining the once in a lifetime, one license year deferral of hunter education training from the department. This fee must be deposited into the fish and wildlife enforcement reward account and must be used exclusively to administer the deferral program created in this subsection.

(c) For the purposes of this subsection, "accompanied" means to go along with another person while staying within a range of the other person that permits continual unaided visual and auditory communication.

(3) To encourage the participation of an adequate number of instructors for the training program, the commission shall develop nonmonetary incentives available to individuals who commit to serving as an instructor. The incentives may include additional hunting opportunities for instructors. [2007 c 163 § 1; 2006 c 23 § 1; 1998 c 191 § 17; 1993 c 85 § 1; 1987 c 506 § 81; 1981 c 310 § 21; 1980 c 78 § 104; 1957 c 17 § 1. Formerly RCW 77.32.015.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.237 Disabled hunter permits for persons with a disability.** The commission shall attempt to enhance the hunting opportunities for persons with a disability. The commission shall authorize the director to issue disabled hunter

permits to persons with a disability. The commission shall adopt rules governing the conduct of persons with a disability who hunt and their designated licensed hunter. [2007 c 254 § 6; 1989 c 297 § 1.]

**77.32.238 Adoption of rules defining a person with a disability—Shooting from a motor vehicle—Assistance from licensed hunter.** (1) The commission shall adopt rules defining who is a person with a disability and governing the conduct of persons with a disability who hunt and their designated licensed hunters. It is unlawful for any person to possess a loaded firearm in or on a motor vehicle except a person with a disability who possesses a disabled hunter permit and all appropriate hunting licenses may discharge a firearm or other legal hunting device from a nonmoving motor vehicle that has the engine turned off. A person with a disability who possesses a disabled hunter permit shall not be exempt from permit requirements for carrying concealed weapons, or from rules, laws, or ordinances concerning the discharge of these weapons. No hunting shall be permitted from a motor vehicle that is parked on or beside the maintained portion of a public road, except as authorized by the commission by rule.

(2) A person with a disability holding a disabled hunter permit may be accompanied by one licensed hunter who may assist the person with a disability by killing game wounded by the person with a disability, and by tagging and retrieving game killed by the person with a disability or the designated licensed hunter. A nondisabled hunter shall not possess a loaded gun in, or shoot from, a motor vehicle. [2007 c 254 § 5; 1989 c 297 § 2.]

**77.32.240 Scientific permit—Procedures—Penalties—Fee.** A scientific permit allows the holder to collect for research or display food fish, game fish, shellfish, and wildlife, including avian nests and eggs as required in RCW 77.32.010, under conditions prescribed by the director. Before a permit is issued, the applicant shall demonstrate to the director their qualifications and establish the need for the permit. The director may require a bond of up to one thousand dollars to ensure compliance with the permit. Permits are valid for the time specified, unless sooner revoked.

Holders of permits may exchange specimens with the approval of the director.

A permit holder who violates this section shall forfeit the permit and bond and shall not receive a similar permit for one year. The fee for a scientific permit is twelve dollars. [1998 c 191 § 21; 1991 sp.s. c 7 § 6; 1981 c 310 § 28; 1980 c 78 § 119; 1955 c 36 § 77.32.240. Prior: 1947 c 275 § 113; Rem. Supp. 1947 § 5992-122.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.250 Licenses nontransferable.** Except as authorized in RCW 77.32.565, licenses, permits, tags, and stamps required by this chapter and raffle tickets authorized under this chapter shall not be transferred. [2008 c 10 § 3; 2001 c

253 § 51; 2000 c 107 § 269; 1998 c 191 § 22; 1996 c 101 § 12; 1995 c 116 § 5; 1981 c 310 § 29; 1980 c 78 § 120; 1955 c 36 § 77.32.250. Prior: 1947 c 275 § 114; Rem. Supp. 1947 § 5992-123.]

**Short title—2008 c 10:** See note following RCW 77.32.565.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Findings—1996 c 101:** See note following RCW 77.32.530.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.256 Duplicate licenses, rebates, permits, tags, and stamps—Fees.** The director shall by rule establish the conditions and fees for issuance of duplicate licenses, rebates, permits, tags, and stamps required by this chapter. The fee for duplicate licenses, rebates, permits, tags, and stamps, except catch record cards, may not exceed the actual cost to the department for issuing the duplicate. [2003 c 318 § 2; 2002 c 222 § 1; 1995 c 116 § 6; 1994 c 255 § 13; 1991 sp.s. c 7 § 7; 1987 c 506 § 86; 1985 c 464 § 7; 1981 c 310 § 30; 1980 c 78 § 121; 1975 1st ex.s. c 15 § 32.]

**Effective date—2003 c 318:** See note following RCW 77.32.430.

**Effective date—1994 c 255 §§ 1-13:** See note following RCW 77.32.520.

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—1985 c 464:** See note following RCW 77.32.191.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**Effective dates—1975 1st ex.s. c 15:** See note following RCW 77.65.450.

**77.32.320 Required licenses, tags—Transport tags for game.** (1) The correct licenses and tags are required to hunt deer, elk, black bear, cougar, sheep, mountain goat, moose, or wild turkey except as provided in RCW 77.32.450.

(2) Persons who kill deer, elk, bear, cougar, mountain goat, sheep, moose, or wild turkey shall immediately validate and attach their own transport tag to the carcass as provided by rule of the director. [1998 c 191 § 23; 1997 c 114 § 1; 1990 c 84 § 4; 1987 c 506 § 87; 1981 c 310 § 8.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**77.32.350 Pheasant or migratory birds—Supplemental permit, stamp—Fees.** In addition to a small game hunting license, a supplemental permit or stamp is required to hunt for western Washington pheasant or migratory birds.

(1) A western Washington pheasant permit is required to hunt for pheasant in western Washington. Western Washington pheasant permits must contain numbered spaces for recording the location and date of harvest of each western Washington pheasant.

(2) The permit shall be available as a season option, a youth full season option, or a three-day option. The fee for this permit is:

(a) For the resident and nonresident full season option, thirty-six dollars;

(b) For the youth full season option, eighteen dollars;

(c) For the three-day option, twenty dollars.

(3) A migratory bird validation is required for all persons sixteen years of age or older to hunt migratory birds. The fee for the validation for hunters is ten dollars for residents and nonresidents. The fee for the stamp for collectors is ten dollars.

(4) The migratory bird license must be validated at the time of signature of the licensee. [2002 c 283 § 1; 2000 c 107 § 270; 1998 c 191 § 25; 1998 c 191 § 24; 1992 c 41 § 1; 1991 sp.s. c 7 § 9; 1990 c 84 § 6; 1989 c 365 § 1; 1987 c 506 § 105. Prior: 1985 c 464 § 9; 1985 c 243 § 1; 1984 c 240 § 6; 1981 c 310 § 12.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1992 c 41:** "This act shall take effect January 1, 1993. The director of wildlife may take steps necessary to ensure that this act is implemented on its effective date." [1992 c 41 § 2.]

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—1985 c 464:** See note following RCW 77.65.450.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

### **77.32.370 Special hunting season permits—Fee.** (1)

A special hunting season permit is required to hunt in each special season established under chapter 77.12 RCW.

(2) Persons may apply for special hunting season permits as provided by rule of the commission.

(3) The application fee to enter the drawing for a special hunting permit is five dollars for residents, fifty dollars for nonresidents, and three dollars for youth. [1998 c 191 § 26; 1991 sp.s. c 7 § 11; 1987 c 506 § 89; 1984 c 240 § 7; 1981 c 310 § 14.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

### **77.32.380 Fish and wildlife lands vehicle use permit—Improved access facility—Fee—Youth groups—Display—Transfer between vehicles—Penalty.** (1)

Persons who enter upon or use clearly identified department improved access facilities with a motor vehicle may be required to display a current annual fish and wildlife lands vehicle use permit on the motor vehicle while within or while using an improved access facility. An "improved access facility" is a clearly identified area specifically created for motor vehicle parking, and includes any boat launch or boat ramp associated with the parking area, but does not include the department parking facilities at the Gorge Concert Center near George, Washington. One vehicle use permit shall be issued at no charge with an initial purchase of either an annual saltwater, freshwater, combination, small game hunt-

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ing, big game hunting, or trapping license, or a watchable wildlife decal, issued by the department. The annual fee for a fish and wildlife lands vehicle use permit, if purchased separately, is ten dollars. A person to whom the department has issued a vehicle use permit or who has purchased a vehicle use permit separately may purchase additional vehicle use permits from the department at a cost of five dollars per vehicle use permit. Revenue derived from the sale of fish and wildlife lands vehicle use permits shall be used solely for the stewardship and maintenance of department improved access facilities.

Youth groups may use department improved access facilities without possessing a vehicle use permit when accompanied by a vehicle use permit holder.

(2) The vehicle use permit must be displayed from the interior of the motor vehicle so that it is clearly visible from outside of the motor vehicle before entering upon or using the motor vehicle on a department improved access facility. The vehicle use permit can be transferred between two vehicles and must contain space for the vehicle license numbers of each vehicle.

(3) Failure to display the fish and wildlife lands vehicle use permit if required by this section is an infraction under chapter 7.84 RCW, and department employees are authorized to issue a notice of infraction to the registered owner of any motor vehicle entering upon or using a department improved access facility without such a vehicle use permit. The penalty for failure to clearly display the vehicle use permit is sixty-six dollars. This penalty is reduced to thirty dollars if the registered owner provides proof to the court that he or she purchased a vehicle use permit within fifteen days after the issuance of the notice of violation. [2003 c 317 § 4; 2001 c 243 § 1; 2000 c 107 § 271; 1998 c 87 § 1; 1993 sp.s. c 2 § 77; 1991 sp.s. c 7 § 12; 1988 c 36 § 52; 1987 c 506 § 90; 1985 c 464 § 11; 1981 c 310 § 15.]

**Findings—2003 c 317:** See note following RCW 77.32.560.

**Effective date—1998 c 87:** "This act takes effect January 1, 1999." [1998 c 87 § 3.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—1985 c 464:** See note following RCW 77.65.450.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

### **77.32.400 Persons with a disability—Designated harvester card—Fish and shellfish.** (1)

The commission shall authorize the director to issue designated harvester cards to persons with a disability. The commission shall adopt rules defining who is a person with a disability and rules governing the conduct of persons with a disability who fish and harvest shellfish and their designated harvesters.

(2) It is lawful for a designated harvester to fish for, take, or possess the personal-use daily bag limit of fish or shellfish for a person with a disability if the harvester is licensed and has a designated harvester card, and if the person with a disability is present on site and in possession of the appropriate fishing license issued under this chapter. Except as provided

in subsection (4) of this section, the person with a disability must be present and participating in the fishing activity.

(3) A designated harvester card will be issued to such a person with a disability upon written application to the director. The application must be submitted on a department official form and must be accompanied by a licensed medical doctor's certification of disability.

(4) A person with a disability utilizing the services of a designated harvester is not required to be present at the location where the designated harvester is harvesting shellfish for the person with a disability. The person with a disability is required to be in the direct line of sight of the designated harvester who is harvesting shellfish for him or her, unless it is not possible to be in a direct line of sight because of a physical obstruction or other barrier. If such a barrier or obstruction exists, the person with a disability is required to be within one-quarter mile of the designated harvester who is harvesting shellfish for him or her. [2007 c 254 § 2; 1998 c 191 § 1. Prior: 1993 sp.s. c 17 § 5; 1993 sp.s. c 2 § 42; 1993 c 201 § 1; 1989 c 305 § 4; 1983 1st ex.s. c 46 § 92; 1980 c 81 § 2. Formerly RCW 75.25.080.]

**Effective date—1998 c 191:** "Sections 1 through 9, 11 through 23, 25 through 30, 34 through 36, 38 through 42, and 44 of this act take effect January 1, 1999." [1998 c 191 § 48.]

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Effective date—1980 c 81:** "This act shall take effect on July 1, 1980." [1980 c 81 § 3.]

**77.32.410 Personal use fishing license—Reciprocity with Oregon in concurrent waters of Columbia river and coastal waters.** In concurrent waters of the Columbia river and in Washington coastal territorial waters from the Oregon-Washington boundary to a point five nautical miles north, an Oregon angling license comparable to the Washington personal use fishing license is valid if Oregon recognizes as valid the Washington personal use fishing license in comparable Oregon waters.

If Oregon recognizes as valid the Washington personal use fishing license southward to Cape Falcon in the coastal territorial waters from the Washington-Oregon boundary and in concurrent waters of the Columbia river then Washington shall recognize a valid Oregon license comparable to the Washington personal use fishing license northward to Lead-better Point.

Oregon licenses are not valid for the taking of food fish or game fish when angling in concurrent waters of the Columbia river from the Washington shore. [1998 c 191 § 3; 1994 c 255 § 6; 1993 sp.s. c 17 § 7; 1989 c 305 § 9; 1987 c 87 § 4; 1985 c 174 § 1; 1983 1st ex.s. c 46 § 96; 1977 ex.s. c 327 § 17. Formerly RCW 75.25.120, 75.28.670.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective date—1994 c 255 §§ 1-13:** See note following RCW 77.32.520.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Declaration of state policy—Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

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### 77.32.420 Recreational licenses—Nontransferable—Enforcement provisions.

**Reviser's note:** RCW 77.32.420 was amended by 2001 c 306 § 2 without reference to its repeal by 2001 c 253 § 62. It has been decodified for publication purposes under RCW 1.12.025.

### 77.32.430 Catch record card—Disposition of funds.

(1) Catch record card information is necessary for proper management of the state's food fish and game fish species and shellfish resources. Catch record card administration shall be under rules adopted by the commission. There is no charge for an initial catch record card. Each subsequent or duplicate catch record card costs ten dollars.

(2) A license to take and possess Dungeness crab is only valid in Puget Sound waters east of the Bonilla-Tatoosh line if the fisher has in possession a valid catch record card officially endorsed for Dungeness crab. The endorsement shall cost no more than three dollars, including any or all fees authorized under RCW 77.32.050, when purchased for a personal use saltwater, combination, or shellfish and seaweed license. The endorsement shall cost no more than one dollar, including any or all fees authorized under RCW 77.32.050, when purchased for a temporary combination fishing license authorized under RCW 77.32.470(3)(a).

(3) Catch record cards issued with affixed temporary short-term charter stamp licenses are not subject to the ten-dollar charge nor to the Dungeness crab endorsement fee provided for in this section. Charter boat or guide operators issuing temporary short-term charter stamp licenses shall affix the stamp to each catch record card issued before fishing commences. Catch record cards issued with a temporary short-term charter stamp are valid for one day.

(4) The department shall include provisions for recording marked and unmarked salmon in catch record cards issued after March 31, 2004.

(5) The funds received from the sale of catch record cards and the Dungeness crab endorsement must be deposited into the \*wildlife fund. The funds received from the Dungeness crab endorsement may be used only for the sampling, monitoring, and management of catch associated with the Dungeness crab recreational fisheries. Moneys allocated under this section shall supplement and not supplant other federal, state, and local funds used for Dungeness crab recreational fisheries management. [2005 c 192 § 2; 2004 c 107 § 2; 2003 c 318 § 1; 1998 c 191 § 5; 1989 c 305 § 10. Formerly RCW 75.25.190.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Intent—2004 c 107:** "It is the intent of the legislature to optimize the management of the recreational allocation of Dungeness crab in Washington state. To accomplish this task, it is necessary to accurately and efficiently quantify the total catch by recreational fishers for Dungeness crab using data from catch record cards. Therefore, an endorsement fee on the catch record card paid at the time of purchasing a recreational fishing license will be required for Dungeness crab to specifically identify the recreational crab harvesting population. The endorsement fee will significantly improve the precision of the catch estimates by eliminating the current practice of sampling fishers who do not participate in the recreational crab fishery." [2004 c 107 § 1.]

**Report—2004 c 107:** "After the completion of one season using the Dungeness crab endorsement fee for Puget Sound recreational Dungeness crab fisheries, the department of fish and wildlife shall evaluate the effectiveness of the endorsement fee as a method for improving the accuracy of catch estimates for the Puget Sound recreational Dungeness crab fishery.

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The department's report shall include how the method has affected their ability to more accurately estimate the preseason allocation of the Puget Sound recreational Dungeness crab fishery and monitor in-season catch. The department shall report their findings to the appropriate committees of the legislature by May 15, 2006." [2004 c 107 § 3.]

**Effective date—2004 c 107:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect May 15, 2004." [2004 c 107 § 4.]

**Effective date—2003 c 318:** "This act takes effect April 1, 2004." [2003 c 318 § 3.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.440 Enhancement programs—Funding levels—Rules—Deposit to warm water game fish account.**

(1) The commission shall adopt rules to continue funding current enhancement programs at levels equal to the participation of licensees in each of the individual enhancement programs. All enhancement funding will continue to be deposited directly into the individual accounts created for each enhancement.

(2) In implementing subsection (1) of this section with regard to warm water game fish, the department shall deposit in the warm water game fish account the sum of one million two hundred fifty thousand dollars each fiscal year during the fiscal years 1999 and 2000, based on two hundred fifty thousand warm water anglers. Beginning in fiscal year 2001, and each year thereafter, the deposit to the warm water game fish account established in this subsection shall be adjusted annually to reflect the actual numbers of license holders fishing for warm water game fish based on an annual survey of licensed anglers from the previous year conducted by the department beginning with the April 1, 1999, to March 31, 2000, license year survey. [1999 c 235 § 2; 1998 c 191 § 13.]

**Effective date—1999 c 235:** See note following RCW 77.44.050.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.450 Big game hunting license—Fees.** (1) A big game hunting license is required to hunt for big game. A big game license allows the holder to hunt for forest grouse, unclassified wildlife, and the individual species identified within a specific big game combination license package. Each big game license includes one transport tag for each species purchased in that package. A hunter may not purchase more than one license for each big game species except as authorized by rule of the commission. The fees for annual big game combination packages are as follows:

(a) Big game number 1: Deer, elk, bear, and cougar. The fee for this license is sixty-six dollars for residents, six hundred sixty dollars for nonresidents, and thirty-three dollars for youth.

(b) Big game number 2: Deer and elk. The fee for this license is fifty-six dollars for residents, five hundred sixty dollars for nonresidents, and twenty-eight dollars for youth.

(c) Big game number 3: Deer or elk, bear, and cougar. At the time of purchase, the holder must identify either deer or elk. The fee for this license is forty-six dollars for residents, four hundred sixty dollars for nonresidents, and twenty-three dollars for youth.

(d) Big game number 4: Deer or elk. At the time of purchase, the holder must identify either deer or elk. The fee for

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this license is thirty-six dollars for residents, three hundred sixty dollars for nonresidents, and eighteen dollars for youth.

(e) Big game number 5: Bear and cougar. The fee for this license is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(2) In the event that the commission authorizes a two animal big game limit, the fees for the second animal are as follows:

(a) Elk: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(b) Deer: The fee is twenty dollars for residents, two hundred dollars for nonresidents, and ten dollars for youth.

(c) Bear: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(d) Cougar: The fee is ten dollars for residents, one hundred dollars for nonresidents, and five dollars for youth.

(3) In the event that the commission authorizes a special permit hunt for goat, sheep, or moose, the permit fees are as follows:

(a) Mountain goat: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(b) Sheep: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(c) Moose: The fee is one hundred dollars for residents, one thousand dollars for nonresidents, and fifty dollars for youth.

(4) Multiple season big game permit: The commission may, by rule, offer permits for hunters to hunt deer or elk during more than one general season. Only one deer or elk may be harvested annually under a multiple season big game permit. The fee is one hundred fifty dollars for residents and one thousand five hundred dollars for nonresidents.

(5) Authorization to hunt the species set out under subsection (3)(a) through (c) of this section or in multiple seasons as set out in subsection (4) of this section is by special permit issued under RCW 77.32.370.

(6) The commission may adopt rules to reduce the price of a license or eliminate the transportation tag requirements concerning bear or cougar when necessary to meet harvest objectives. [2005 c 140 § 1; 2000 c 109 § 1; 1998 c 191 § 14.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.460 Small game hunting license—Turkey tags—Fees.** (1) A small game hunting license is required to hunt for all classified wild animals and wild birds, except big game. A small game license also allows the holder to hunt for unclassified wildlife.

(a) The fee for this license is thirty dollars for residents, one hundred fifty dollars for nonresidents, and fifteen dollars for youth.

(a) The fee for this license is thirty dollars for residents, one hundred fifty dollars for nonresidents, and fifteen dollars for youth.

(b) The fee for this license if purchased in conjunction with a big game combination license package is sixteen dollars for residents, eighty dollars for nonresidents, and eight dollars for youth.

(c) The fee for a three-consecutive-day small game license is fifty dollars for nonresidents.

(2) In addition to a small game license, a turkey tag is required to hunt for turkey.

(a) The fee for a primary turkey tag is fourteen dollars for residents and forty dollars for nonresidents. A primary turkey tag will, on request, be issued to the purchaser of a youth small game license at no charge.

(b) The fee for each additional turkey tag is fourteen dollars for residents, sixty dollars for nonresidents, and nine dollars for youth.

(c) All moneys received from turkey tags must be deposited in the state wildlife account. One-third of the moneys received from turkey tags must be appropriated solely for the purposes of turkey management. An additional one-third of the moneys received from turkey tags must be appropriated solely for upland game bird management. Moneys received from turkey tags may not supplant existing funds provided for these purposes. [2006 c 15 § 1; 2000 c 109 § 2; 1998 c 191 § 15.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.470 Personal use fishing licenses—Fees—Temporary fishing license—Family fishing weekend license—Rules.** (1) A personal use saltwater, freshwater, combination, temporary, or family fishing weekend license is required for all persons fifteen years of age or older to fish for or possess fish taken for personal use from state waters or offshore waters.

(2) The fees for annual personal use saltwater, freshwater, or combination licenses are as follows:

(a) A combination license allows the holder to fish for or possess fish, shellfish, and seaweed from state waters or offshore waters. The fee for this license is thirty-six dollars for residents, seventy-two dollars for nonresidents, and five dollars for youth. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(b) A saltwater license allows the holder to fish for or possess fish taken from saltwater areas. The fee for this license is eighteen dollars for residents, thirty-six dollars for nonresidents, and five dollars for resident seniors. There is an additional fifty-cent surcharge for this license, to be deposited in the rockfish research account created in RCW 77.12.702.

(c) A freshwater license allows the holder to fish for, take, or possess food fish or game fish species in all freshwater areas. The fee for this license is twenty dollars for residents, forty dollars for nonresidents, and five dollars for resident seniors.

(3)(a) A temporary combination fishing license is valid for one to five consecutive days and allows the holder to fish for or possess fish, shellfish, and seaweed taken from state waters or offshore waters. The fee for this temporary fishing license is:

(i) One day - Seven dollars for residents and fourteen dollars for nonresidents;

(ii) Two days - Ten dollars for residents and twenty dollars for nonresidents;

(iii) Three days - Thirteen dollars for residents and twenty-six dollars for nonresidents;

(iv) Four days - Fifteen dollars for residents and thirty dollars for nonresidents; and

(v) Five days - Seventeen dollars for residents and thirty-four dollars for nonresidents.

(b) The fee for a charter stamp is seven dollars for a one-day temporary combination fishing license for residents and nonresidents for use on a charter boat as defined in RCW 77.65.150.

(c) A transaction fee to support the automated licensing system will be taken from the amounts set forth in this subsection for temporary licenses.

(d) Except for active duty military personnel serving in any branch of the United States armed forces, the temporary combination fishing license is not valid on game fish species for an eight-consecutive-day period beginning on the opening day of the lowland lake fishing season.

(e) The temporary combination fishing license fee for active duty military personnel serving in any branch of the United States armed forces is the resident rate as set forth in (a) of this subsection. Active duty military personnel must provide a valid military identification card at the time of purchase of the temporary license to qualify for the resident rate.

(f) There is an additional fifty-cent surcharge on the temporary combination fishing license and the associated charter stamp, to be deposited in the rockfish research account created in RCW 77.12.702.

(4) A family fishing weekend license allows for a maximum of six anglers: One resident and five youth; two residents and four youth; or one resident, one nonresident, and four youth. This license allows the holders to fish for or possess fish taken from state waters or offshore waters. The fee for this license is twenty dollars. This license is only valid during periods as specified by rule of the department.

(5) The commission may adopt rules to create and sell combination licenses for all hunting and fishing activities at or below a fee equal to the total cost of the individual license contained within any combination. [2008 c 35 § 1; 2007 c 442 § 5; 2005 c 192 § 1; 2003 c 181 § 1; 1998 c 191 § 16.]

**Findings—Intent—Effective date—2007 c 442:** See notes following RCW 77.12.702.

**Effective date—2003 c 181:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2003]." [2003 c 181 § 2.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.480 Reduced rate licenses.** Upon written application, a combination fishing license shall be issued at the reduced rate of five dollars, and all hunting licenses shall, be issued at the reduced rate of a youth hunting license fee for the following individuals:

(1) A resident sixty-five years old or older who is an honorably discharged veteran of the United States armed forces having a service-connected disability;

(2) A resident who is an honorably discharged veteran of the United States armed forces with a thirty percent or more service-connected disability;

(3) A resident with a disability who permanently uses a wheelchair;

(4) A resident who is blind or visually impaired; and

(5) A resident with a developmental disability as defined in RCW 71A.10.020 with documentation of the disability

certified by a physician licensed to practice in this state. [2007 c 254 § 3; 1998 c 191 § 18.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.500 Saltwater, freshwater transition areas—Rule-making authority.** In order to simplify fishing license requirements in transition areas between saltwater and freshwater, the commission may adopt rules designating specific waters where either a freshwater or a saltwater license is valid. [1998 c 191 § 41.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.32.510 Recreational license fees—Disposition of appropriation.** As provided in RCW 77.12.170(1)(c), all recreational license fees deposited into the general fund shall be appropriated for the management, enhancement, research, and enforcement of shellfish and saltwater programs of the department. [1998 c 191 § 43.]

**Effective date—1998 c 191:** See note following RCW 77.32.050.

**77.32.520 Personal use shellfish and seaweed license—Razor clam license—Fees—License available for inspection.** (1) A personal use shellfish and seaweed license is required for all persons other than residents or non-residents under fifteen years of age to fish for, take, dig for, or possess seaweed or shellfish, including razor clams, for personal use from state waters or offshore waters including national park beaches.

(2) A razor clam license allows a person to harvest only razor clams for personal use from state waters, including national park beaches.

(3) The fees for annual personal use shellfish and seaweed licenses are:

(a) For a resident fifteen years of age or older, seven dollars;

(b) For a nonresident fifteen years of age or older, twenty dollars; and

(c) For a senior, five dollars.

(4) The fee for an annual razor clam license is five dollars and fifty cents for residents and eleven dollars for nonresidents.

(5) The fee for a three-day razor clam license is three dollars and fifty cents for both residents and nonresidents.

(6) A personal use shellfish and seaweed license or razor clam license must be in immediate possession of the licensee and available for inspection while a licensee is harvesting shellfish or seaweed. However, the license does not need to be visible at all times. [2007 c 336 § 1; 2004 c 248 § 1; 2000 c 107 § 27; 1999 c 243 § 3; 1998 c 191 § 2; 1994 c 255 § 4; 1993 sp.s. c 17 § 3. Formerly RCW 75.25.092.]

**Report—2007 c 336:** "The department of fish and wildlife shall monitor the sale of personal use shellfish and seaweed licenses and razor clam licenses for four years from July 22, 2007. If in any of the four years the number of license sales drop more than ten percent from July 22, 2007, then the department of fish and wildlife shall report the sales and revenue data for the licenses along with any relevant information regarding the reasons for the decrease to the legislature." [2007 c 336 § 2.]

**Finding—Effective date—1999 c 243:** See notes following RCW 77.32.050.

**Effective date—1998 c 191:** See note following RCW 77.32.400.

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**Effective date—1994 c 255 §§ 1-13:** "Sections 1 through 13 of this act shall take effect January 1, 1995." [1994 c 255 § 23.]

**Finding—1993 sp.s. c 17:** "The legislature finds that additional cost savings can be realized by simplifying the department of fisheries recreational licensing system. The legislature finds that significant benefits will accrue to recreational fishers from streamlining the department of fisheries recreational licensing system. The legislature finds recreational license fees and commercial landing taxes have not been increased in recent years. The legislature finds that reduction in important department of fisheries programs can be avoided by increasing license fees and commercial landing taxes. The legislature finds that it is in the best interest of the state to avoid significant reductions in current department of fisheries activities." [1993 sp.s. c 17 § 1.]

**Contingent effective date—1993 sp.s. c 17:** "This act shall take effect January 1, 1994, except that sections 13 through 30 of this act shall take effect only if Senate Bill No. 5124 does not become law by August 1, 1993." [1993 sp.s. c 17 § 32.] Senate Bill No. 5124 [1993 c 340] did become law; sections 13 through 30 of 1993 sp.s. c 17 did not become law.

**Severability—1993 sp.s. c 17:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 17 § 53.]

**77.32.525 Hunting and fishing contests—Field trials for dogs—Rules—Limitation.** The director shall administer rules adopted by the commission governing the time, place, and manner of holding hunting and fishing contests and competitive field trials involving live wildlife for hunting dogs. The department shall prohibit contests and field trials that are not in the best interests of wildlife. [1987 c 506 § 48; 1980 c 78 § 67. Formerly RCW 77.12.530.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

*Contests and field trials:* RCW 77.32.540.

**77.32.530 Hunting big game—Auction or raffle—Procedure.** (1) The commission in consultation with the director may authorize hunting of big game animals and wild turkeys through auction. The department may conduct the auction for the hunt or contract with a nonprofit wildlife conservation organization to conduct the auction for the hunt.

(2) The commission in consultation with the director may authorize hunting of up to a total of fifteen big game animals and wild turkeys per year through raffle. The department may conduct raffles or contract with a nonprofit wildlife conservation organization to conduct raffles for hunting these animals. In consultation with the gambling commission, the director may adopt rules for the implementation of raffles involving hunting.

(3) The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified.

(4) After deducting the expenses of conducting an auction or raffle, any revenues retained by a nonprofit organization, as specified under contract with the department, shall be devoted solely for wildlife conservation, consistent with its qualification as a bona fide nonprofit organization for wildlife conservation.

(5) The department's share of revenues from auctions and raffles shall be deposited in the \*state wildlife fund. The revenues shall be used to improve the habitat, health, and welfare of the species auctioned or raffled and shall supplement, rather than replace, other funds budgeted for management of that species. The commission may solicit input from groups or individuals with special interest in and expertise on a species in determining how to use these revenues.

(6) A nonprofit wildlife conservation organization may petition the commission to authorize an auction or raffle for a special hunt for big game animals and wild turkeys. [1996 c 101 § 5. Formerly RCW 77.12.770.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Findings—1996 c 101:** "The legislature finds that it is in the best interest of recreational hunters to provide them with the variety of hunting opportunities provided by auctions and raffles. Raffles provide an affordable opportunity for most hunters to participate in special hunts for big game animals and wild turkeys. The legislature also finds that wildlife management and recreation are not adequately funded and that such auctions and raffles can increase revenues to improve wildlife management and recreation." [1996 c 101 § 1.]

**77.32.535 Private lands—Raffle authorization to hunt big game.** If a private entity has a private lands wildlife management area agreement in effect with the department, the commission may authorize the private entity to conduct raffles for access to hunt for big game animals and wild turkeys to meet the conditions of the agreement. The private entity shall comply with all applicable rules adopted under RCW 77.32.530 for the implementation of raffles; however, raffle hunts conducted pursuant to this section shall not be counted toward the number of raffle hunts the commission may authorize under RCW 77.32.530. The director shall establish the procedures for the hunts, which shall require any participants to obtain any required license, permit, or tag. Representatives of the department may participate in the hunt upon the request of the commission to ensure that the animals to be killed are properly identified. [2001 c 253 § 52; 1996 c 101 § 6. Formerly RCW 77.12.780.]

**Findings—1996 c 101:** See note following RCW 77.32.530.

**77.32.540 Hunting and fishing contests—Field trials for dogs—Permit—Rules.** A person shall not promote, conduct, hold, or sponsor a contest for the hunting or fishing of wildlife or a competitive field trial involving live wildlife for hunting dogs without first obtaining a hunting or fishing contest permit. Contests and field trials shall be held in accordance with established rules. [1998 c 190 § 118; 1987 c 506 § 58; 1980 c 78 § 69; 1955 c 36 § 77.16.010. Prior: 1947 c 275 § 39; Rem. Supp. 1947 § 5992-49. Formerly RCW 77.16.010.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

*Contests and field trials:* RCW 77.32.525.

**77.32.545 Removal of trap—Identification of traps—Disclosure of identities.** A property owner, lessee, or tenant may remove a trap placed on the owner's, lessee's, or tenant's posted or fenced property by a trapper.

Trappers shall attach to the chain of their traps or devices a legible metal tag with either the department identification number of the trapper or the name and address of the trapper in English letters not less than one-eighth inch in height.

When a property owner, lessee, or tenant presents a trapper identification number to the department for a trap found upon the property of the owner, lessee, or tenant and requests identification of the trapper, the department shall provide the requestor with the name and address of the trapper. Prior to disclosure of the trapper's name and address, the department shall obtain the name and address of the requesting individual in writing and after disclosing the trapper's name and address to the requesting individual, the requesting individual's name and address shall be disclosed in writing to the trapper whose name and address was disclosed. [1998 c 190 § 121; 1993 sp.s. c 2 § 75; 1988 c 36 § 51; 1987 c 372 § 1; 1980 c 78 § 85; 1955 c 36 § 77.16.170. Prior: 1947 c 275 § 56; Rem. Supp. 1947 § 5992-65. Formerly RCW 77.16.170.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.32.550 Group fishing permit.** (1) A group fishing permit allows a group of individuals to fish, and harvest shellfish, without individual licenses or the payment of individual license fees.

(2) The director must issue a group fishing permit on a seasonal basis to a state-operated facility or state-licensed nonprofit facility or program for persons with physical or mental disabilities, hospital patients, seriously or terminally ill persons, persons who are dependent on the state because of emotional or physical developmental disabilities, or senior citizens who are in the care of the facility. The permit is valid only for use during open season.

(3) The director may set conditions and issue a group fishing permit to groups working in partnership with and participating in department outdoor education programs. At the discretion of the director, a processing fee may be applied.

(4) The commission may adopt rules that provide the conditions under which a group fishing permit is issued. [2007 c 254 § 4; 2006 c 16 § 1; 2002 c 266 § 1.]

**77.32.555 Surcharge to fund biotoxin testing and monitoring.** In addition to the fees authorized in this chapter, the department shall include a surcharge to fund biotoxin testing and monitoring by the department of health of beaches used for recreational shellfishing, and to fund monitoring by the Olympic region harmful algal bloom program of the Olympic natural resources center at the University of Washington. A surcharge of three dollars applies to resident and nonresident shellfish and seaweed licenses as authorized by RCW 77.32.520(3) (a) and (b); a surcharge of two dollars applies to resident and nonresident adult combination licenses as authorized by RCW 77.32.470(2)(a); a surcharge of two dollars applies to annual resident and nonresident razor clam licenses as authorized by RCW 77.32.520(4); and a surcharge of one dollar applies to the three-day razor clam license authorized by RCW 77.32.520(5). Amounts collected from these surcharges must be deposited in the general

fund—local account managed by the department of health, except that one hundred fifty thousand dollars per year shall be deposited in the general fund—local account managed by the University of Washington.

Unspent amounts from the surcharges deposited in the general fund—local accounts managed by the department of health and the University of Washington shall carry over to ensuing biennia to pay for the ongoing costs of the programs. The department of health and the University of Washington shall, by December 1st of each year, provide a letter to the relevant legislative policy and fiscal committees on the status of expenditures. This letter shall include, but is not limited to, the annual appropriation amount, the amount not expended, account fund balance, and reasons for not spending the full annual appropriation. [2005 c 416 § 1; 2004 c 248 § 2; 2003 c 263 § 2.]

**Effective date—2005 c 416:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2005]." [2005 c 416 § 2.]

**Findings—2003 c 263:** "The legislature finds that testing and monitoring of beaches used for recreational shellfishing is essential to ensure the health of recreational shellfishers. The legislature also finds that it is essential to have a stable and reliable source of funding for such biotoxin testing and monitoring. The legislature also finds that the cost of the resident and nonresident personal use shellfish and seaweed licenses is undervalued and not properly aligned with neighboring states and provinces." [2003 c 263 § 1.]

**Effective date—2003 c 263:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 263 § 4.]

**77.32.560 Watchable wildlife decals.** (1) The department may sell watchable wildlife decals. Proceeds from the sale of the decal must be deposited into the \*state wildlife fund created in RCW 77.12.170 and must be dedicated to the support of the department's watchable wildlife activities. The department may also use proceeds from the sale of the decal for marketing the decal and for marketing watchable wildlife activities in the state.

(2) The term "watchable wildlife activities" includes but is not limited to: Initiating partnerships with communities to jointly develop watchable wildlife projects, building infrastructure to serve wildlife viewers, assisting and training communities in conducting wildlife watching events, developing destination wildlife viewing corridors and trails, tours, maps, brochures, and travel aides, and offering grants to assist rural communities in identifying key wildlife attractions and ways to protect and promote them.

(3) The commission must adopt by rule the cost of the watchable wildlife decal. A person may, at their discretion, contribute more than the cost as set by the commission by rule for the watchable wildlife decal in order to support watchable wildlife activities. A person who purchases a watchable wildlife decal must be issued one vehicle use permit free of charge. [2003 c 317 § 2.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Findings—2003 c 317:** "The legislature finds that healthy wildlife populations significantly contribute to the economic vitality of Washington's rural areas through increased opportunities for watchable wildlife and related tourism. Travel related to watchable wildlife is one of the fastest growing segments of the travel industry. Much of this travel occurs off-season, creat-

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ing jobs and providing revenue to local businesses and governments during otherwise slow periods. The watchable wildlife industry is particularly important to Washington's rural economies.

The legislature also finds that it is vital to support programs that enhance watchable wildlife activities and tourism, while also protecting the wildlife resources that attract the viewers. A revenue source must be created and directed to the watchable wildlife programs of the department of fish and wildlife to develop watchable wildlife opportunities in cooperation with other local, state, and federal agencies, and nongovernmental organizations." [2003 c 317 § 1.]

**77.32.565 Hunting and fishing opportunities for a terminally ill person—Provision of a license, tag, permit, or stamp without a fee—Rule-making authority.** (1) In order to facilitate hunting and fishing opportunities for a terminally ill person, the director may provide any licenses, tags, permits, stamps, and other fees without charge including transaction and dealer fees.

(2) The director may accept special permits or other special hunting opportunities, including raffle tags, auction tags, and multiple season opportunities from donors seeking to facilitate hunting opportunities for a terminally ill person. The director shall distribute these donations pursuant to rules adopted under subsection (4) of this section.

(3) The director may take other actions consistent with facilitating hunting and fishing opportunities for a terminally ill person. These actions may include, but are not limited to, entering into agreements with willing landowners pursuant to RCW 77.12.320.

(4) In addition to rules required under subsection (2) of this section, the commission may adopt rules as necessary to effectuate the purpose and policies of this section. [2008 c 10 § 1.]

**Short title—2008 c 10:** "This act may be known and cited as the Senator Bob Oke memorial act." [2008 c 10 § 4.]

## Chapter 77.36 RCW WILDLIFE DAMAGE

### Sections

77.36.005	Findings.
77.36.010	Definitions.
77.36.020	Game damage control—Special hunt/remedial action.
77.36.030	Trapping or killing wildlife causing damage—Emergency situations.
77.36.040	Payment of claims for damages—Procedure—Limitations.
77.36.050	Claimant refusal—Excessive claims.
77.36.060	Claim refused—Posted property.
77.36.070	Limit on total claims from wildlife fund per fiscal year.
77.36.080	Limit on total claims from general fund per fiscal year—Emergency exceptions.
77.36.900	Application—1996 c 54.
77.36.901	Effective date—1996 c 54.

**77.36.005 Findings.** The legislature finds that:

(1) As the number of people in the state grows and wildlife habitat is altered, people will encounter wildlife more frequently. As a result, conflicts between humans and wildlife will also increase. Wildlife is a public resource of significant value to the people of the state and the responsibility to minimize and resolve these conflicts is shared by all citizens of the state.

(2) In particular, the state recognizes the importance of commercial agricultural and horticultural crop production and the value of healthy deer and elk populations, which can damage such crops. The legislature further finds that damage

prevention is key to maintaining healthy deer and elk populations, wildlife-related recreational opportunities, and commercially productive agricultural and horticultural crops, and that the state, participants in wildlife recreation, and private landowners and tenants share the responsibility for damage prevention. Toward this end, the legislature encourages landowners and tenants to contribute through their land management practices to healthy wildlife populations and to provide access for related recreation. It is in the best interests of the state for the department of fish and wildlife to respond quickly to wildlife damage complaints and to work with these landowners and tenants to minimize and/or prevent damages and conflicts while maintaining deer and elk populations for enjoyment by all citizens of the state.

(3) A timely and simplified process for resolving claims for damages caused by deer and elk for commercial agricultural or horticultural products is beneficial to the claimant and the state. [1996 c 54 § 1; (2001 c 274 § 1 expired June 30, 2004).]

**Expiration date—2001 c 274 §§ 1-3:** "The following expire June 30, 2004:

- (1) Section 1, chapter 274, Laws of 2001;
- (2) Section 2, chapter 274, Laws of 2001; and
- (3) Section 3, chapter 274, Laws of 2001." [2001 c 274 § 5.]

**Effective date—2001 c 274:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 274 § 6.]

**77.36.010 Definitions.** Unless otherwise specified, the following definitions apply throughout this chapter:

(1) "Crop" means a commercially raised horticultural and/or agricultural product and includes growing or harvested product but does not include livestock. For the purposes of this chapter all parts of horticultural trees shall be considered a crop and shall be eligible for claims.

(2) "Emergency" means an unforeseen circumstance beyond the control of the landowner or tenant that presents a real and immediate threat to crops, domestic animals, or fowl.

(3) "Immediate family member" means spouse, brother, sister, grandparent, parent, child, or grandchild. [1996 c 54 § 2; (2001 c 274 § 2 expired June 30, 2004).]

**Expiration date—2001 c 274 §§ 1-3:** See note following RCW 77.36.005.

**Effective date—2001 c 274:** See note following RCW 77.36.005.

**77.36.020 Game damage control—Special hunt/remedial action.** The department shall work closely with landowners and tenants suffering game damage problems to control damage without killing the animals when practical, to increase the harvest of damage-causing animals in hunting seasons, and to kill the animals when no other practical means of damage control is feasible.

If the department receives recurring complaints regarding property being damaged as described in this section or RCW 77.36.030 from the owner or tenant of real property, or receives such complaints from several such owners or tenants in a locale, the commission shall conduct a special hunt or special hunts or take remedial action to reduce the potential for such damage. The commission shall authorize either one or two antlerless permits per hunter for special hunts held in damage areas where qualified department staff, or their des-

ignee, have confirmed six incidents of crop damage by deer or elk.

As an alternative to hunting, the department shall work with affected entities to relocate deer and elk when needed to augment existing herds. [2003 c 385 § 1; 1996 c 54 § 3.]

**77.36.030 Trapping or killing wildlife causing damage—Emergency situations.** (1) Subject to the following limitations and conditions, the owner, the owner's immediate family member, the owner's documented employee, or a tenant of real property may trap or kill on that property, without the licenses required under RCW 77.32.010 or authorization from the director under RCW 77.12.240, wild animals or wild birds that are damaging crops, domestic animals, or fowl:

(a) Threatened or endangered species shall not be hunted, trapped, or killed;

(b) Except in an emergency situation, deer, elk, and protected wildlife shall not be killed without a permit issued and conditioned by the director or the director's designee. In an emergency, the department may give verbal permission followed by written permission to trap or kill any deer, elk, or protected wildlife that is damaging crops, domestic animals, or fowl; and

(c) On privately owned cattle ranching lands, the land owner or lessee may declare an emergency only when the department has not responded within forty-eight hours after having been contacted by the land owner or lessee regarding damage caused by wild animals or wild birds. In such an emergency, the owner or lessee may trap or kill any deer, elk, or other protected wildlife that is causing the damage but deer and elk may only be killed if such lands were open to public hunting during the previous hunting season, or the closure to public hunting was coordinated with the department to protect property and livestock.

(2) Except for coyotes and Columbian ground squirrels, wildlife trapped or killed under this section remain the property of the state, and the person trapping or killing the wildlife shall notify the department immediately. The department shall dispose of wildlife so taken within three days of receiving such a notification and in a manner determined by the director to be in the best interest of the state. [1996 c 54 § 4.]

**77.36.040 Payment of claims for damages—Procedure—Limitations.** (1) Pursuant to this section, the director or the director's designee may distribute money appropriated to pay claims for damages to crops caused by wild deer or elk in an amount of up to ten thousand dollars per claim. Damages payable under this section are limited to the value of such commercially raised horticultural or agricultural crops, whether growing or harvested, and shall be paid only to the owner of the crop at the time of damage, without assignment. Damages shall not include damage to other real or personal property including other vegetation or animals, damages caused by animals other than wild deer or elk, lost profits, consequential damages, or any other damages whatsoever. These damages shall comprise the exclusive remedy for claims against the state for damages caused by wildlife.

(2) The director may adopt rules for the form of affidavits or proof to be provided in claims under this section. The

director may adopt rules to specify the time and method of assessing damage. The burden of proving damages shall be on the claimant. Payment of claims shall remain subject to the other conditions and limits of this chapter.

(3) If funds are limited, payments of claims shall be prioritized in the order that the claims are received. No claim may be processed if:

(a) The claimant did not notify the department within ten days of discovery of the damage. If the claimant intends to take steps that prevent determination of damages, such as harvest of damaged crops, then the claimant shall notify the department as soon as reasonably possible after discovery so that the department has an opportunity to document the damage and take steps to prevent additional damage; or

(b) The claimant did not present a complete, written claim within sixty days after the damage, or the last day of damaging if the damage was of a continuing nature.

(4) The director or the director's designee may examine and assess the damage upon notice. The department and claimant may agree to an assessment of damages by a neutral person or persons knowledgeable in horticultural or agricultural practices. The department and claimant shall share equally in the costs of such third party examination and assessment of damage.

(5) There shall be no payment for damages if:

(a) The crops are on lands leased from any public agency;

(b) The landowner or claimant failed to use or maintain applicable damage prevention materials or methods furnished by the department, or failed to comply with a wildlife damage prevention agreement under RCW 77.12.260;

(c) The director has expended all funds appropriated for payment of such claims for the current fiscal year; or

(d) The damages are covered by insurance. The claimant shall notify the department at the time of claim of insurance coverage in the manner required by the director. Insurance coverage shall cover all damages prior to any payment under this chapter.

(6) When there is a determination of claim by the director or the director's designee pursuant to this section, the claimant has sixty days to accept the claim or it is deemed rejected. [1996 c 54 § 5.]

**77.36.050 Claimant refusal—Excessive claims.** If the claimant does not accept the director's decision under RCW 77.36.040, or if the claim exceeds ten thousand dollars, then the claim may be filed with the office of risk management under \*RCW 4.92.040(5). The office of risk management shall recommend to the legislature whether the claim should be paid. If the legislature approves the claim, the director shall pay it from moneys appropriated for that purpose. No funds shall be expended for damages under this chapter except as appropriated by the legislature. [1996 c 54 § 6.]

**\*Reviser's note:** RCW 4.92.040 was amended by 2002 c 332 § 11, changing the filing of claims under subsection (5) to the risk management division.

**77.36.060 Claim refused—Posted property.** The director may refuse to consider and pay claims of persons who have posted the property against hunting or who have

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not allowed public hunting during the season prior to the occurrence of the damages. [1996 c 54 § 7.]

**77.36.070 Limit on total claims from \*wildlife fund per fiscal year.** The department may pay no more than one hundred twenty thousand dollars per fiscal year from the \*wildlife fund for claims under RCW 77.36.040 and for assessment costs and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the damage occurred in a place where the opportunity to hunt was not restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage. [1996 c 54 § 8.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**77.36.080 Limit on total claims from general fund per fiscal year—Emergency exceptions.** (1) The department may pay no more than thirty thousand dollars per fiscal year from the general fund for claims under RCW 77.36.040 and for assessment costs and compromise of claims unless the legislature declares an emergency. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the damage occurred in a place where the opportunity to hunt was restricted or prohibited by a county, municipality, or other public entity during the season prior to the occurrence of the damage.

(2) The legislature may declare an emergency, defined for the purposes of this section as any happening arising from weather, other natural conditions, or fire that causes unusually great damage to commercially raised agricultural or horticultural crops by deer or elk. In an emergency, the department may pay as much as may be subsequently appropriated, in addition to the funds authorized under subsection (1) of this section, for claims under RCW 77.36.040 and for assessment and compromise of claims. Such money shall be used to pay animal damage claims only if the claim meets the conditions of RCW 77.36.040 and the department has expended all funds authorized under RCW 77.36.070 or subsection (1) of this section. [1996 c 54 § 9; (2001 c 274 § 3 expired June 30, 2004).]

**Expiration date—2001 c 274 §§ 1-3:** See note following RCW 77.36.005.

**Effective date—2001 c 274:** See note following RCW 77.36.005.

**77.36.900 Application—1996 c 54.** Chapter 54, Laws of 1996 applies prospectively only and not retroactively. It applies only to claims that arise on or after July 1, 1996. [1996 c 54 § 10.]

**77.36.901 Effective date—1996 c 54.** Sections 1 through 12 of this act shall take effect July 1, 1996. [1996 c 54 § 13.]

## Chapter 77.44 RCW

WARM WATER GAME FISH  
ENHANCEMENT PROGRAM

## Sections

77.44.005	Public interest declaration.
77.44.007	Definitions.
77.44.010	Warm water game fish enhancement program—Created.
77.44.030	Freshwater, combination fishing license—Disposition of fee.
77.44.040	Program goals.
77.44.050	Warm water game fish account—Created—Use of moneys.
77.44.060	Specifications—Purchases from aquatic farmers.
77.44.070	Purchases from aquatic farmers for stocking purposes.

**77.44.005 Public interest declaration.** The legislature declares that the public and private propagation, production, protection, and enhancement of fish is in the public interest. [1991 c 253 § 1. Formerly RCW 77.18.005.]

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

(1) "Contract" means an agreement setting at a minimum, price, quantity of fish to be delivered, time of delivery, and fish health requirements.

(2) "Fish health requirements" means those site specific fish health and genetic requirements actually used by the department of fish and wildlife in fish stocking.

(3) "Aquatic farmer" means a private sector person who commercially farms and manages private sector cultured aquatic products on the person's own land or on land in which the person has a present right of possession.

(4) "Warm water game fish" includes the following species: Bass, channel catfish, walleye, crappie, and other species as defined by the department. [2000 c 107 § 262; 1993 sp.s. c 2 § 76; 1991 c 253 § 2. Formerly RCW 77.18.010.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.44.010 Warm water game fish enhancement program—Created.** A warm water game fish enhancement program is created in the department. The enhancement program shall be designed to increase the opportunities to fish for and catch warm water game fish including: Largemouth black bass, smallmouth black bass, channel catfish, black crappie, white crappie, walleye, and tiger musky. The program shall be designed to use a practical applied approach to increasing warm water fishing. The department shall use the funds available efficiently to assure the greatest increase in the fishing for warm water fish at the lowest cost. This approach shall involve the minimization of overhead and administrative costs and the maximization of productive in-the-field activities. [1998 c 191 § 39; 1996 c 222 § 1.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective dates—1996 c 222:** "(1) Sections 1, 2, and 4 through 6 of this act shall take effect July 1, 1996.

(2) Section 3 of this act shall take effect January 1, 1997." [1996 c 222 § 8.]

**77.44.030 Freshwater, combination fishing license—Disposition of fee.** (1) As provided in RCW 77.32.440, a

portion of each freshwater and combination fishing license fee shall be deposited into the warm water game fish account.

(2) The department shall use the most cost-effective format in designing and administering the warm water game fish surcharge [account].

(3) A warm water game fish account shall be used for enhancement of largemouth bass, smallmouth bass, walleye, black crappie, white crappie, channel catfish, and tiger musky. [1998 c 191 § 29; 1996 c 222 § 3.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Effective dates—1996 c 222:** See note following RCW 77.44.010.

**77.44.040 Program goals.** The goals of the warm water game fish enhancement program are to improve the fishing for warm water game fish using cost-effective management. Development of new ponds and lakes shall be an important and integral part of the program. The department shall work with the department of natural resources to coordinate the reclamation of surface mines and the development of warm water game fish ponds. Improvement of warm water fishing shall be coordinated with the protection and conservation of cold water fish populations. This shall be accomplished by carefully designing the warm water projects to have minimal adverse effects upon the cold water fish populations. New pond and lake development should have beneficial effects upon wildlife due to the increase in lacustrine and wetland habitat that will accompany the improvement of warm water fish habitat. The department shall not develop projects that will increase the populations of undesirable or deleterious fish species such as carp, squawfish, walking catfish, and others.

Fish culture programs shall be used in conditions where they will prove to be cost-effective, and may include the purchase of warm water fish from aquatic farmers defined in RCW 15.85.020. Consideration should be made for development of urban area enhancement of fishing opportunity for put-and-take species, such as channel catfish, that are amenable to production by low-cost fish culture methods. Fish culture shall also be used for stocking of high value species, such as walleye, smallmouth bass, and tiger musky. Introduction of special genetic strains that show high potential for recreational fishing improvement, including Florida strain largemouth bass and striped bass, shall be considered.

Transplantation and introduction of exotic warm water fish shall be carefully reviewed to assure that adverse effects to native fish and wildlife populations do not occur. This review shall include an analysis of consequences from disease and parasite introduction.

Population management through the use of fish toxicants, including rotenone or derris root, shall be an integral part of the warm water game fish enhancement program. However, any use of fish toxicants shall be subject to a thorough review to prevent adverse effects to cold water fish, desirable warm water fish, and other biota. Eradication of deleterious fish species shall be a goal of the program.

Habitat improvement shall be a major aspect of the warm water game fish enhancement program. Habitat improvement opportunities shall be defined with scientific investigations, field surveys, and by using the extensive experience of other state management entities. Installation of cover, structure,

water flow control structures, screens, spawning substrate, vegetation control, and other management techniques shall be fully used. The department shall work to gain access to privately owned waters that can be developed with habitat improvements to improve the warm water resource for public fishing.

The department shall use the resources of cooperative groups to assist in the planning and implementation of the warm water game fish enhancement program. In the development of the program the department shall actively involve the organized fishing clubs that primarily fish for warm water fish. The warm water fish enhancement program shall be cooperative between the department and private landowners; private landowners shall not be required to alter the uses of their private property to fulfill the purposes of the warm water fish enhancement program. The director shall not impose restrictions on the use of private property, or take private property, for the purpose of the warm water fish enhancement program. [1996 c 222 § 4.]

**Effective dates—1996 c 222:** See note following RCW 77.44.010.

**77.44.050 Warm water game fish account—Created—Use of moneys.** The warm water game fish account is hereby created in the \*state wildlife fund. Moneys in the account are subject to legislative appropriation and shall be used for the purpose of funding the warm water game fish enhancement program, including the development of warm water pond and lake habitat, culture of warm water game fish, improvement of warm water fish habitat, management of warm water fish populations, and other practical activities that will improve the fishing for warm water fish. Funds for warm water game fish as provided in RCW 77.32.440 shall not serve as replacement funding for department-operated warm water fish projects existing on December 31, 1994, except that an amount not to exceed ninety-one thousand dollars may be used for warm water fish culture at the Rod Meseberg warm water fish production facility during the biennium ending June 30, 2001. [1999 c 235 § 1; 1996 c 222 § 5.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Effective date—1999 c 235:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 10, 1999]." [1999 c 235 § 4.]

**Effective dates—1996 c 222:** See note following RCW 77.44.010.

**77.44.060 Specifications—Purchases from aquatic farmers.** If the department requires, pursuant to its authority relative to environmental permits or licenses, that resident hatchery game fish be stocked by the permittee or licensee for mitigation of environmental damage, the department shall specify the pounds or numbers, species, stock, and/or race of resident game fish that are to be provided. The department shall offer the permittee or licensee the option of purchasing under contract from aquatic farmers in Washington, those game fish, unless the fish specified by the department are not available from Washington growers. [1991 c 253 § 3. Formerly RCW 77.18.020.]

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**77.44.070 Purchases from aquatic farmers for stocking purposes.** Any agency of state or federal government, political subdivision of the state, private or public utility company, corporation, or sports group, or any purchaser of fish under RCW 77.44.060 may purchase resident game fish from an aquatic farmer for stocking purposes if permit requirements of this title and the department have been met. [2001 c 253 § 53; 1991 c 253 § 4. Formerly RCW 77.18.030.]

**Chapter 77.50 RCW**

**LIMITATIONS ON CERTAIN COMMERCIAL FISHERIES**

(Formerly: Unlawful acts)

Sections

- 77.50.010 Limitations on commercial fishing for salmon in Puget Sound waters.
- 77.50.020 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca.
- 77.50.030 Salmon fishing gear.
- 77.50.040 Commercial net fishing for salmon in tributaries of Columbia river—Boundaries defined.
- 77.50.050 Reef net salmon fishing gear—Reef net areas specified.
- 77.50.060 Unauthorized fishing vessels entering state waters.
- 77.50.070 Limitation on salmon fishing gear in Pacific Ocean.
- 77.50.080 Possession or transportation in Pacific Ocean of salmon taken by other than troll lines or angling gear.
- 77.50.090 Bottom trawling not authorized—Areas specified.
- 77.50.100 Hood Canal shrimp—Limitation on number of shrimp pots.
- 77.50.110 Commercial salmon fishing—Unauthorized gear.
- 77.50.120 Maintaining consistent salmon harvest levels.
- 77.50.900 Purpose—2000 c 107.

**77.50.010 Limitations on commercial fishing for salmon in Puget Sound waters.** (1) The commission may authorize commercial fishing for sockeye salmon within the waters described in subsection (2) of this section only during the period June 10th to July 25th and for other salmon only from the second Monday of September through November 30th, except during the hours between 4:00 p.m. of Friday and 4:00 p.m. of the following Sunday.

(2) All waters east and south of a line commencing at a concrete monument on Angeles Point in Clallam county near the mouth of the Elwha River on which is inscribed "Angeles Point Monument" (latitude 48° 9' 3" north, longitude 123° 33' 01" west of Greenwich Meridian); thence running east on a line 81° 30' true across the flashlight and bell buoy off Partridge Point and thence continued to longitude 122° 40' west; thence north to the southerly shore of Sinclair Island; thence along the southerly shore of the island to the most easterly point of the island; thence 46° true to Carter Point, the most southerly point of Lummi Island; thence northwesterly along the westerly shore line of Lummi Island to where the shore line intersects line of longitude 122° 40' west; thence north to the mainland, including: The southerly portion of Hale Passage, Bellingham Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, Similk Bay, Saratoga Passage, Holmes Harbor, Possession Sound, Admiralty Inlet, Hood Canal, Puget Sound, and their inlets, passages, waters, waterways, and tributaries.

(3) The commission may authorize commercial fishing for salmon with gill net, purse seine, and other lawful gear prior to the second Monday in September within the waters of Hale Passage, Bellingham Bay, Samish Bay, Padilla Bay, Fidalgo Bay, Guemes Channel, Skagit Bay, and Similk Bay,

to wit: Those waters northerly and easterly of a line commencing at Stanwood, thence along the south shore of Skagit Bay to Rocky Point on Camano Island; thence northerly to Polnell Point on Whidbey Island.

(4) Whenever the commission determines that a stock or run of salmon cannot be harvested in the usual manner, and that the stock or run of salmon may be in danger of being wasted and surplus to natural or artificial spawning requirements, the commission may authorize units of gill net and purse seine gear in any number or equivalents, by time and area, to fully utilize the harvestable portions of these salmon runs for the economic well being of the citizens of this state. Gill net and purse seine gear other than emergency and test gear authorized by the director shall not be used in Lake Washington.

(5) The commission may authorize commercial fishing for pink salmon in each odd-numbered year from August 1st through September 1st in the waters lying inside of a line commencing at the most easterly point of Dungeness Spit and thence projected to Point Partridge on Whidbey Island and a line commencing at Olele Point and thence projected easterly to Bush Point on Whidbey Island. [2002 c 311 § 2; 1998 c 190 § 75; 1995 1st sp.s. c 2 § 25 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 46; 1973 1st ex.s. c 220 § 2; 1971 ex.s. c 283 § 13; 1955 c 12 § 75.12.010. Prior: 1949 c 112 § 28; Rem. Supp. 1949 § 5780-301. Formerly RCW 75.12.010.]

**Findings—2002 c 311:** "The legislature finds that the economic well-being and stability of the fishing industry and the conservation of the food fish resources of the state of Washington are best served by providing managers with all available tools to stabilize and distribute the commercial harvest of targeted Puget Sound salmon stocks. In recent years, segments of the industry in cooperation with the department of fish and wildlife have funded studies examining modification of harvest practices and fishing gear, particularly purse seine gear, to minimize or avoid impacts on nontargeted Puget Sound salmon stocks.

The legislature finds that the new Pacific salmon treaty agreement of 1999 will drastically reduce the commercial harvest of Fraser river sockeye salmon while likely providing increased harvest opportunities in areas of Puget Sound where only gill net gear is now authorized. This exclusive limitation is contrary to the long-term needs of the fishing industry and inconsistent with the legislature's intent to stabilize harvest levels while selectively targeting healthy salmon stocks." [2002 c 311 § 1.]

**Effective date—2002 c 311 § 2:** "Section 2 of this act takes effect July 1, 2002." [2002 c 311 § 3.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Legislative declaration:** "The preservation of the fishing industry and food fish and shellfish resources of the state of Washington is vital to the state's economy, and effective measures and remedies are necessary to prevent the depletion of these resources." [1973 1st ex.s. c 220 § 1.]

**Effective dates—1971 ex.s. c 283:** See note following RCW 77.65.170.

**77.50.020 Limitations on commercial fishing for chinook or coho salmon in Pacific Ocean and Straits of Juan de Fuca.** (1) The commission may authorize commercial fishing for coho salmon in the Pacific Ocean and the Straits of Juan de Fuca only from June 16th through October 31st.

(2) The commission may authorize commercial fishing for chinook salmon in the Pacific Ocean and the Straits of Juan de Fuca only from March 15th through October 31st. [1998 c 190 § 76; 1995 1st sp.s. c 2 § 26 (Referendum Bill

No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 48; 1955 c 12 § 75.18.020. Prior: 1953 c 147 § 3. Formerly RCW 75.12.015, 75.18.020.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.50.030 Salmon fishing gear.** (1) A person shall not use, operate, or maintain a gill net which exceeds one thousand five hundred feet in length or a drag seine in the waters of the Columbia river for catching salmon.

(2) A person shall not construct, install, use, operate, or maintain within state waters a pound net, round haul net, lampara net, fish trap, fish wheel, scow fish wheel, set net, weir, or fixed appliance for catching salmon or steelhead except under the authority of a trial or experimental fishery permit, when an emerging commercial fishery has been designated allowing use of one or more of these gear types. The director must consult with the commercial fishing interests that would be affected by the trial or experimental fishery permit. The director may authorize the use of this gear for scientific investigations.

(3) The department, in coordination with the Oregon department of fish and wildlife, shall adopt rules to regulate the use of monofilament in gill net webbing on the Columbia river. [2001 c 163 § 2; 1998 c 190 § 77; 1993 sp.s. c 2 § 27; 1985 c 147 § 1; 1983 1st ex.s. c 46 § 52; 1955 c 12 § 75.12.040. Prior: 1949 c 112 § 29; Rem. Supp. 1949 § 5780-303. Formerly RCW 75.12.040.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.50.040 Commercial net fishing for salmon in tributaries of Columbia river—Boundaries defined.** (1) The commission shall adopt rules defining geographical boundaries of the following Columbia river tributaries and sloughs:

- (a) Washougal river;
- (b) Camas slough;
- (c) Lewis river;
- (d) Kalama river;
- (e) Cowlitz river;
- (f) Elokomín river;
- (g) Elokomín sloughs;
- (h) Skamokawa sloughs;
- (i) Grays river;
- (j) Deep river;
- (k) Grays bay.

(2) The commission may authorize commercial net fishing for salmon in the tributaries and sloughs from September 1st to November 30th only, if the time, areas, and level of effort are regulated in order to maximize the recreational fishing opportunity while minimizing excess returns of fish to hatcheries. The commission shall not authorize commercial net fishing if a significant catch of steelhead would occur. [1998 c 190 § 78; 1984 c 80 § 5; 1983 c 245 § 1. Formerly RCW 75.12.132.]

**77.50.050 Reef net salmon fishing gear—Reef net areas specified.** The commission shall not authorize use of

reef net fishing gear except in the reef net areas described in this section.

(1) Point Roberts reef net fishing area includes those waters within 250 feet on each side of a line projected 129° true from a point at longitude 123° 01' 15" W. latitude 48° 58' 38" N. to a point one mile distant, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6300, published September, 1941, in Washington, D.C., eleventh edition.

(2) Cherry Point reef net fishing area includes those waters inland and inside the 10-fathom line between lines projected 205° true from points on the mainland at longitude 122° 44' 54" latitude 48° 51' 48" and longitude 122° 44' 18" latitude 48° 51' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(3) Lummi Island reef net fishing area includes those waters inland and inside a line projected from Village Point 208° true to a point 900 yards distant, thence 129° true to the point of intersection with a line projected 259° true from the shore of Lummi Island 122° 40' 42" latitude 48° 41' 32", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition, revised 11-25-57, save and except that there shall be excluded therefrom all waters lying inside of a line projected 259° true from a point at 122° 40' 42" latitude 48° 41' 32" to a point 300 yards distant from high tide, thence in a northerly direction to the United States Coast and Geodetic Survey reference mark number 2, 1941-1950, located on that point on Lummi Island known as Lovers Point, as such descriptions are shown upon the United States Coast and Geodetic Survey map number 6380 as aforesaid. The term "Village Point" as used herein shall be construed to mean a point of location on Village Point, Lummi Island, at the mean high tide line on a true bearing of 43° 53' a distance of 457 feet to the center of the chimney of a wood frame house on the east side of the county road. Said chimney and house being described as Village Point Chimney on page 612 of the United States Coast and Geodetic Survey list of geographic positions No. G-5455, Rosario Strait.

(4) Sinclair Island reef net fishing area includes those waters inland and inside a line projected from the northern point of Sinclair Island to Boulder reef, thence 200° true to the northwesterly point of Sinclair Island, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(5) Flat Point reef net fishing area includes those waters within a radius of 175 feet of a point off Lopez Island located at longitude 122° 55' 24" latitude 48° 32' 33", as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(6) Lopez Island reef net fishing area includes those waters within 400 yards of shore between lines projected true west from points on the shore of Lopez Island at longitude 122° 55' 04" latitude 48° 31' 59" and longitude 122° 55' 54"

latitude 48° 30' 55", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(7) Iceberg Point reef net fishing area includes those waters inland and inside a line projected from Davis Point on Lopez Island to the west point of Long Island, thence to the southern point of Hall Island, thence to the eastern point at the entrance to Jones Bay, and thence to the southern point at the entrance to Mackaye Harbor on Lopez Island; and those waters inland and inside a line projected 320° from Iceberg Point light on Lopez Island, a distance of 400 feet, thence easterly to the point on Lopez Island at longitude 122° 53' 00" latitude 48° 25' 39", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(8) Aleck Bay reef net fishing area includes those waters inland and inside a line projected from the southwestern point at the entrance to Aleck Bay on Lopez Island at longitude 122° 51' 11" latitude 48° 25' 14" southeasterly 800 yards to the submerged rock shown on U.S.G.S. map number 6380, thence northerly to the cove on Lopez Island at longitude 122° 50' 49" latitude 48° 25' 42", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(9) Shaw Island reef net fishing area number 1 includes those waters within 300 yards of shore between lines projected true south from points on Shaw Island at longitude 122° 56' 14" latitude 48° 33' 28" and longitude 122° 57' 29" latitude 48° 32' 58", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(10) Shaw Island reef net fishing area number 2 includes those waters inland and inside a line projected from Point George on Shaw Island to the westerly point of Neck Point on Shaw Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(11) Stuart Island reef net fishing area number 1 includes those waters within 600 feet of the shore of Stuart Island between lines projected true east from points at longitude 123° 10' 47" latitude 48° 39' 47" and longitude 123° 10' 47" latitude 48° 39' 33", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(12) Stuart Island reef net fishing area number 2 includes those waters within 250 feet of Gossip Island, also known as Happy Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(13) Johns Island reef net fishing area includes those waters inland and inside a line projected from the eastern point of Johns Island to the northwestern point of Little Cactus Island, thence northwesterly to a point on Johns Island at longitude 123° 09' 24" latitude 48° 39' 59", as such descrip-

tions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(14) Battleship Island reef net fishing area includes those waters lying within 350 feet of Battleship Island, as such description is shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(15) Open Bay reef net fishing area includes those waters lying within 150 feet of shore between lines projected true east from a point on Henry Island at longitude 123° 11' 34 1/2" latitude 48° 35' 27 1/2" at a point 250 feet south, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(16) Mitchell Reef net fishing area includes those waters within a line beginning at the rock shown on U.S.G.S. map number 6380 at longitude 123° 10' 56" latitude 48° 34' 49 1/2", and projected 50 feet northwesterly, thence southwest-erly 250 feet, thence southeasterly 300 feet, thence northeast-erly 250 feet, thence to the point of beginning, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(17) Smugglers Cove reef fishing area includes those waters within 200 feet of shore between lines projected true west from points on the shore of San Juan Island at longitude 123° 10' 29" latitude 48° 33' 50" and longitude 123° 10' 31" latitude 48° 33' 45", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(18) Andrews Bay reef net fishing area includes those waters lying within 300 feet of the shore of San Juan Island between a line projected true south from a point at the north-ern entrance of Andrews Bay at longitude 123° 09' 53 1/2" latitude 48° 33' 00" and the cable crossing sign in Andrews Bay, at longitude 123° 09' 45" latitude 48° 33' 04", as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition.

(19) Orcas Island reef net fishing area includes those waters inland and inside a line projected true west a distance of 1,000 yards from the shore of Orcas Island at longitude 122° 57' 40" latitude 48° 41' 06" thence northeasterly to a point 500 feet true west of Point Doughty, then true east to Point Doughty, as such descriptions are shown upon the United States Coast and Geodetic Survey map numbered 6380, published March, 1947, in Washington, D.C., eighth edition. [1998 c 190 § 79; 1983 1st ex.s. c 46 § 59; 1965 c 64 § 1; 1961 c 236 § 1; 1959 c 309 § 1; 1955 c 276 § 2. Formerly RCW 75.12.140.]

**77.50.060 Unauthorized fishing vessels entering state waters.** In order to protect the welfare of the citizens of the state of Washington by protecting the natural resources of the state from illegal fishing in state waters, commercial fishing vessels which are not authorized by law to fish for salmon in Washington state waters cannot enter Washington state waters unless all salmon fishing gear is stowed below deck or

placed in a position so that it is not readily available for fish-ing. [1987 c 262 § 1. Formerly RCW 75.12.155.]

**77.50.070 Limitation on salmon fishing gear in Pacific Ocean.** (1) Except as provided in subsection (2) of this section, the commission shall not authorize gear other than troll gear or angling gear for taking salmon within the offshore waters or the waters of the Pacific Ocean over which the state has jurisdiction lying west of the following line: Commencing at the point of intersection of the international boundary line in the Strait of Juan de Fuca and a line drawn between the lighthouse on Tatoosh Island in Clallam County and Bonilla Point on Vancouver Island; thence southerly to the lighthouse on Tatoosh Island; thence southerly to the most westerly point of Cape Flattery; thence southerly along the state shoreline of the Pacific Ocean, crossing any river mouths at their most westerly points of land, to Point Brown at the entrance to Grays Harbor; thence southerly to Point Chehalis Light on Point Chehalis; thence southerly from Point Chehalis along the state shoreline of the Pacific Ocean to the Cape Shoalwater tower at the entrance to Willapa Bay; thence southerly to Leadbetter Point; thence southerly along the state shoreline of the Pacific Ocean to the inshore end of the North jetty at the entrance to the Columbia River; thence southerly to the knuckle of the South jetty at the entrance to said river.

(2) The commission may authorize the use of nets for taking salmon in the waters described in subsection (1) of this section for scientific investigations. [1998 c 190 § 80; 1993 c 20 § 2; 1983 1st ex.s. c 46 § 60; 1957 c 108 § 3. Formerly RCW 75.12.210.]

**Purpose—1993 c 20:** "The purpose of this act is to correct references to a geographical landmark on Cape Shoalwater that no longer exists. Cape Shoalwater Light has been removed and a new tower has been constructed four hundred yards to the west. It is not intended that this act make any substantive change in the boundaries of the areas described in RCW 75.12.210 and 75.28.012 beyond the minor adjustment necessitated by the replacement of the landmark." [1993 c 20 § 1.]

**Preamble—1957 c 108:** "The state has a vital interest in the salmon resources of the Pacific Ocean both within and beyond the territorial limits of the state, in that a large number of such salmon spawn in its fresh water streams, migrate to the waters of the Pacific Ocean and, in response to their anadromous cycle, return to the fresh water streams to spawn.

Expansion of fishing for salmon by the use of nets in waters of the east-ern Pacific Ocean, which has occurred in the past year, will result in a sub-stantial depletion of salmon originating within the state because the salmon runs are intercepted before they separate to move in toward the rivers of their origin. Oregon, California and Canada, through their respective fisheries agencies, have likewise expressed a deep concern over this problem since portions of such salmon originate within their respective jurisdictions. Short of absolute prohibition, it appears to be presently impracticable to regulate salmon net fishing in such waters of the Pacific Ocean by any known scien-tific fisheries management techniques in order to insure adequate salmon escapement to the three Pacific Coast states and Canada, the reason being that salmon stocks and races are so commingled in such Pacific Ocean waters that they are indistinguishable as to origin until they enter the harbors, bays, straits and estuaries of the respective jurisdictions.

Canada, through its authorized officials, has proposed to prohibit its nationals from net fishing for salmon in Pacific Ocean waters provided the United States or the three Pacific Coast states apply such appropriate conser-vation measures to their respective citizens. Inasmuch as there is presently no congressional legislation prohibiting such fishing, and inasmuch as authorized officials of the state department of the United States have expressed a desire to have the states act in this area, the Pacific Marine Fish-eries Commission has proposed and recommended appropriate legislation to the three Pacific Coast states to insure the survival of their valuable salmon resources." [1957 c 108 § 2. Formerly RCW 75.12.200.]

**77.50.080 Possession or transportation in Pacific Ocean of salmon taken by other than troll lines or angling gear.** Within the waters described in RCW 77.50.070, a person shall not transport or possess salmon on board a vessel carrying fishing gear of a type other than troll lines or angling gear, unless accompanied by a certificate issued by a state or country showing that the salmon have been lawfully taken within the territorial waters of the state or country. [2000 c 107 § 13; 1998 c 190 § 81; 1983 1st ex.s. c 46 § 61; 1963 c 234 § 2; 1957 c 108 § 5. Formerly RCW 75.12.230.]

**Preamble—1957 c 108:** See note following RCW 77.50.070.

**77.50.090 Bottom trawling not authorized—Areas specified.** The commission shall not authorize commercial bottom trawling for food fish and shellfish in all areas of Hood Canal south of a line projected from Tala Point to Foulweather Bluff and in Puget Sound south of a line projected from Foulweather Bluff to Double Bluff and including all marine waters east of Whidbey Island and Camano Island. [1998 c 190 § 82; 1989 c 172 § 1. Formerly RCW 75.12.390.]

**77.50.100 Hood Canal shrimp—Limitation on number of shrimp pots.** The commission shall not authorize any commercial fisher to use more than fifty shrimp pots while commercially fishing for shrimp in that portion of Hood Canal lying south of the Hood Canal floating bridge. [1998 c 190 § 83; 1993 c 340 § 50; 1989 c 316 § 9; 1983 1st ex.s. c 31 § 2. Formerly RCW 75.12.440, 75.28.134.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—1983 1st ex.s. c 31:** "This act shall take effect January 1, 1984." [1983 1st ex.s. c 31 § 4.]

**77.50.110 Commercial salmon fishing—Unauthorized gear.** The commission shall not authorize angling gear or other personal use gear for commercial salmon fishing. [1998 c 190 § 84; 1996 c 267 § 24; 1983 1st ex.s. c 46 § 69; 1969 ex.s. c 23 § 1. Formerly RCW 75.12.650.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Effective date—1969 ex.s. c 23:** "The provisions of this act shall become effective January 1, 1970." [1969 ex.s. c 23 § 2.]

**77.50.120 Maintaining consistent salmon harvest levels.** It is the intent of the legislature to ensure that a sustainable level of salmon is made available for harvest for commercial fishers in the state. Maintaining consistent harvest levels has become increasingly difficult with the listing of salmonid species under the federal endangered species act. Without a stable level of harvest, fishers cannot develop niche markets that maximize the economic value of the harvest. New tools and approaches are needed by fish managers to bring increased stability to the fishing industry.

In the short term, it is the legislature's intent to provide managers with tools to assure that commercial harvest of targeted stocks can continue and expand under the constraints of the federal endangered species act. There are experimental types of commercial fishing gear that could allow fishers to stabilize harvest levels by selectively targeting healthy salmon stocks.

For the longer term, the department of fish and wildlife shall proceed with changes to the operation of certain hatcheries in order to stabilize harvest levels by allowing naturally spawning and hatchery origin fish to be managed as a single run. Scientific information from such hatcheries would guide the department's approach to reducing the need to mass mark hatchery origin salmon where appropriate. [2001 c 163 § 1.]

**77.50.900 Purpose—2000 c 107.** The purpose of chapter 107, Laws of 2000 is to recodify Titles 75 and 77 RCW into Title 77 RCW ensuant to the merger of the departments of wildlife and fisheries. [2000 c 107 § 1.]

## Chapter 77.55 RCW

### CONSTRUCTION PROJECTS IN STATE WATERS

#### Sections

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77.55.311	Hydraulic appeals board—Procedures.

**77.55.011 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Bed" means the land below the ordinary high water lines of state waters. This definition does not include irrigation ditches, canals, storm water runoff devices, or other artificial watercourses except where they exist in a natural watercourse that has been altered by man.

(2) "Board" means the hydraulic appeals board created in RCW 77.55.301.

(3) "Commission" means the state fish and wildlife commission.

(4) "Department" means the department of fish and wildlife.

(5) "Director" means the director of the department of fish and wildlife.

(6) "Emergency" means an immediate threat to life, the public, property, or of environmental degradation.

(7) "Hydraulic project" means the construction or performance of work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or freshwaters of the state.

(8) "Imminent danger" means a threat by weather, water flow, or other natural conditions that is likely to occur within sixty days of a request for a permit application.

(9) "Marina" means a public or private facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(10) "Marine terminal" means a public or private commercial wharf located in the navigable water of the state and used, or intended to be used, as a port or facility for the storing, handling, transferring, or transporting of goods to and from vessels.

(11) "Ordinary high water line" means the mark on the shores of all water that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years as to mark upon the soil or vegetation a character distinct from the abutting upland. Provided, that in any area where the ordinary high water line cannot be found, the ordinary high water line adjoining saltwater is the line of mean higher high water and the ordinary high water line adjoining fresh water is the elevation of the mean annual flood.

(12) "Permit" means a hydraulic project approval permit issued under this chapter.

(13) "Sandbars" includes, but is not limited to, sand, gravel, rock, silt, and sediments.

(14) "Small scale prospecting and mining" means the use of only the following methods: Pans; nonmotorized sluice boxes; concentrators; and minirocker boxes for the discovery and recovery of minerals.

(15) "Spartina," "purple loosestrife," and "aquatic noxious weeds" have the same meanings as defined in RCW 17.26.020.

(16) "Streambank stabilization" means those projects that prevent or limit erosion, slippage, and mass wasting. These projects include, but are not limited to, bank resloping, log and debris relocation or removal, planting of woody vegetation, bank protection using rock or woody material or placement of jetties or groins, gravel removal, or erosion control.

(17) "Tide gate" means a one-way check valve that prevents the backflow of tidal water.

(18) "Waters of the state" and "state waters" means all salt and fresh waters waterward of the ordinary high water line and within the territorial boundary of the state. [2005 c 146 § 101.]

**Part headings not law—2005 c 146:** "Part headings used in this act are not any part of the law." [2005 c 146 § 1007.]

**77.55.021 Permit.** (1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; and

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections (8), (10), and (12) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(b) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

(4) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life. Issuance, denial, conditioning, or modification of a permit shall be appealable to the department or the board as specified in RCW 77.55.301 within thirty days of the notice of decision.

(5)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for stream-

bank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

(6) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification becomes effective unless appealed to the department or the board as specified in RCW 77.55.301 within thirty days from the notice of the proposed modification. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

(7) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the board within thirty days of the notice of the decision. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

(8)(a) The department, the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(9) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

(10) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of immi-

nent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

(11)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department shall issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (3) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

(12) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection. [2008 c 272 § 1; 2005 c 146 § 201.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.031 Driving across established ford.** The act of driving across an established ford is exempt from a permit. Driving across streams or on wetted streambeds at areas other than established fords requires a permit. Work within the ordinary high water line of state waters to construct or repair a ford or crossing requires a permit. [2005 c 146 § 301.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.041 Derelict fishing gear—Removal.** The removal of derelict fishing gear does not require a permit under this chapter if the gear is removed according to the

guidelines described in RCW 77.12.865. [2005 c 146 § 302; 2002 c 20 § 4. Formerly RCW 77.55.330.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Purpose—2002 c 20:** See note following RCW 77.12.865.

**77.55.051 Spartina/purple loosestrife—Removal or control.** (1) An activity conducted solely for the removal or control of spartina does not require a permit.

(2) An activity conducted solely for the removal or control of purple loosestrife and which is performed with hand-held tools, handheld equipment, or equipment carried by a person does not require a permit. [2005 c 146 § 303.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.061 Hazardous substance remedial actions—Procedural requirements not applicable.** The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 18. Formerly RCW 77.55.030, 75.20.025.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**77.55.071 Certain secure community transition facilities not subject to this chapter. (Expires June 30, 2009.)** An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009. [2002 c 68 § 14. Formerly RCW 77.55.360.]

**Purpose—Severability—Effective date—2002 c 68:** See notes following RCW 36.70A.200.

**77.55.081 Removal or control of aquatic noxious weeds—Rules—Pamphlet.** (1) By June 30, 1997, the department shall develop rules for projects conducted solely for the removal or control of various aquatic noxious weeds other than spartina and purple loosestrife and for activities or hydraulic projects for controlling purple loosestrife not covered by RCW 77.55.051(2). Following the adoption of the rules, the department shall produce and distribute a pamphlet describing the methods of removing or controlling the aquatic noxious weeds that are approved under the rules. The pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

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(2) From time to time as information becomes available, the department shall adopt similar rules for additional aquatic noxious weeds or additional activities for removing or controlling aquatic noxious weeds not governed by RCW 77.55.051 (1) and (2) and shall produce and distribute one or more pamphlets describing these methods of removal or control. Such a pamphlet serves as the permit for any project that is conducted solely for the removal or control of such aquatic noxious weeds and that is conducted as described in the pamphlet. No further permit is required for such a project.

(3) Nothing in this section shall prohibit the department from requiring a permit for those parts of hydraulic projects that are not specifically for the control or removal of spartina, purple loosestrife, or other aquatic noxious weeds. [2005 c 146 § 401; 1995 c 255 § 4. Formerly RCW 77.55.150, 75.20.108.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Severability—Effective date—1995 c 255:** See RCW 17.26.900 and 17.26.901.

**77.55.091 Small scale prospecting and mining—Rules.** (1) Small scale prospecting and mining shall not require a permit under this chapter if the prospecting is conducted in accordance with rules established by the department.

(2) By December 31, 1998, the department shall adopt rules applicable to small scale prospecting and mining activities subject to this section. The department shall develop the rules in cooperation with the recreational mining community and other interested parties.

(3) Within two months of adoption of the rules, the department shall distribute an updated gold and fish pamphlet that describes methods of mineral prospecting that are consistent with the department's rule. The pamphlet shall be written to clearly indicate the prospecting methods that require a permit under this chapter and the prospecting methods that require compliance with the pamphlet. To the extent possible, the department shall use the provisions of the gold and fish pamphlet to minimize the number of specific provisions of a written permit issued under this chapter. [2005 c 146 § 402; 1997 c 415 § 2. Formerly RCW 77.55.270, 75.20.330.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—1997 c 415:** "The legislature finds that small scale prospecting and mining: (1) Is an important part of the heritage of the state; (2) provides economic benefits to the state; and (3) can be conducted in a manner that is beneficial to fish habitat and fish propagation. Now, therefore, the legislature declares that small scale prospecting and mining shall be regulated in the least burdensome manner that is consistent with the state's fish management objectives and the federal endangered species act." [1997 c 415 § 1.]

**77.55.101 Environmental excellence program agreements—Effect on chapter.** Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 25. Formerly RCW 77.55.020, 75.20.015.]

**Purpose—1997 c 381:** See RCW 43.21K.005.

**77.55.111 Habitat incentives agreement.** When a private landowner is applying for a permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of natural resources as provided in RCW 77.55.121, the department shall comply with the terms of that agreement when evaluating the request for a permit. [2005 c 146 § 403; 2001 c 253 § 54; 1997 c 425 § 4. Formerly RCW 77.55.280, 75.20.340.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—1997 c 425:** See note following RCW 77.55.121.

**77.55.121 Habitat incentives program—Goal—Requirements of agreement—Application evaluation factors.** (1) Beginning in January 1998, the department and the department of natural resources shall implement a habitat incentives program based on the recommendations of federally recognized Indian tribes, landowners, the regional fisheries enhancement groups, the timber, fish, and wildlife cooperators, and other interested parties. The program shall allow a private landowner to enter into an agreement with the departments to enhance habitat on the landowner's property for food fish, game fish, or other wildlife species. In exchange, the landowner shall receive state regulatory certainty with regard to future applications for a permit or a forest practices permit on the property covered by the agreement. The overall goal of the program is to provide a mechanism that facilitates habitat development on private property while avoiding an adverse state regulatory impact to the landowner at some future date. A single agreement between the departments and a landowner may encompass up to one thousand acres. A landowner may enter into multiple agreements with the departments, provided that the total acreage covered by such agreements with a single landowner does not exceed ten thousand acres. The departments are not obligated to enter into an agreement unless the departments find that the agreement is in the best interest of protecting fish or wildlife species or their habitat.

(2) A habitat incentives agreement shall be in writing and shall contain at least the following: (a) A description of the property covered by the agreement; (b) an expiration date; (c) a description of the condition of the property prior to the implementation of the agreement; and (d) other information needed by the landowner and the departments for future reference and decisions.

(3) As part of the agreement, the department may stipulate the factors that will be considered when the department evaluates a landowner's application for a permit on property covered by the agreement. The department's identification of these evaluation factors shall be in concurrence with the department of natural resources and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of a permit must be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(4) As part of the agreement, the department of natural resources may stipulate the factors that will be considered when the department of natural resources evaluates a landowner's application for a forest practices permit under chapter 76.09 RCW on property covered by the agreement. The department of natural resources' identification of these eval-

uation factors shall be in concurrence with the department and affected federally recognized Indian tribes. In general, future decisions related to the issuance, conditioning, or denial of forest practices permits shall be based on the conditions present on the landowner's property at the time of the agreement, unless all parties agree otherwise.

(5) The agreement is binding on and may be used by only the landowner who entered into the agreement with the department. The agreement shall not be appurtenant with the land. However, if a new landowner chooses to maintain the habitat enhancement efforts on the property, the new landowner and the department and the department of natural resources may jointly choose to retain the agreement on the property.

(6) If the department and the department of natural resources receive multiple requests for agreements with private landowners under the habitat incentives program, the departments shall prioritize these requests and shall enter into as many agreements as possible within available budgetary resources. [2005 c 146 § 404; 2000 c 107 § 229; 1997 c 425 § 3. Formerly RCW 77.55.300, 77.12.830.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—1997 c 425:** "In an effort to increase the amount of habitat available for fish and wildlife, the legislature finds that it is desirable for the department of fish and wildlife, the department of natural resources, and other interested parties to work closely with private landowners to achieve habitat enhancements. In some instances, private landowners avoid enhancing habitat because of a concern that the presence of fish or wildlife may make future land management more difficult. It is the intent of this act to provide a mechanism that facilitates habitat development while avoiding an adverse impact on the landowner at a later date. The habitat incentives program is not intended to supercede any federal laws." [1997 c 425 § 1.]

**77.55.131 Dike vegetation management guidelines—Memorandum of agreement.** The department and the department of ecology will work cooperatively with the United States army corps of engineers to develop a memorandum of agreement outlining dike vegetation management guidelines so that dike owners are eligible for coverage under P.L. 84-99, and state requirements established pursuant to RCW 77.55.021 are met. [2005 c 146 § 405; 2000 c 107 § 18; 1993 sp.s. c 2 § 34; 1991 c 322 § 19. Formerly RCW 77.55.130, 75.20.1041.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.141 Marine beach front protective bulkheads or rockwalls.** (1) In order to protect the property of marine waterfront shoreline owners it is necessary to facilitate issuance of permits for bulkheads or rockwalls under certain conditions.

(2) The department shall issue a permit with or without conditions within forty-five days of receipt of a complete and accurate application which authorizes commencement of construction, replacement, or repair of a marine beach front protective bulkhead or rockwall for single-family type residences or property under the following conditions:

(a) The waterward face of a new bulkhead or rockwall shall be located only as far waterward as is necessary to excavate for footings or place base rock for the structure and under no conditions shall be located more than six feet waterward of the ordinary high water line;

(b) Any bulkhead or rockwall to replace or repair an existing bulkhead or rockwall shall be placed along the same alignment as the bulkhead or rockwall it is replacing. However, the replaced or repaired bulkhead or rockwall may be placed waterward of and directly abutting the existing structure only in cases where removal of the existing bulkhead or rockwall would result in environmental degradation or removal problems related to geological, engineering, or safety considerations; and

(c) Construction of a new bulkhead or rockwall, or replacement or repair of an existing bulkhead or rockwall waterward of the existing structure shall not result in the permanent loss of critical food fish or shellfish habitats; and

(d) Timing constraints shall be applied on a case-by-case basis for the protection of critical habitats, including but not limited to migration corridors, rearing and feeding areas, and spawning habitats, for the proper protection of fish life.

(3) Any bulkhead or rockwall construction, replacement, or repair not meeting the conditions in this section shall be processed under this chapter in the same manner as any other application.

(4) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the board pursuant to this chapter. [2005 c 146 § 501; 1991 c 279 § 1. Formerly RCW 77.55.200, 75.20.160.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.151 Marina or marine terminal.** (1) For a marina or marine terminal in existence on June 6, 1996, or a marina or marine terminal that has received a permit for its initial construction, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(2) Upon construction of a new marina or marine terminal that has received a permit, a renewable, five-year permit shall be issued, upon request, for regular maintenance activities of the marina or marine terminal.

(3) For the purposes of this section, regular maintenance activities are only those activities necessary to restore the marina or marine terminal to the conditions approved in the initial permit. These activities may include, but are not limited to, dredging, piling replacement, and float replacement.

(4) The five-year permit must include a requirement that a fourteen-day notice be given to the department before regular maintenance activities begin. [2005 c 146 § 502; 2002 c 368 § 7; 1996 c 192 § 2. Formerly RCW 77.55.220, 75.20.180.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** See note following RCW 77.55.340.

**Finding—Intent—1996 c 192:** "The legislature finds that initial construction of a marina and some maintenance activities change the natural flow or bed of the salt or fresh water body in which the marina is constructed. Because of this disturbance, it is appropriate that plans for initial marina con-

struction as well as some maintenance activities undergo the hydraulic project review and approval process established in chapter 75.20 RCW.

It is the intent of the legislature that after a marina has received a hydraulic project approval and been constructed, a renewable, five-year hydraulic project approval be issued, upon request, for regular maintenance activities within the marina." [1996 c 192 § 1.]

**77.55.161 Storm water discharges.** (1) Notwithstanding any other provision of this chapter, all permits related to storm water discharges must follow the provisions established in this section.

(2) Permits issued in locations covered by a national pollution discharge elimination system municipal storm water general permit may not be conditioned or denied for water quality or quantity impacts arising from storm water discharges. A permit is required only for the actual construction of any storm water outfall or associated structures pursuant to this chapter.

(3)(a) In locations not covered by a national pollution discharge elimination system municipal storm water general permit, the department may issue permits that contain provisions that protect fish life from adverse effects, such as scouring or erosion of the bed of the water body, resulting from the direct hydraulic impacts of the discharge.

(b) Prior to the issuance of a permit issued under this subsection (3), the department must:

(i) Make a finding that the discharge from the outfall will cause harmful effects to fish life;

(ii) Transmit the findings to the applicant and to the city or county where the project is being proposed; and

(iii) Allow the applicant an opportunity to use local ordinances or other mechanisms to avoid the adverse effects resulting from the direct hydraulic discharge. The forty-five day requirement for permit issuance under RCW 77.55.021 is suspended during the time period the department is meeting the requirements of this subsection (3)(b).

(c) After following the procedures set forth in (b) of this subsection, the department may issue a permit that prescribes the discharge rates from an outfall structure that will prevent adverse effects to the bed or flow of the waterway. The department may recommend, but not specify, the measures required to meet these discharge rates. The department may not require changes to the project design above the mean higher high water mark of marine waters, or the ordinary high water mark of freshwaters of the state. Nothing in this section alters any authority the department may have to regulate other types of projects under this chapter. [2005 c 146 § 503; 2002 c 368 § 4. Formerly RCW 77.55.340.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** "The legislature finds that hydraulic project approvals should ensure that fish life is properly protected, but conditions attached to the approval of these permits must reasonably relate to the potential harm that the projects may produce. The legislature is particularly concerned over the current overlap of agency jurisdiction regarding storm water projects, and believes that there is an immediate need to address this issue to ensure that project applicants are not given conflicting directions over project design. Requiring a major redesign of a project results in major delays, produces exponentially rising costs for both public and private project applicants, and frequently produces only marginal benefits for fish.

The legislature recognizes that the department of ecology is primarily responsible for the approval of storm water projects. The legislature believes that once the department of ecology approves a proposed storm water project, it is inappropriate for the department of fish and wildlife to require a major redesign of that project in order for the applicant to obtain hydraulic

project approval. The legislature further believes that it is more appropriate for the department of fish and wildlife to defer the design elements of a storm water project to the department of ecology and focus its own efforts on determining reasonable mitigation or conditions for the project based upon the project's potential harm to fish. It is the intent of the legislature to restore some balance over conditions attached to hydraulic permits, and to minimize overlapping state regulatory authority regarding storm water projects in order to reduce waste in both time and money while still providing ample protection for fish life." [2002 c 368 § 1.]

**77.55.171 Watershed restoration projects—Permit processing.** A permit required by the department for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. [2005 c 146 § 504; 1995 c 378 § 14. Formerly RCW 77.55.210, 75.20.170.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.181 Fish habitat enhancement project—Permit review and approval process.** (1) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department pursuant to chapter 77.95 or 77.100 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3)(a) A permit is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(b) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the board pursuant to the provisions of this chapter.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section. [2005 c 146 § 505; 2001 c 253 § 55; 1998 c 249 § 3. Formerly RCW 77.55.290, 75.20.350.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Findings—Purpose—1998 c 249:** "The legislature finds that fish habitat enhancement projects play a key role in the state's salmon and steelhead recovery efforts. The legislature finds that there are over two thousand barriers to fish passage at road crossings throughout the state, blocking fish access to as much as three thousand miles of freshwater spawning and rearing habitat. The legislature further finds that removal of these barriers and completion of other fish habitat enhancement projects should be done in a cost-effective manner, which includes providing technical assistance and training to people who will undertake projects such as removal of barriers to salmon passage and minimizing the expense and delays of various permitting processes. The purpose of this act is to take immediate action to facilitate the review and approval of fish habitat enhancement projects, to encourage efforts that will continue to improve the process in the future, to address known fish passage barriers immediately, and to develop over time a comprehensive system to inventory and prioritize barriers on a statewide basis." [1998 c 249 § 1.]

**Joint aquatic resource permit application form—Modification—1998 c 249:** "The department of ecology permit assistant [assistance] center shall immediately modify the joint aquatic resource permit application form

to incorporate the permit process established in section 3 of this act." [1998 c 249 § 2.]

**Finding—Report—1998 c 249:** "The legislature finds that, while the process created in this act can improve the speed with which fish habitat enhancement projects are put into place, additional efforts can improve the review and approval process for the future. The legislature directs the department of fish and wildlife, the conservation commission, local governments, fish habitat enhancement project applicants, and other interested parties to work together to continue to improve the permitting review and approval process. Specific efforts shall include the following:

(1) Development of common acceptable design standards, best management practices, and standardized hydraulic project approval conditions for each type of fish habitat enhancement project;

(2) An evaluation of the potential for using technical evaluation teams in evaluating specific project proposals or stream reaches;

(3) An evaluation of techniques appropriate for restoration and enhancement of pasture and crop land adjacent to riparian areas;

(4) A review of local government shoreline master plans to identify and correct instances where the local plan does not acknowledge potentially beneficial instream work;

(5) An evaluation of the potential for local governments to incorporate fish habitat enhancement projects into their comprehensive planning process; and

(6) Continued work with the federal government agencies on federal permitting for fish habitat enhancement projects.

The department of fish and wildlife shall coordinate this joint effort and shall report back to the legislature on the group's progress by December 1, 1998." [1998 c 249 § 15.]

**Effective date—1998 c 249:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]." [1998 c 249 § 18.]

**77.55.191 Columbia river anadromous fish sanctuary—Restrictions.** (1) Except for the north fork of the Lewis river and the White Salmon river, all streams and rivers tributary to the Columbia river downstream from McNary dam are established as an anadromous fish sanctuary. This sanctuary is created to preserve and develop the food fish and game fish resources in these streams and rivers and to protect them against undue industrial encroachment.

(2) Within the sanctuary area:

(a) The department shall not issue a permit to construct a dam greater than twenty-five feet high within the migration range of anadromous fish as determined by the department.

(b) A person shall not divert water from rivers and streams in quantities that will reduce the respective stream flow below the annual average low flow, based upon data published in United States geological survey reports.

(3) The commission may acquire and abate a dam or other obstruction, or acquire any water right vested on a sanctuary stream or river, which is in conflict with the provisions of subsection (2) of this section.

(4) Subsection (2)(a) of this section does not apply to the sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers. [2005 c 146 § 506; 1998 c 190 § 89; 1995 1st sp.s. c 2 § 27 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 36; 1988 c 36 § 36; 1985 c 307 § 5; 1983 1st ex.s. c 46 § 76; 1961 c 4 § 1 (Initiative Measure No. 25, approved November 8, 1960). Formerly RCW 77.55.160, 75.20.110.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

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**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1961 c 4:** "If any section or provision or part thereof of this act shall be held unconstitutional or for any other reason invalid, the invalidity of such section, provision or part thereof shall not affect the validity of the remaining sections, provisions or parts thereof which are not judged to be invalid or unconstitutional." [1961 c 4 § 3 (Initiative Measure No. 25, approved November 8, 1960).]

**77.55.201 Landscape management plan.** A landscape management plan approved by the department and the department of natural resources under RCW 76.09.350(2) shall serve as a permit for the life of the plan if fish are selected as one of the public resources for coverage under such a plan. [2005 c 146 § 507.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.211 Informational brochure.** The department, the department of ecology, and the department of natural resources shall jointly develop an informational brochure that describes when permits and any other authorizations are required for flood damage prevention and reduction projects, and recommends ways to best proceed through the various regulatory permitting processes. [2005 c 146 § 406; 1993 sp.s. c 2 § 28; 1991 c 322 § 21. Formerly RCW 77.55.010, 75.20.005.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.221 Flood damage repair and reduction activities—Five-year maintenance permit agreements.** The department shall, at the request of a county, develop five-year maintenance permit agreements, consistent with comprehensive flood control management plans adopted under the authority of RCW 86.12.200, or other watershed plan approved by a county legislative authority, to allow for work on public and private property for bank stabilization, bridge repair, removal of sandbars and debris, channel maintenance, and other flood damage repair and reduction activity under agreed-upon conditions and times without obtaining permits for specific projects. [2005 c 146 § 508.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.231 Conditions imposed upon a permit—Reasonably related to project.** (1) Conditions imposed upon a permit must be reasonably related to the project. The permit conditions must ensure that the project provides proper protection for fish life, but the department may not impose conditions that attempt to optimize conditions for fish life that are out of proportion to the impact of the proposed project.

(2) The permit must contain provisions allowing for minor modifications to the plans and specifications without

requiring reissuance of the permit. [2005 c 146 § 601; 2002 c 368 § 5. Formerly RCW 77.55.350.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding—Intent—2002 c 368:** See note following RCW 77.55.340.

**77.55.241 Off-site mitigation.** (1) The legislature finds that the construction of hydraulic projects may require mitigation for the protection of fish life, and that the mitigation may be most cost-effective and provide the most benefit to the fish resource if the mitigation is allowed to be applied in locations that are off-site of the hydraulic project location. The department may approve off-site mitigation plans that are submitted by permit applicants.

(2) If a permit applicant proposes off-site mitigation and the department does not approve the permit or conditions the permit in such a manner as to render off-site mitigation unpracticable, the project proponent must be given the opportunity to submit the permit application to the board for approval. [2005 c 146 § 602; 1996 c 276 § 1. Formerly RCW 77.55.230, 75.20.190.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.251 Mitigation plan review.** When reviewing a mitigation plan under RCW 77.55.021, the department shall, at the request of the project proponent, follow the guidance contained in RCW 90.74.005 through 90.74.030. [2005 c 146 § 603; 2000 c 107 § 15; 1997 c 424 § 6. Formerly RCW 77.55.090, 75.20.098.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.261 Placement of woody debris as condition of permit.** Whenever the placement of woody debris is required as a condition of a permit issued under RCW 77.55.021, the department, upon request, shall invite comment regarding that placement from the local governmental authority, affected tribes, affected federal and state agencies, and the project applicant. [2005 c 146 § 604; 2000 c 107 § 17; 1993 sp.s. c 2 § 33; 1991 c 322 § 18. Formerly RCW 77.55.120, 75.20.104.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**77.55.271 Sediment dredging or capping actions—Dredging of existing channels and berthing areas—Mitigation not required.** The department shall not require mitigation for sediment dredging or capping actions that result in a cleaner aquatic environment and equal or better habitat functions and values, if the actions are taken under a state or federal cleanup action.

This chapter shall not be construed to require habitat mitigation for navigation and maintenance dredging of existing channels and berthing areas. [1997 c 424 § 5. Formerly RCW 77.55.260, 75.20.325.]

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**77.55.281 Fishways on certain agricultural drainage facilities.** (1) The department may not require a fishway on a tide gate, flood gate, or other associated man-made agricultural drainage facilities as a condition of a permit if such a fishway was not originally installed as part of an agricultural drainage system existing on or before May 20, 2003.

(2) Any condition requiring a self-regulating tide gate to achieve fish passage in an existing permit under this chapter may not be enforced. [2005 c 146 § 605.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.55.291 Civil penalty.** (1) The department may levy civil penalties of up to one hundred dollars per day for violation of any provisions of RCW 77.55.021. The penalty provided shall be imposed by notice in writing, either by certified mail or personal service to the person incurring the penalty, from the director or the director's designee describing the violation.

(2) Any person incurring any penalty under this chapter may appeal the same under chapter 34.05 RCW to the director. Appeals shall be filed within thirty days of receipt of notice imposing any penalty.

(3) The penalty imposed shall become due and payable thirty days after receipt of a notice imposing the penalty unless an appeal is filed. Whenever an appeal of any penalty incurred under this chapter is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action. All penalties recovered under this section shall be paid into the state's general fund. [2005 c 146 § 701; 2000 c 107 § 19; 1993 sp.s. c 2 § 35; 1988 c 36 § 35; 1986 c 173 § 6. Formerly RCW 77.55.140, 75.20.106.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.55.301 Hydraulic appeals board—Members—Jurisdiction—Procedures.** (1) There is created within the environmental hearings office under RCW 43.21B.005 the hydraulic appeals board of the state of Washington.

(2) The board consists of three members: The director of the department of ecology or the director's designee, the director of the department of agriculture or the director's designee, and the director or the director's designee of the department. A decision must be agreed to by at least two members of the board to be final.

(3) The board may adopt rules necessary for the conduct of its powers and duties or for transacting other official business.

(4) The board shall make findings of fact and prepare a written decision in each case decided by it. The finding and decision shall be effective upon being signed by two or more board members and upon being filed at the board's principal office, and shall be open to public inspection at all reasonable times.

(5) The board has exclusive jurisdiction to hear appeals arising from the approval, denial, conditioning, or modification of a permit issued by the department: (a) Under the authority granted in RCW 77.55.021 for the diversion of water for agricultural irrigation or stock watering purposes or when associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020; (b) under the authority granted in RCW 77.55.241 for off-site mitigation proposals; (c) under the authority granted in RCW 77.55.141; or (d) under the authority granted in RCW 77.55.181.

(6)(a) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under RCW 77.55.021 may, except as otherwise provided in chapter 43.21L RCW, seek review from the board by filing a request for the same within thirty days of notice of the approval, denial, conditioning, or modification of the permit.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2005 c 146 § 801; 2003 c 393 § 21; 2000 c 107 § 20; 1996 c 276 § 2; 1993 sp.s. c 2 § 37; 1989 c 175 § 160; 1988 c 272 § 3; 1988 c 36 § 37; 1986 c 173 § 4. Formerly RCW 77.55.170, 75.20.130.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1988 c 272:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 272 § 6.]

### 77.55.311 Hydraulic appeals board—Procedures.

(1) In all appeals, the board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(2) In all appeals, the board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(3) All proceedings before the board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. Such rules shall be published and distributed.

(4) Judicial review of a decision of the board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [2005 c 146 § 802; 1995 c 382 § 7; 1989 c 175 § 161; 1986 c 173 § 5. Formerly RCW 77.55.180, 75.20.140.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## Chapter 77.57 RCW

### FISHWAYS, FLOW, AND SCREENING

#### Sections

77.57.010	Fish guards required on diversion devices—Penalties, remedies for failure.
77.57.020	Review of permit applications to divert or store water—Water flow policy.
77.57.030	Fishways required in dams, obstructions—Penalties, remedies for failure.
77.57.040	Director may modify inadequate fishways and fish guards.
77.57.050	If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.
77.57.060	Director may modify inadequate fishways and protective devices.
77.57.070	Diversion of water—Screen, bypass required.
77.57.080	Operation and maintenance of fish collection facility on Toutle river.

**77.57.010 Fish guards required on diversion devices—Penalties, remedies for failure.** (1) A diversion device used for conducting water from a lake, river, or stream for any purpose shall be equipped with a fish guard approved by the director to prevent the passage of fish into the diversion device. The fish guard shall be maintained at all times when water is taken into the diversion device. The fish guards shall be installed at places and times prescribed by the director upon thirty days' notice to the owner of the diversion device.

(2) Each day the diversion device is not equipped with an approved fish guard is a separate offense. If within thirty days after notice to equip a diversion device the owner fails to do so, the director may take possession of the diversion device and close the device until it is properly equipped. Expenses incurred by the department constitute the value of a lien upon the diversion device and upon the real and personal property of the owner. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the action is taken. [2005 c 146 § 901; 1998 c 190 § 85; 1983 1st ex.s. c 46 § 70; 1955 c 12 § 75.20.040. Prior: 1949 c 112 § 45; Rem. Supp. 1949 § 5780-319. Formerly RCW 77.55.040, 75.20.040.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**77.57.020 Review of permit applications to divert or store water—Water flow policy.** It is the policy of this state that a flow of water sufficient to support game fish and food fish populations be maintained at all times in the streams of this state.

The director of ecology shall give the director notice of each application for a permit to divert or store water. The director has thirty days after receiving the notice to state his or her objections to the application. The permit shall not be issued until the thirty-day period has elapsed.

The director of ecology may refuse to issue a permit if, in the opinion of the director of ecology, issuing the permit might result in lowering the flow of water in a stream below the flow necessary to adequately support food fish and game fish populations in the stream.

The provisions of this section shall in no way affect existing water rights. [2005 c 146 § 902; 1993 sp.s. c 2 § 29; 1988 c 36 § 32; 1986 c 173 § 7; 1983 1st ex.s. c 46 § 71; 1955 c 12 § 75.20.050. Prior: 1949 c 112 § 46; Rem. Supp. 1949 § 5780-320. Formerly RCW 77.55.050, 75.20.050.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.57.030 Fishways required in dams, obstructions—Penalties, remedies for failure.** (1) Subject to subsection (3) of this section, a dam or other obstruction across or in a stream shall be provided with a durable and efficient fishway approved by the director. Plans and specifications shall be provided to the department prior to the director's approval. The fishway shall be maintained in an effective condition and continuously supplied with sufficient water to freely pass fish.

(2)(a) If a person fails to construct and maintain a fishway or to remove the dam or obstruction in a manner satisfactory to the director, then within thirty days after written notice to comply has been served upon the owner, his or her agent, or the person in charge, the director may construct a fishway or remove the dam or obstruction. Expenses incurred by the department constitute the value of a lien upon the dam and upon the personal property of the person owning the dam. Notice of the lien shall be filed and recorded in the office of the county auditor of the county in which the dam or obstruction is situated. The lien may be foreclosed in an action brought in the name of the state.

(b) If, within thirty days after notice to construct a fishway or remove a dam or obstruction, the owner, his or her agent, or the person in charge fails to do so, the dam or obstruction is a public nuisance and the director may take possession of the dam or obstruction and destroy it. No liability shall attach for the destruction.

(3) For the purposes of this section, "other obstruction" does not include tide gates, flood gates, and associated man-made agricultural drainage facilities that were originally installed as part of an agricultural drainage system on or before May 20, 2003, or the repair, replacement, or improvement of such tide gates or flood gates. [2005 c 146 § 903; 2003 c 391 § 1; 1998 c 190 § 86; 1983 1st ex.s. c 46 § 72; 1955 c 12 § 75.20.060. Prior: 1949 c 112 § 47; Rem. Supp. 1949 § 5780-321. Formerly RCW 77.55.060, 75.20.060.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Severability—2003 c 391:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 391 § 8.]

**Effective date—2003 c 391:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 391 § 9.]

**77.57.040 Director may modify inadequate fishways and fish guards.** If the director determines that a fishway or fish guard described in \*RCW 77.55.040 and 77.55.060 and in existence on September 1, 1963, is inadequate, in addition

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to other authority granted in this chapter, the director may remove, relocate, reconstruct, or modify the device, without cost to the owner. The director shall not materially modify the amount of flow of water through the device. After the department has completed the improvements, the fishways and fish guards shall be operated and maintained at the expense of the owner in accordance with \*RCW 77.55.040 and 77.55.060. [2000 c 107 § 14; 1983 1st ex.s. c 46 § 73; 1963 c 153 § 1. Formerly RCW 77.55.070, 75.20.061.]

**\*Reviser's note:** RCW 77.55.040 and 77.55.060 were recodified as RCW 77.57.010 and 77.57.030, respectively, pursuant to 2005 c 146 § 1002.

*Director of fish and wildlife may modify, etc., inadequate fishways and protective devices: RCW 77.57.060.*

**77.57.050 If fishway is impractical, fish hatchery or cultural facility may be provided in lieu.** Before a person commences construction on a dam or other hydraulic project for which the director determines that a fishway is impractical, the person shall at the option of the director:

(1) Convey to the state a fish cultural facility on a site satisfactory to the director and constructed according to plans and specifications approved by the director, and enter into an agreement with the director secured by sufficient bond, to furnish water and electricity, without expense, and funds necessary to operate and maintain the facilities; or

(2) Enter into an agreement with the director secured by sufficient bond to make payments to the state as the director determines are necessary to expand, maintain, and operate additional facilities at existing hatcheries within a reasonable distance of the dam or other hydraulic work to compensate for the damages caused by the dam or other hydraulic work.

(3) A decision of the director under this section is subject to review in the superior court of the state for Thurston county. Each day that a person carries on construction work or operates a dam or hydraulic project without complying with this section is a separate offense. [1983 1st ex.s. c 46 § 74; 1955 c 12 § 75.20.090. Prior: 1949 c 112 § 48; Rem. Supp. 1949 § 5780-322. Formerly RCW 77.55.080, 75.20.090.]

**77.57.060 Director may modify inadequate fishways and protective devices.** The director may authorize removal, relocation, reconstruction, or other modification of an inadequate fishway or fish protective device required by \*RCW 77.55.320 which device was in existence on September 1, 1963, without cost to the owner for materials and labor. The modification may not materially alter the amount of water flowing through the fishway or fish protective device. Following modification, the fishway or fish protective device shall be maintained at the expense of the person or governmental agency owning the obstruction or water diversion device. [2001 c 253 § 21; 1980 c 78 § 90; 1963 c 152 § 1. Formerly RCW 77.55.310, 77.12.425, 77.16.221.]

**\*Reviser's note:** RCW 77.55.320 was recodified as RCW 77.57.070 pursuant to 2005 c 146 § 1002.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

*Director of fish and wildlife may modify inadequate fishways and fish guards: RCW 77.57.040.*

**77.57.070 Diversion of water—Screen, bypass required.** (1) A person shall not divert water from a lake, river, or stream containing game fish unless the water diversion device is equipped at or near its intake with a fish guard or screen to prevent the passage of game fish into the device and, if necessary, with a means of returning game fish from immediately in front of the fish guard or screen to the waters of origin. A person who was, on June 11, 1947, otherwise lawfully diverting water from a lake, river, or stream shall not be deemed guilty of a violation of this section.

(2) Plans for the fish guard, screen, and bypass shall be approved by the director prior to construction. The installation shall be approved by the director prior to the diversion of water.

(3) The director or the director's designee may close a water diversion device operated in violation of this section and keep it closed until it is properly equipped with a fish guard, screen, or bypass. [2005 c 146 § 904; 2001 c 253 § 48; 1998 c 190 § 122; 1980 c 78 § 89; 1955 c 36 § 77.16.220. Prior: 1947 c 275 § 61; Rem. Supp. 1947 § 5992-70. Formerly RCW 77.55.320, 77.16.220.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.57.080 Operation and maintenance of fish collection facility on Toutle river.** The legislature recognizes the need to mitigate the effects of sedimentary build-up and resultant damage to fish population in the Toutle river resulting from the Mt. St. Helens eruption. The state has entered into a contractual agreement with the United States army corps of engineers designed to minimize fish habitat disruption created by the sediment retention structure on the Toutle river, under which the corps has agreed to construct a fish collection facility at the sediment retention structure site conditional upon the state assuming the maintenance and operation costs of the facility. The department shall operate and maintain a fish collection facility on the Toutle river. [1993 sp.s. c 2 § 39; 1988 c 36 § 39; 1987 c 506 § 101. Formerly RCW 77.55.240, 75.20.310.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

## Chapter 77.60 RCW

### SHELLFISH

#### Sections

77.60.010	State oyster reserves established.
77.60.020	Sale or lease of state oyster reserves.
77.60.030	State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits.
77.60.040	Olympia oysters—Cultivation on reserves in Puget Sound.
77.60.050	Sale of shellfish from state oyster reserves.
77.60.060	Restricted shellfish areas—Infestations—Permit.
77.60.070	Geoduck clams, commercial harvesting—Unauthorized acts—Gear requirements.
77.60.080	Imported oyster seed—Permit and inspection required.
77.60.090	Imported oyster seed—Inspection—Costs.
77.60.100	Establishment of reserves on state shellfish lands.

77.60.110	Zebra mussels and European green crabs—Draft rules—Prevention of introduction and dispersal.
77.60.120	Infested waters—List published.
77.60.130	Aquatic nuisance species committee.
77.60.150	Oyster reserve land—Pilot project—Advisory committee—Report—Lease administration.
77.60.160	Oyster reserve land account.
77.60.170	Shellfish—On-site sewage grant program—Priority areas—Memorandum of understanding.

**77.60.010 State oyster reserves established.** The following areas are the state oyster reserves and are more completely described in maps and plats on file in the office of the commissioner of public lands and in the office of the auditor of the county in which the reserve is located:

#### 1. PUGET SOUND OYSTER RESERVES:

- (a) Totten Inlet reserves (sometimes known as Oyster Bay reserves), located in Totten Inlet, Thurston county;
- (b) Eld Inlet reserves (sometimes known as Mud Bay reserves), located in Mud Bay, Thurston county;
- (c) Oakland Bay reserves, located in Oakland Bay, Mason county;
- (d) North Bay reserves (sometimes known as Case Inlet reserves), located in Case Inlet, Mason county.

#### 2. WILLAPA HARBOR OYSTER RESERVES:

- (a) Nemah reserve, south and west sides of reserve located along Nemah River channel, Pacific county;
- (b) Long Island reserve, located at south end and along west side of Long Island, Willapa Harbor, Pacific county;
- (c) Long Island Slough reserve, located at south end and along east side of Long Island, Willapa Harbor, Pacific county;
- (d) Bay Center reserve, located in the Palix River channel, extending from Palix River bridge to beyond Bay Center to north of Goose Point, Willapa Harbor, Pacific county;
- (e) Willapa River reserve, located in the Willapa River channel extending west and up-river from a point approximately one-quarter mile from the blinker light marking the division of Willapa River channel and the North River channel, Willapa Harbor, Pacific county. [1983 1st ex.s. c 46 § 78; 1955 c 12 § 75.24.010. Prior: 1949 c 112 § 54; Rem. Supp. 1949 § 5780-01. Formerly RCW 75.24.010.]

**77.60.020 Sale or lease of state oyster reserves.** Only upon recommendation of the commission may the state oyster reserves be sold, leased, or otherwise disposed of by the department of natural resources. [1995 1st sp.s. c 2 § 28 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 79; 1955 c 12 § 75.24.030. Prior: 1949 c 112 § 55; Rem. Supp. 1949 § 5780-402. Formerly RCW 75.24.030.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.60.030 State oyster reserves management policy—Personal use harvesting—Inventory—Management categories—Cultch permits.** It is the policy of the state to improve state oyster reserves so that they are productive and yield a revenue sufficient for their maintenance. In fixing the

price of oysters and other shellfish sold from the reserves, the director shall take into consideration this policy. It is also the policy of the state to maintain the oyster reserves to furnish shellfish to growers and processors and to stock public beaches.

Shellfish may be harvested from state oyster reserves for personal use as prescribed by rule of the director.

The director shall periodically inventory the state oyster reserves and assign the reserve lands into management categories:

- (1) Native Olympia oyster broodstock reserves;
- (2) Commercial shellfish harvesting zones;
- (3) Commercial shellfish propagation zones designated for long-term leasing to private aquaculturists;
- (4) Public recreational shellfish harvesting zones;
- (5) Unproductive land.

The director shall manage each category of oyster reserve land to maximize the sustained yield production of shellfish consistent with the purpose for establishment of each management category.

The commission shall develop an oyster reserve management plan, to include recommendations for leasing reserve lands, in coordination with the shellfish industry, by January 1, 1986.

The director shall protect, reseed, improve the habitat of, and replant state oyster reserves. The director shall also issue cultch permits and oyster reserve fishery licenses. [2000 c 107 § 22; 1998 c 245 § 152; 1985 c 256 § 1; 1983 1st ex.s. c 46 § 81; 1969 ex.s. c 91 § 1; 1955 c 12 § 75.24.060. Prior: 1949 c 112 § 56; Rem. Supp. 1949 § 5780-403. Formerly RCW 75.24.060.]

**77.60.040 Olympia oysters—Cultivation on reserves in Puget Sound.** The legislature finds that current environmental and economic conditions warrant a renewal of the state's historical practice of actively cultivating and managing its oyster reserves in Puget Sound to produce the state's native oyster, the Olympia oyster. The director shall reestablish dike cultivated production of Olympia oysters on such reserves on a trial basis as a tool for planning more comprehensive cultivation by the state. [2000 c 107 § 23; 1993 sp.s. c 2 § 40; 1985 c 256 § 2. Formerly RCW 75.24.065.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.60.050 Sale of shellfish from state oyster reserves.** The director shall determine the time, place, and method of sale of oysters and other shellfish from state oyster reserves. Any person who commercially takes shellfish from state oyster reserves must possess an oyster reserve fishery license issued by the director pursuant to RCW 77.65.260. Any person engaged in the commercial cultching of oysters on state oyster reserves must possess an oyster cultch permit issued by the director pursuant to RCW 77.65.270.

To maintain local communities and industries and to restrain the formation of monopolies in the industry, the director shall determine the number of bushels which shall be sold to a person. When the shellfish are sold at public auction, the director may reject any and all bids. [2000 c 107 § 24; 1983 1st ex.s. c 46 § 82; 1955 c 12 § 75.24.070. Prior: 1949

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c 112 § 57; Rem. Supp. 1949 § 5780-404. Formerly RCW 75.24.070.]

*Oyster reserve fishery license:* RCW 77.65.260.

**77.60.060 Restricted shellfish areas—Infestations—Permit.** The director may designate as "restricted shellfish areas" those areas in which infection or infestation of shellfish is present. A permit issued by the director is required to transplant or transport into or out of a restricted area shellfish or equipment used in culturing, taking, handling, or processing shellfish. [1998 c 190 § 90; 1983 1st ex.s. c 46 § 83; 1955 c 12 § 75.24.080. Prior: 1949 c 112 § 59; Rem. Supp. 1949 § 5780-406. Formerly RCW 75.24.080.]

**77.60.070 Geoduck clams, commercial harvesting—Unauthorized acts—Gear requirements.** (1) The director may not authorize a person to take geoduck clams for commercial purposes outside the harvest area designated in a current department of natural resources geoduck harvesting agreement issued under RCW 79.135.210. The director may not authorize commercial harvest of geoduck clams from bottoms that are shallower than eighteen feet below mean lower low water (0.0 ft.). Vessels conducting harvest operations must remain seaward of a line two hundred yards seaward from and parallel to the line of ordinary high tide. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Commercial geoduck harvesting shall be done with a hand-held, manually operated water jet or suction device guided and controlled from under water by a diver. Periodically, the director shall determine the effect of each type or unit of gear upon the geoduck population or the substrate they inhabit. The director may require modification of the gear or stop its use if it is being operated in a wasteful or destructive manner or if its operation may cause permanent damage to the bottom or adjacent shellfish populations. [2006 c 144 § 1; 2000 c 107 § 25; 1998 c 190 § 91; 1995 1st sp.s. c 2 § 29 (Referendum Bill No. 45, approved November 7, 1995); 1993 c 340 § 51; 1984 c 80 § 2. Prior: 1983 1st ex.s. c 46 § 85; 1983 c 3 § 193; 1979 ex.s. c 141 § 1; 1969 ex.s. c 253 § 1. Formerly RCW 75.24.100.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Liberal construction—1969 ex.s. c 253:** "The provisions of this act shall be liberally construed." [1969 ex.s. c 253 § 5.]

**Severability—1969 ex.s. c 253:** "If any provisions of this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 253 § 6.]

*Designation of aquatic lands for geoduck harvesting:* RCW 79.135.220.

*Diver license for harvesting geoducks:* RCW 77.65.410.

**77.60.080 Imported oyster seed—Permit and inspection required.** The department may not authorize a person to import oysters or oyster seed into this state for the purpose of planting them in state waters without a permit from the director. The director shall issue a permit only after an adequate

inspection has been made and the oysters or oyster seed are found to be free of disease, pests, and other substances which might endanger oysters in state waters. [1998 c 190 § 92; 1983 1st ex.s. c 46 § 87; 1955 c 12 § 75.08.054. Prior: 1951 c 271 § 42. Formerly RCW 75.24.110, 75.08.054.]

**77.60.090 Imported oyster seed—Inspection—Costs.**

The director may require imported oyster seed to be inspected for diseases and pests. The director may specify the place of inspection. Persons importing oyster seed shall pay for the inspection costs excluding the inspector's salary. The cost shall be determined by the director and prorated among the importers according to the number of cases of oyster seeds each imports. The director shall specify the time and manner of payment. [1983 1st ex.s. c 46 § 88; 1967 ex.s. c 38 § 1; 1955 c 12 § 75.08.056. Prior: 1951 c 271 § 43. Formerly RCW 75.24.120, 75.08.056.]

**77.60.100 Establishment of reserves on state shellfish lands.** The commission may examine the clam, mussel, and oyster beds located on aquatic lands belonging to the state and request the commissioner of public lands to withdraw these lands from sale and lease for the purpose of establishing reserves or public beaches. The director shall conserve, protect, and develop these reserves and the oyster, shrimp, clam, and mussel beds on state lands. [2000 c 107 § 26; 1995 1st sp.s. c 2 § 30 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 89; 1955 c 12 § 75.08.060. Prior: 1949 c 112 § 7(5); Rem. Supp. 1949 § 5780-206(5). Formerly RCW 75.24.130, 75.08.060.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.60.110 Zebra mussels and European green crabs—Draft rules—Prevention of introduction and dispersal.** To complement programs authorized by the federal aquatic nuisance species task force, the department of fish and wildlife is directed to develop draft rules for legislative consideration to prevent the introduction and dispersal of zebra mussels and European green crabs and to allow eradication of infestations that may occur. The department is authorized to display and distribute material and literature informing boaters and owners of airplanes that land on water of the problem and to publicize and maintain a telephone number available to the public to express concerns and report infestations. [1998 c 153 § 2. Formerly RCW 75.24.140.]

**Intent—1998 c 153:** "The unauthorized introduction of the zebra mussel and the European green crab into Washington state waters would pose a serious economic and environmental threat. The zebra mussel and European green crab have adverse impacts on fisheries, waterways, public and private facilities, and the functioning of natural ecosystems. The threat of zebra mussels and European green crabs requires a coordinated response. It is the intent of the legislature to prevent adverse economic and environmental impacts caused by zebra mussels and European green crabs in cooperation and coordination with local governments, the public, other states, and federal agencies." [1998 c 153 § 1.]

**Effective date—1998 c 153:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 1998]." [1998 c 153 § 6.]

**77.60.120 Infested waters—List published.** The department of fish and wildlife shall prepare, maintain, and publish a list of all lakes, ponds, or other waters of the state and other states infested with zebra mussels or European green crabs. The department may participate in regional or national groups addressing these species. [1998 c 153 § 3. Formerly RCW 75.24.150.]

**Intent—Effective date—1998 c 153:** See notes following RCW 77.60.110.

**77.60.130 Aquatic nuisance species committee.** (1)

The aquatic nuisance species committee is created for the purpose of fostering state, federal, tribal, and private cooperation on aquatic nuisance species issues. The mission of the committee is to minimize the unauthorized or accidental introduction of nonnative aquatic species and give special emphasis to preventing the introduction and spread of aquatic nuisance species. The term "aquatic nuisance species" means a nonnative aquatic plant or animal species that threatens the diversity or abundance of native species, the ecological stability of infested waters, or commercial, agricultural, or recreational activities dependent on such waters.

(2) The committee consists of representatives from each of the following state agencies: Department of fish and wildlife, department of ecology, department of agriculture, department of health, department of natural resources, Puget Sound partnership, state patrol, state noxious weed control board, and Washington sea grant program. The committee shall encourage and solicit participation by: Federally recognized tribes of Washington, federal agencies, Washington conservation organizations, environmental groups, and representatives from industries that may either be affected by the introduction of an aquatic nuisance species or that may serve as a pathway for their introduction.

(3) The committee has the following duties:

(a) Periodically revise the state of Washington aquatic nuisance species management plan, originally published in June 1998;

(b) Make recommendations to the legislature on statutory provisions for classifying and regulating aquatic nuisance species;

(c) Recommend to the state noxious weed control board that a plant be classified under the process designated by RCW 17.10.080 as an aquatic noxious weed;

(d) Coordinate education, research, regulatory authorities, monitoring and control programs, and participate in regional and national efforts regarding aquatic nuisance species;

(e) Consult with representatives from industries and other activities that may serve as a pathway for the introduction of aquatic nuisance species to develop practical strategies that will minimize the risk of new introductions; and

(f) Prepare a biennial report to the legislature with the first report due by December 1, 2001, making recommendations for better accomplishing the purposes of this chapter, and listing the accomplishments of this chapter to date.

(4) The committee shall accomplish its duties through the authority and cooperation of its member agencies. Implementation of all plans and programs developed by the committee shall be through the member agencies and other cooperating organizations. [2007 c 341 § 59; 2000 c 149 § 1.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**77.60.150 Oyster reserve land—Pilot project—Advisory committee—Report—Lease administration.** (1) The department shall initiate a pilot project to evaluate the feasibility and potential of intensively culturing shellfish on currently nonproductive oyster reserve land in Puget Sound. The pilot program shall include no fewer than three long-term lease agreements with commercial shellfish growers. Except as provided in subsection (4) of this section, revenues from the lease of such lands shall be deposited in the oyster reserve land account created in RCW 77.60.160.

(2) The department shall form one advisory committee each for the Willapa Bay oyster reserve lands and the Puget Sound oyster reserve lands. The advisory committees shall make recommendations on management practices to conserve, protect, and develop oyster reserve lands. The advisory committees may make recommendations regarding the management practices on oyster reserve lands, in particular to ensure that they are managed in a manner that will: (a) Increase revenue through production of high-value shellfish; (b) not be detrimental to the market for shellfish grown on nonreserve lands; and (c) avoid negative impacts to existing shellfish populations. The advisory committees may also make recommendation on the distribution of funds in RCW 77.60.160(2)(a). The department shall attempt to structure each advisory committee to include equal representation between shellfish growers that participate in reserve sales and shellfish growers that do not.

(3) The department shall submit a brief progress report on the status of the pilot programs to the appropriate standing committees of the legislature by January 7, 2003.

(4) The department of natural resources, in consultation with the department of fish and wildlife, shall administer the leases for oyster reserves entered into under this chapter. In administering the leases, the department of natural resources shall exercise its authority under \*RCW 79.96.090. Vacation of state oyster reserves by the department of fish and wildlife shall not be a requirement for the department of natural resources to lease any oyster reserves under this section. The department of natural resources may recover reasonable costs directly associated with the administration of the leases for oyster reserves entered into under this chapter. All administrative fees collected by the department of natural resources pursuant to this section shall be deposited into the resource management cost account established in RCW 79.64.020. The department of fish and wildlife may not assess charges to recover the costs of consulting with the department of natural resources under this subsection.

(5) The Puget Sound pilot program shall not include the culture of geoduck. [2001 c 273 § 1.]

**\*Reviser's note:** RCW 79.96.090 was recodified as RCW 79.135.300 pursuant to 2005 c 155 § 1010.

**77.60.160 Oyster reserve land account.** (1) The oyster reserve land account is created in the state treasury. All receipts from revenues from the lease of land or sale of shellfish from oyster reserve lands must be deposited into the account. Moneys in the account may be spent only after

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appropriation. Expenditures from the account may be used only as provided in this section.

(2) Funds in the account shall be used for the purposes provided for in this subsection:

(a) Up to forty percent for:

(i) The management expenses incurred by the department that are directly attributable to the management of the oyster reserve lands; and

(ii) The expenses associated with new bivalve shellfish research and development activities at the Pt. Whitney and Nahcotta shellfish laboratories managed by the department. As used in this subsection, "new research and development activities" includes an emphasis on the control of aquatic nuisance species and burrowing shrimp. New research and development activities must be identified by the department and the appropriate oyster reserve advisory committee;

(b) Up to ten percent may be deposited into the state general fund; and

(c) Except as provided in subsection (3) of this section, all remaining funds in the account shall be used for the shellfish—on-site sewage grant program established in RCW 77.60.170.

(3)(a) No later than January 1st of each year, the department shall transfer up to fifty percent of the annual revenues generated in the preceding year from the Willapa harbor oyster reserve to the on-site sewage grant program established under RCW 77.60.170 as necessary to achieve a fund balance of one hundred thousand dollars.

(b) All remaining revenues received from the Willapa harbor oyster reserve shall be used to fund research activities as specified in subsection (2)(a) of this section. [2008 c 202 § 2; 2007 c 341 § 44; 2001 c 273 § 2.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**77.60.170 Shellfish—On-site sewage grant program—Priority areas—Memorandum of understanding.** (1)(a) The department shall transfer the funds required by RCW 77.60.160 to the appropriate local governments. Pacific and Grays Harbor counties and Puget Sound shall manage their established shellfish—on-site sewage grant program. The local governments, in consultation with the department of health, shall use the provided funds as grants or loans to individuals for repairing or improving their on-site sewage systems. The grants or loans may be provided only in areas that have the potential to adversely affect water quality in commercial and recreational shellfish growing areas.

(b) A recipient of a grant or loan shall enter into an agreement with the appropriate local government to maintain the improved on-site sewage system according to specifications required by the local government.

(c) The department shall work closely with local governments and it shall be the goal of the department to attain geographic equity between Grays Harbor, Willapa Bay, and Puget Sound when making funds available under this program.

(d) For the purposes of this subsection, "geographic equity" means issuing on-site sewage grants or loans at a level that matches the funds generated from the oyster reserve lands in that area.

(2) In Puget Sound, the local governments shall give first priority to areas that are:

(a) Identified as "areas of special concern" under \*WAC 246-272-01001;

(b) Included within a shellfish protection district under chapter 90.72 RCW; or

(c) Identified as a marine recovery area under chapter 70.118A RCW.

(3) In Grays Harbor and Pacific counties, the local governments shall give first priority to preventing the deterioration of water quality in areas where commercial or recreational shellfish are grown.

(4) The department and each participating local government shall enter into a memorandum of understanding that will establish an applicant income eligibility requirement for individual grant applicants from within the jurisdiction and other mutually agreeable terms and conditions of the grant program.

(5) For the 2007-2009 biennium, from the funds received under this section, Pacific county shall transfer up to two hundred thousand dollars to the department. Upon receiving the funds from Pacific county, the department and the appropriate oyster reserve advisory committee under RCW 77.60.160 shall identify and execute specific research projects with those funds. [2008 c 202 § 1; 2007 c 341 § 43; 2001 c 273 § 3. Formerly RCW 70.118.140, 90.71.100.]

**\*Reviser's note:** WAC 246-272-01001 was repealed effective July 1, 2007. The term "areas of special concern" is defined in WAC 246-272B-01001.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

## Chapter 77.65 RCW

### FOOD FISH AND SHELLFISH— COMMERCIAL LICENSES

#### Sections

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#### **77.65.010 Commercial licenses and permits required—Exemption.**

(1) Except as otherwise provided by this title, a person may not engage in any of the following activities without a license or permit issued by the director:

(a) Commercially fish for or take food fish or shellfish;

(b) Deliver from a commercial fishing vessel food fish or shellfish taken for commercial purposes in offshore waters. As used in this subsection, "deliver" means arrival at a place or port, and includes arrivals from offshore waters to waters within the state and arrivals from state or offshore waters;

(c) Operate a charter boat or commercial fishing vessel engaged in a fishery;

(d) Engage in processing or wholesaling food fish or shellfish; or

(e) Act as a guide for salmon for personal use in freshwater rivers and streams, other than that part of the Columbia river below the bridge at Longview.

(2) No person may engage in the activities described in subsection (1) of this section unless the licenses or permits required by this title are in the person's possession, and the person is the named license holder or an alternate operator designated on the license and the person's license is not suspended.

(3) A valid Oregon license that is equivalent to a license under this title is valid in the concurrent waters of the Columbia river if the state of Oregon recognizes as valid the equivalent Washington license. The director may identify by rule what Oregon licenses are equivalent.

(4) No license or permit is required for the production or harvesting of private sector cultured aquatic products as defined in RCW 15.85.020 or for the delivery, processing, or wholesaling of such aquatic products. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing or permit requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2005 c 20 § 1; 1998 c 190 § 93; 1997 c 58 § 883; 1993 c 340 § 2; 1991 c 362 § 1; 1985 c 457 § 18; 1983 1st ex.s. c 46 § 101; 1959 c 309 § 2; 1955 c 12 § 75.28.010. Prior: 1949 c 112 § 73; Rem. Supp. 1949 § 5780-511. Formerly RCW 75.28.010.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**Finding—Intent—1993 c 340:** "The legislature finds that the laws governing commercial fishing licensing in this state are highly complex and increasingly difficult to administer and enforce. The current laws governing commercial fishing licenses have evolved slowly, one section at a time, over decades of contention and changing technology, without general consideration for how the totality fits together. The result has been confusion and litigation among commercial fishers. Much of the confusion has arisen because the license holder in most cases is a vessel, not a person. The legislature intends by this act to standardize licensing criteria, clarify licensing requirements, reduce complexity, and remove inequities in commercial fishing licensing. The legislature intends that the license fees stated in this act shall be equivalent to those in effect on January 1, 1993, as adjusted under section 19, chapter 316, Laws of 1989." [1993 c 340 § 1.]

**Captions not law—1993 c 340:** "Section headings as used in this act do not constitute any part of the law." [1993 c 340 § 57.]

**Effective date—1993 c 340:** "This act shall take effect January 1, 1994." [1993 c 340 § 58.]

**Severability—1993 c 340:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 340 § 59.]

**77.65.020 Transfer of licenses—Restrictions—Fees—Inheritability.** (1) Unless otherwise provided in this title, a license issued under this chapter is not transferable from the license holder to any other person.

(2) The following restrictions apply to transfers of commercial fishery licenses, salmon delivery licenses, and salmon charter licenses that are transferable between license holders:

(a) The license holder shall surrender the previously issued license to the department.

(b) The department shall complete no more than one transfer of the license in any seven-day period.

(c) The fee to transfer a license from one license holder to another is:

(i) The same as the resident license renewal fee if the license is not limited under chapter 77.70 RCW;

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(ii) Three and one-half times the resident renewal fee if the license is not a commercial salmon license and the license is limited under chapter 77.70 RCW;

(iii) Fifty dollars if the license is a commercial salmon license and is limited under chapter 77.70 RCW;

(iv) Five hundred dollars if the license is a Dungeness crab-coastal fishery license; or

(v) If a license is transferred from a resident to a nonresident, an additional fee is assessed that is equal to the difference between the resident and nonresident license fees at the time of transfer, to be paid by the transferee.

(3) A commercial license that is transferable under this title survives the death of the holder. Though such licenses are not personal property, they shall be treated as analogous to personal property for purposes of inheritance and intestacy. Such licenses are subject to state laws governing wills, trusts, estates, intestate succession, and community property, except that such licenses are exempt from claims of creditors of the estate and tax liens. The surviving spouse, estate, or beneficiary of the estate may apply for a renewal of the license. There is no fee for transfer of a license from a license holder to the license holder's surviving spouse or estate, or to a beneficiary of the estate. [2000 c 107 § 28; 1997 c 418 § 1; 1995 c 228 § 1; 1993 sp.s. c 17 § 34. Formerly RCW 75.28.011.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** "Sections 34 through 47 of this act shall take effect only if Senate Bill No. 5124 becomes law by August 1, 1993." [1993 sp.s. c 17 § 48.] Senate Bill No. 5124 [1993 c 340] did become law. Sections 34 through 47 of 1993 sp.s. c 17 did become law.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.030 Commercial licenses and permits—Application deadline—Exception.** The application deadline for a commercial license or permit established in this chapter is December 31st of the calendar year for which the license or permit is sought. The department shall accept no license or permit applications after December 31st of the calendar year for which the license or permit is sought. The application deadline in this section does not apply to a license or permit that has not been renewed because of the death or incapacity of the license or permit holder. The license or permit holder's surviving spouse, estate, estate beneficiary, attorney-in-fact, or guardian must be given an additional one hundred eighty days to renew the license or permit. [2003 c 386 § 5; 2001 c 244 § 2; 1993 c 340 § 3; 1986 c 198 § 8; 1983 1st ex.s. c 46 § 103; 1981 c 201 § 1; 1965 ex.s. c 57 § 1; 1959 c 309 § 4; 1957 c 171 § 3. Formerly RCW 75.28.014.]

**Effective date—2003 c 386 § 5:** "Section 5 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 2003]." [2003 c 386 § 6.]

**Findings—Intent—2003 c 386:** See note following RCW 77.15.700.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.040 Commercial licenses—Qualifications—Limited-entry license—Nonsalmon delivery license.** (1) Except as otherwise provided in this title, a person may hold a commercial license established by this chapter.

(2) Except as otherwise provided in this title, an individual may hold a commercial license only if the individual is sixteen years of age or older and a bona fide resident of the United States.

(3) A corporation may hold a commercial license only if it is authorized to do business in this state.

(4) No person may hold a limited-entry license unless the person meets the qualifications that this title establishes for the license.

(5) The residency requirements in subsection (2) of this section do not apply to holders of nonsalmon delivery licenses. [2000 c 107 § 29; 1994 c 244 § 1; 1993 c 340 § 4; 1989 c 47 § 1; 1983 1st ex.s. c 46 § 104; 1963 c 171 § 1; 1955 c 12 § 75.28.020. Prior: 1953 c 207 § 9; 1949 c 112 § 63; Rem. Supp. 1949 § 5780-501. Formerly RCW 75.28.020.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.050 Application for commercial licenses and permits—Replacement.** (1) Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person upon receiving a completed application accompanied by the required fee.

(2) An application submitted to the department under this chapter shall contain the name and address of the applicant and any other information required by the department or this title. An applicant for a commercial fishery license or delivery license may designate a vessel to be used with the license. An applicant for a commercial fishery license or delivery license may also designate up to two alternate operators.

(3) An application submitted to the department under this chapter shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(4) Upon issuing a commercial license under this chapter, the director shall assign the license a unique number that the license shall retain upon renewal. The department shall use the number to record any commercial catch under the license. This does not preclude the department from using other, additional, catch record methods.

(5) The fee to replace a license that has been lost or destroyed is twenty dollars. [1998 c 267 § 1; 1993 sp.s. c 17 § 44; (1993 c 340 § 5 repealed by 1993 sp.s. c 17 § 47); 1983 1st ex.s. c 46 § 105; 1959 c 309 § 7; 1955 c 12 § 75.28.030. Prior: 1953 c 207 § 2; 1949 c 112 § 65; Rem. Supp. 1949 § 5780-503. Formerly RCW 75.28.030.]

**Effective date—1998 c 267:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 1998]." [1998 c 267 § 5.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.060 No commercial fishery during year—License requirement waived or license fees refunded.** If, for any reason, the department does not allow any opportunity for a commercial fishery during a calendar year, the director shall either: (1) Waive the requirement to obtain a

license for that commercial fishery for that year; or (2) refund applicable license fees upon return of the license. [2000 c 107 § 30; 1995 c 227 § 1. Formerly RCW 75.28.034.]

**77.65.070 Licensees subject to statute and rules—Licenses not subject to security interest or lien—Expiration and renewal of licenses.** (1) A commercial license issued under this chapter permits the license holder to engage in the activity for which the license is issued in accordance with this title and the rules of the department.

(2) No security interest or lien of any kind, including tax liens, may be created or enforced in a license issued under this chapter.

(3) Unless otherwise provided in this title or rules of the department, commercial licenses and permits issued under this chapter expire at midnight on December 31st of the calendar year for which they are issued. In accordance with this title, licenses may be renewed annually upon application and payment of the prescribed license fees. In accordance with RCW 77.65.030, the department must provide a license or permit holder's surviving spouse, estate, or estate beneficiary a reasonable opportunity to renew the license or permit. [2001 c 244 § 3; 1996 c 267 § 27; 1993 c 340 § 6; 1983 1st ex.s. c 46 § 108; 1955 c 212 § 2; 1955 c 12 § 75.28.040. Prior: 1949 c 112 § 64; Rem. Supp. 1949 § 5780-502. Formerly RCW 75.28.040.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.080 License suspension—Noncompliance with support order—Reissuance.** (1) The department shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order.

(2) A listing on the department of licensing's database that an individual's license is currently suspended pursuant to RCW 46.20.291(8) shall be prima facie evidence that the individual is in noncompliance with a support order. Presentation of a written release issued by the department of social and health services or a court stating that the person is in compliance with an order shall serve as proof of compliance. [2000 c 107 § 31; 1997 c 58 § 882. Formerly RCW 75.28.042.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**77.65.090 Vessel substitution.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses, except for emergency salmon delivery licenses.

(1) The holder of a license subject to this section may substitute the vessel designated on the license or designate a vessel if none has previously been designated if the license holder:

(a) Surrenders the previously issued license to the department;

(b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and

(c) Pays to the department a fee of thirty-five dollars.

(2) Unless the license holder owns all vessels identified on the application described in subsection (1)(b) of this section or unless the vessel is designated on a Dungeness crab-coastal or a Dungeness crab-coastal class B fishery license, the following restrictions apply to changes in vessel designation:

(a) The department shall change the vessel designation on the license no more than four times per calendar year.

(b) The department shall change the vessel designation on the license no more than once in any seven-day period. [1994 c 260 § 11; 1993 sp.s. c 17 § 45. Formerly RCW 75.28.044.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.100 Vessel designation.** This section applies to all commercial fishery licenses, delivery licenses, and charter licenses.

(1) An applicant for a license subject to this section may designate a vessel to be used with the license. Except for emergency salmon delivery licenses, the director may issue a license regardless of whether the applicant designates a vessel. An applicant may designate no more than one vessel on a license subject to this section.

(2) A license for a fishery that requires a vessel authorizes no taking or delivery of food fish or shellfish unless a vessel is designated on the license. A delivery license authorizes no delivery of food fish or shellfish unless a vessel is designated on the license.

(3) No vessel may be designated on more than one commercial fishery license unless the licenses are for different fisheries, except:

(a) The same vessel may be designated on two of the following licenses, provided the licenses are owned by the same licensee:

- (i) Shrimp pot-Puget Sound fishery license;
- (ii) Sea cucumber dive fishery license; and
- (iii) Sea urchin dive fishery license.

(b) The same vessel may be designated on two Puget Sound Dungeness crab fishery licenses, subject to the provision of RCW 77.65.130.

(4) No vessel may be designated on more than one delivery license, on more than one salmon charter license, or on more than one nonsalmon charter license. [2005 c 82 § 1; 2001 c 105 § 3; 1998 c 190 § 94; 1993 c 340 § 7. Formerly RCW 75.28.045.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

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**77.65.110 Alternate operator designation—Fee.** This section applies to all commercial fishery licenses, charter boat license[s], and delivery licenses.

(1) A person designated as an alternate operator must possess an alternate operator license issued under RCW 77.65.130, and be designated on the license prior to engaging in the activities authorized by the license. The holder of the commercial fishery license, charter boat license, or delivery license may designate up to two alternate operators for the license, except:

(a) Whiting—Puget Sound fishery licensees may not designate alternate operators;

(b) Emergency salmon delivery licensees may not designate alternate operators;

(c) Shrimp pot-Puget Sound fishery licensees may designate no more than one alternate operator at a time; and

(d) Shrimp trawl-Puget Sound fishery licensees may designate no more than one alternate operator at a time.

(2) The fee to change the alternate operator designation is twenty-two dollars. [2001 c 105 § 4; 2000 c 107 § 32; 1998 c 267 § 2; 1994 c 260 § 12; 1993 c 340 § 9. Formerly RCW 75.28.046.]

**Effective date—1998 c 267:** See note following RCW 77.65.050.

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.120 Sale or delivery of food fish or shellfish—Conditions—Charter boat operation.** (1) Only the license holder and any alternate operators designated on the license

may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) Notwithstanding RCW 77.65.010(1)(c), an alternate operator license is not required for an individual to operate a vessel as a charter boat. [2000 c 107 § 33; 1998 c 267 § 3; 1993 c 340 § 10. Formerly RCW 75.28.047.]

**Effective date—1998 c 267:** See note following RCW 77.65.050.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.130 Vessel operation—License designation—Alternate operator license required.** (1) A person who holds a commercial fishery license or a delivery license may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license or delivery license under RCW 77.65.110.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses or delivery licenses under RCW 77.65.110.

(4) An individual who holds two Dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the license holder or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) Two persons owning separate Dungeness crab—Puget Sound fishery licenses may operate both licenses on one vessel if the license holders or their alternate operators are on the vessel.

(6) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state. [2005 c 82 § 2; 2000 c 107 § 34; 1998 c 267 § 4; 1997 c 233 § 2; 1993 c 340 § 25. Formerly RCW 75.28.048.]

**Effective date—1998 c 267:** See note following RCW 77.65.050.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.140 Alternate operators—Increase for certain licenses.** The director may, by rule, increase the number of alternate operators beyond the level authorized by RCW 77.65.050 and 77.65.110 for a commercial fishery license, delivery license, or charter license. [2000 c 107 § 35; 1997 c 421 § 1. Formerly RCW 75.28.055.]

**77.65.150 Charter licenses and angler permits—Fees—"Charter boat" defined—Oregon charter boats—Salmon charter license renewal.** (1) The director shall issue the charter licenses and angler permits listed in this section according to the requirements of this title. The licenses and permits and their annual fees and surcharges are:

License or Permit	Annual Fee		Governing Section
	(RCW 77.95.090 Surcharge) (RCW 77.12.702 Surcharge)	(RCW 77.12.702 Surcharge)	
	Resident	Nonresident	
(a) Non-salmon charter	\$225 (plus \$35 for RCW 77.12.702 Surcharge)	\$375 (plus \$35 for RCW 77.12.702 Surcharge)	
(b) Salmon charter	\$380 (plus \$100 for RCW 77.12.702 Surcharge)	\$685 (plus \$100 for RCW 77.12.702 Surcharge)	RCW 77.70.050
(c) Salmon angler	\$ 0	\$ 0	RCW 77.70.060
(d) Salmon roe	\$ 95	\$ 95	RCW 77.65.350

(2) A salmon charter license designating a vessel is required to operate a charter boat from which persons may, for a fee, fish for salmon, other food fish, and shellfish. The director may issue a salmon charter license only to a person who meets the qualifications of RCW 77.70.050.

(3) A nonsalmon charter license designating a vessel is required to operate a charter boat from which persons may,

for a fee, fish for food fish other than salmon, albacore tuna, and shellfish.

(4)(a) "Charter boat" means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in those state waters set forth in (b) of this subsection. "Charter boat" also means a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use in offshore waters or in the waters of other states. The director may specify by rule when a vessel is a "charter boat" within this definition.

(b) A person may not operate a vessel from which persons may, for a fee, fish for food fish or shellfish in Puget Sound, Grays Harbor, Willapa Bay, Pacific Ocean waters, Lake Washington, or the Columbia river below the bridge at Longview unless the vessel is designated on a charter boat license.

(5) A charter boat licensed in Oregon may fish without a Washington charter license under the same rules as Washington charter boat operators in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point, as long as the Oregon vessel does not take on or discharge passengers for any purpose from any Washington port, the Washington shore, or a dock, landing, or other point in Washington. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations.

(6) A salmon charter license under subsection (1)(b) of this section may be renewed if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge and a thirty-five dollar surcharge to be deposited in the rockfish research account created in RCW 77.12.702, plus a fifteen-dollar handling charge, in order to be considered a valid renewal and eligible to renew the license the following year. [2007 c 442 § 3; 2006 c 186 § 1; 2000 c 107 § 36; 1998 c 190 § 95; 1997 c 76 § 2; 1995 c 104 § 1; 1993 sp.s. c 17 § 41. Prior: (1993 c 340 § 21 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 2; 1989 c 147 § 1; 1989 c 47 § 2; 1988 c 9 § 1; 1983 1st ex.s. c 46 § 112; 1979 c 60 § 1; 1977 ex.s. c 327 § 5; 1971 ex.s. c 283 § 15; 1969 c 90 § 1. Formerly RCW 75.28.095.]

**Findings—Intent—Effective date—2007 c 442:** See notes following RCW 77.12.702.

**Effective date—1997 c 76:** See note following RCW 77.65.160.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Severability—1979 c 60:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 60 § 4.]

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—1977 ex.s. c 327:** "The long range economic development goals for the state of Washington shall include the restoration of salmon runs to provide an increased supply of this valuable renewable resource for the benefit of commercial and recreational users and the economic well-being of the state. For the purpose of providing funds for the planning, acquisition, construction, improvement, and operation of salmon enhancement facilities within the state it is the intent of the legislature that the revenues received from fees from the issuance of vessel delivery permits, charter boat licenses, trolling gear licenses, gill net gear licenses, purse seine gear licenses, reef net

gear licenses, anadromous salmon angling licenses and all moneys received from all privilege fees and fish sales taxes collected on fresh or frozen salmon or parts thereof be utilized to fund such costs.

The salmon enhancement program funded by commercial and recreational fishing fees and taxes shall be for the express benefit of all persons whose fishing activities fall under the management authority of the Washington department of fisheries and who actively participate in the funding of the enhancement costs through the fees and taxes set forth in chapters 75.28 and 82.27 RCW or through other adequate funding methods." [1980 c 98 § 8; 1977 ex.s. c 327 § 1. Formerly RCW 75.18.100.]

**Declaration of state policy—1977 ex.s. c 327:** "The legislature, recognizing that anadromous salmon within the waters of the state and offshore waters are fished for both recreational and commercial purposes and that the recreational anadromous salmon fishery is a major recreational and economic asset to the state and improves the quality of life for all residents of the state, declares that it is the policy of the state to enhance and improve recreational anadromous salmon fishing in the state." [1977 ex.s. c 327 § 10. Formerly RCW 75.28.600.]

**Severability—1977 ex.s. c 327:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 327 § 34.]

**Effective date—1977 ex.s. c 327:** "This 1977 amendatory act shall take effect on January 1, 1978." [1977 ex.s. c 327 § 35.]

**Effective dates—1971 ex.s. c 283:** See note following RCW 77.65.170.

*Limitation on issuance of salmon charter boat licenses: RCW 77.70.050.*

*Salmon charter boats—Angler permit, when required: RCW 77.70.060.*

**77.65.160 Commercial salmon fishery licenses—Gear and geographic designations—Fees.** (1) The following commercial salmon fishery licenses are required for the license holder to use the specified gear to fish for salmon in state waters. Only a person who meets the qualifications of RCW 77.70.090 may hold a license listed in this subsection. The licenses and their annual fees and surcharges under RCW 77.95.090 are:

Fishery License	Resident Fee	Nonresident Fee	Surcharge
(a) Salmon Gill Net—Grays Harbor-Columbia river	\$380	\$685	plus \$100
(b) Salmon Gill Net—Puget Sound	\$380	\$685	plus \$100
(c) Salmon Gill Net—Willapa Bay-Columbia river	\$380	\$685	plus \$100
(d) Salmon purse seine	\$530	\$985	plus \$100
(e) Salmon reef net	\$380	\$685	plus \$100
(f) Salmon troll	\$380	\$685	plus \$100

(2) A license issued under this section authorizes no taking or delivery of salmon or other food fish unless a vessel is designated under RCW 77.65.100.

(3) Holders of commercial salmon fishery licenses may retain incidentally caught food fish other than salmon, subject to rules of the department.

(4) A salmon troll license includes a salmon delivery license.

(5) A salmon gill net license authorizes the taking of salmon only in the geographical area for which the license is issued. The geographical designations in subsection (1) of this section have the following meanings:

(a) "Puget Sound" includes waters of the Strait of Juan de Fuca, Georgia Strait, Puget Sound and all bays, inlets, canals, coves, sounds, and estuaries lying easterly and southerly of the international boundary line and a line at the entrance to the Strait of Juan de Fuca projected northerly from Cape Flat-

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tery to the lighthouse on Tatoosh Island and then to Bonilla Point on Vancouver Island.

(b) "Grays Harbor-Columbia river" includes waters of Grays Harbor and tributary estuaries lying easterly of a line projected northerly from Point Chehalis Light to Point Brown and those waters of the Columbia river and tributary sloughs and estuaries easterly of a line at the entrance to the Columbia river projected southerly from the most westerly point of the North jetty to the most westerly point of the South jetty.

(c) "Willapa Bay-Columbia river" includes waters of Willapa Bay and tributary estuaries and easterly of a line projected northerly from Leadbetter Point to the Cape Shoalwater tower and those waters of the Columbia river and tributary sloughs described in (b) of this subsection.

(6) A commercial salmon troll fishery license may be renewed under this section if the license holder notifies the department by May 1st of that year that he or she will not participate in the fishery during that calendar year. A commercial salmon gill net, reef net, or seine fishery license may be renewed under this section if the license holder notifies the department before the third Monday in September of that year that he or she will not participate in the fishery during that calendar year. The license holder must pay the one hundred-dollar enhancement surcharge, plus a fifteen-dollar handling charge before the third Monday in September, in order to be considered a valid renewal and eligible to renew the license the following year.

(7) Notwithstanding the annual license fees and surcharges established in subsection (1) of this section, a person who holds a resident commercial salmon fishery license shall pay an annual license fee of one hundred dollars plus the surcharge if all of the following conditions are met:

(a) The license holder is at least seventy-five years of age;

(b) The license holder owns a fishing vessel and has fished with a resident commercial salmon fishery license for at least thirty years; and

(c) The commercial salmon fishery license is for a geographical area other than the Puget Sound.

An alternate operator may not be designated for a license renewed at the one hundred dollar annual fee under this subsection (7). [2001 c 244 § 1; 2000 c 107 § 37; 1997 c 76 § 1; 1996 c 267 § 28; 1993 sp.s. c 17 § 35; (1993 c 340 § 12 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 3; 1985 c 107 § 1; 1983 1st ex.s. c 46 § 113; 1965 ex.s. c 73 § 2; 1959 c 309 § 10; 1955 c 12 § 75.28.110. Prior: 1951 c 271 § 9; 1949 c 112 § 69(1); Rem. Supp. 1949 § 5780-507(1). Formerly RCW 75.28.110.]

**Effective date—1997 c 76:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 76 § 3.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

*Limitations on issuance of commercial salmon fishing licenses: RCW 77.70.090.*

**77.65.170 Salmon delivery license—Fee—Restrictions—Revocation.** (1) A salmon delivery license is required for a commercial fishing vessel to deliver salmon taken for commercial purposes in offshore waters to a place or port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The annual fee for a salmon delivery license is three hundred eighty dollars for residents and six hundred eighty-five dollars for nonresidents. The annual surcharge under RCW 77.95.090 is one hundred dollars for each license. Holders of nonlimited entry delivery licenses issued under RCW 77.65.210 may apply the nonlimited entry delivery license fee against the salmon delivery license fee.

(2) Only a person who meets the qualifications established in RCW 77.70.090 may hold a salmon delivery license issued under this section.

(3) A salmon delivery license authorizes no taking of salmon or other food fish or shellfish from the waters of the state.

(4) If the director determines that the operation of a vessel under a salmon delivery license results in the depletion or destruction of the state's salmon resource or the delivery into this state of salmon products prohibited by law, the director may revoke the license under the procedures of chapter 34.05 RCW. [2005 c 20 § 2; 2000 c 107 § 38; 1998 c 190 § 96; 1994 c 260 § 22; 1993 sp.s. c 17 § 36; (1993 c 340 § 13 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 4; 1983 1st ex.s. c 46 § 115; 1977 ex.s. c 327 § 3; 1971 ex.s. c 283 § 1; 1955 c 12 § 75.18.080. Prior: 1953 c 147 § 9. Formerly RCW 75.28.113, 75.18.080.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**Effective dates—1971 ex.s. c 283:** "The provisions of this 1971 amendatory act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The provisions of sections 1 to 10 inclusive of this 1971 amendatory act shall take effect on January 1, 1972." [1971 ex.s. c 283 § 16.]

*Limitations on issuance of salmon delivery licenses: RCW 77.70.090.*

**77.65.180 Oregon, California harvested salmon—Landing in Washington ports encouraged.** (1) The legislature finds that landing salmon into the ports of Washington state, regardless of where such salmon have been harvested, is economically beneficial to those ports as well as to the citizens of the state of Washington. It is therefore the intent of the legislature to encourage this practice.

(2) Notwithstanding the provisions of RCW 77.65.010(1)(b) and 77.65.170, a Washington citizen who holds a valid Oregon or California salmon troll license may land salmon taken during lawful seasons in Oregon and Cali-

fornia into Washington ports without obtaining a salmon delivery license. This exception is valid only when the salmon were taken in offshore waters south of Cape Falcon.

(3) The department shall adopt rules necessary to implement this section, including rules identifying the appropriate methods for verifying that salmon were in fact taken south of Cape Falcon. [2000 c 107 § 39; 1999 c 103 § 1. Formerly RCW 75.28.114.]

**77.65.190 Emergency salmon delivery license—Fee—Nontransferable, nonrenewable.** A person who does not qualify for a license under RCW 77.70.090 shall obtain a nontransferable emergency salmon delivery license to make one delivery from a commercial fishing vessel of salmon taken for commercial purposes in offshore waters. As used in this section, "delivery" means arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. The director shall not issue an emergency salmon delivery license unless, as determined by the director, a bona fide emergency exists. The license fee is two hundred twenty-five dollars for residents and four hundred seventy-five dollars for nonresidents. An applicant for an emergency salmon delivery license shall designate no more than one vessel that will be used with the license. Alternate operator licenses are not required of persons delivering salmon under an emergency salmon delivery license. Emergency salmon delivery licenses are not renewable. [2005 c 20 § 3; 2000 c 107 § 40; 1993 sp.s. c 17 § 37; (1993 c 340 § 14 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 5; 1984 c 80 § 1. Prior: 1983 1st ex.s. c 46 § 116; 1983 c 297 § 1; 1977 ex.s. c 327 § 4; 1974 ex.s. c 184 § 3. Formerly RCW 75.28.116, 75.28.460.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Legislative intent—Funding of salmon enhancement facilities—Use of license fees—Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**Legislative intent—Severability—1974 ex.s. c 184:** See notes following RCW 77.70.090.

**77.65.200 Commercial fishery licenses for food fish fisheries—Fees—Rules for species, gear, and areas.** (1) This section establishes commercial fishery licenses required for food fish fisheries and the annual fees for those licenses. As used in this section, "food fish" does not include salmon. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Baitfish Lampara	\$185	\$295	Yes	No
(b) Baitfish purse seine	\$530	\$985	Yes	No
(c) Bottom fish jig	\$130	\$185	Yes	No
(d) Bottom fish pot	\$130	\$185	Yes	No
(e) Bottom fish troll	\$130	\$185	Yes	No
(f) Carp	\$130	\$185	No	No
(g) Columbia river smelt	\$380	\$685	No	No
(h) Dog fish set net	\$130	\$185	Yes	No

(i) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	Determined by rule	Determined by rule
(j) Food fish drag seine	\$130	\$185	Yes	No
(k) Food fish set line	\$130	\$185	Yes	No
(l) Food fish trawl-Non-Puget Sound	\$240	\$405	Yes	No
(m) Food fish trawl-Puget Sound	\$185	\$295	Yes	No
(n) Herring dip bag net (RCW 77.70.120)	\$175	\$275	Yes	Yes
(o) Herring drag seine (RCW 77.70.120)	\$175	\$275	Yes	Yes
(p) Herring gill net (RCW 77.70.120)	\$175	\$275	Yes	Yes
(q) Herring Lampara (RCW 77.70.120)	\$175	\$275	Yes	Yes
(r) Herring purse seine (RCW 77.70.120)	\$175	\$275	Yes	Yes
(s) Herring spawn-on-kelp (RCW 77.70.210)	N/A	N/A	Yes	Yes
(t) Smelt dip bag net	\$130	\$185	No	No
(u) Smelt gill net	\$380	\$685	Yes	No
(v) Whiting-Puget Sound (RCW 77.70.130)	\$295	\$520	Yes	Yes

(2) The director may by rule determine the species of food fish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take food fish in that fishery. [2000 c 107 § 41; 1993 sp.s. c 17 § 38; (1993 c 340 § 15 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 6; 1983 1st ex.s. c 46 § 117; 1965 ex.s. c 73 § 3; 1959 c 309 § 11; 1955 c 12 § 75.28.120. Prior: 1951 c 271 § 10; 1949 c 112 § 69(2); Rem. Supp. 1949 § 5780-507(2). Formerly RCW 75.28.120.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

*Limitation on commercial herring fishing: RCW 77.70.120.*

**77.65.210 Nonlimited entry delivery license—Limitations—Fee.** (1) Except as provided in subsection (2) of this section, a person may not use a commercial fishing vessel to deliver food fish or shellfish taken for commercial purposes in offshore waters to a port in the state without a nonlimited entry delivery license. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals ashore from offshore waters. As used in this section, "food fish" does not include salmon. As used in this section, "shellfish" does not include ocean pink shrimp, coastal crab, or fish or shellfish taken under an emerging commercial fisheries license if taken from off-shore waters. The annual license fee for a nonlimited entry delivery license is one hundred ten dollars for residents and two hundred dollars for nonresidents, and an additional thirty-five dollar surcharge for both residents and nonresidents to be deposited in the rockfish research account created in RCW 77.12.702.

(2) Holders of salmon troll fishery licenses issued under RCW 77.65.160, salmon delivery licenses issued under RCW 77.65.170, crab pot fishery licenses issued under RCW 77.65.220, food fish trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.200, Dungeness crab—coastal fishery licenses, ocean pink shrimp delivery licenses, shrimp trawl—Non-Puget Sound fishery licenses, and emerging commercial fishery licenses issued under RCW 77.65.220 may deliver food fish or shellfish taken in offshore waters without a nonlimited entry delivery license.

(3) A nonlimited entry delivery license authorizes no taking of food fish or shellfish from state waters. [2007 c 442 § 4; 2005 c 20 § 4; 2000 c 107 § 42; 1998 c 190 § 97; 1994 c 260 § 21. Prior: 1993 sp.s. c 17 § 39; 1993 c 376 § 3; (1993 c 340 § 16 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 7; 1983 1st ex.s. c 46 § 119; 1971 ex.s. c 283 § 5; 1965 ex.s. c 73 § 1; 1959 c 309 § 5. Formerly RCW 75.28.125, 75.28.085.]

**Findings—Intent—Effective date—2007 c 442:** See notes following RCW 77.12.702.

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**Effective dates—1971 ex.s. c 283:** See note following RCW 77.65.170.

**77.65.220 Commercial fishery licenses for shellfish fisheries—Fees—Rules for species, gear, and areas.** (1) This section establishes commercial fishery licenses required for shellfish fisheries and the annual fees for those licenses. The director may issue a limited-entry commercial fishery license only to a person who meets the qualifications established in applicable governing sections of this title.

Fishery (Governing section(s))	Annual Fee		Vessel Required?	Limited Entry?
	Resident	Nonresident		
(a) Burrowing shrimp	\$185	\$295	Yes	No
(b) Crab ring net-Non-Puget Sound	\$130	\$185	Yes	No
(c) Crab ring net-Puget Sound	\$130	\$185	Yes	No
(d) Dungeness crab-coastal (RCW 77.70.280)	\$295	\$520	Yes	Yes
(e) Dungeness crab-coastal, class B (RCW 77.70.280)	\$295	\$520	Yes	Yes
(f) Dungeness crab-Puget Sound (RCW 77.70.110)	\$130	\$185	Yes	Yes
(g) Emerging commercial fishery (RCW 77.70.160 and 77.65.400)	\$185	\$295	Determined by rule	Determined by rule
(h) Geoduck (RCW 77.70.220)	\$ 0	\$ 0	Yes	Yes
(i) Hardshell clam mechanical harvester	\$530	\$985	Yes	No

(j) Oyster reserve (RCW 77.65.260)	\$130	\$185	No	No
(k) Razor clam	\$130	\$185	No	No
(l) Sea cucumber dive (RCW 77.70.190)	\$130	\$185	Yes	Yes
(m) Sea urchin dive (RCW 77.70.150)	\$130	\$185	Yes	Yes
(n) Shellfish dive	\$130	\$185	Yes	No
(o) Shellfish pot	\$130	\$185	Yes	No
(p) Shrimp pot- Puget Sound (RCW 77.70.410)	\$185	\$295	Yes	Yes
(q) Shrimp trawl- Non-Puget Sound	\$240	\$405	Yes	No
(r) Shrimp trawl- Puget Sound (RCW 77.70.420)	\$185	\$295	Yes	Yes
(s) Squid	\$185	\$295	Yes	No

(2) The director may by rule determine the species of shellfish that may be taken with the commercial fishery licenses established in this section, the gear that may be used with the licenses, and the areas or waters in which the licenses may be used. Where a fishery license has been established for a particular species, gear, geographical area, or combination thereof, a more general fishery license may not be used to take shellfish in that fishery. [2000 c 107 § 43; 1999 c 239 § 2; 1994 c 260 § 14; 1993 sp.s. c 17 § 40; (1993 c 340 § 17 repealed by 1993 sp.s. c 17 § 47); 1989 c 316 § 8; 1983 1st ex.s. c 46 § 120; 1977 ex.s. c 327 § 6; 1971 ex.s. c 283 § 7; 1965 ex.s. c 73 § 4; 1959 c 309 § 12; 1955 c 12 § 75.28.130. Prior: 1951 c 271 § 11; 1949 c 112 § 69(3); Rem. Supp. 1949 § 5780-507(3). Formerly RCW 75.28.130.]

**Finding—Purpose—Intent—1999 c 239:** "The legislature finds that it is in the public interest to convert the Puget Sound shrimp fishery from the status of an emerging fishery to that of a limited entry fishery. The purpose of this act is to initiate this conversion, recognizing that additional details associated with the shrimp fishery limited entry program will need to be developed. The legislature intends to complete the development of the laws associated with this limited entry fishery program during the next regular legislative session and will consider recommendations from the industry and the department during this program." [1999 c 239 § 1.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Severability—Effective date—1977 ex.s. c 327:** See notes following RCW 77.65.150.

**Effective dates—1971 ex.s. c 283:** See note following RCW 77.65.170.

*Dungeness crab-Puget Sound fishery license endorsement: RCW 77.70.110.*

**77.65.230 Surcharge on Dungeness crab-coastal fishery licenses and Dungeness crab-coastal class B fishery licenses—Dungeness crab appeals account.** A surcharge of fifty dollars shall be collected with each Dungeness crab-coastal fishery license issued under RCW 77.65.220 until June 30, 2000, and with each Dungeness crab-coastal class B fishery license issued under RCW 77.65.220 until December 31, 1997. Moneys collected under this section shall be placed in the Dungeness crab appeals account hereby created in the state treasury. The account is subject to allotment procedures

under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used for processing appeals related to the issuance of Dungeness crab-coastal fishery licenses. [2000 c 107 § 44; 1994 c 260 § 15. Formerly RCW 75.28.132.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.65.240 Surcharge on Dungeness crab-coastal fishery license and Dungeness crab-coastal class B fishery license—Coastal crab account.** A surcharge of one hundred twenty dollars shall be collected with each Dungeness crab-coastal fishery license and with each Dungeness crab-coastal class B fishery license issued under RCW 77.65.220. Moneys collected under this section shall be placed in the coastal crab account created under RCW 77.70.320. [2000 c 107 § 45; 1997 c 418 § 5. Formerly RCW 75.28.133.]

**77.65.250 Hardshell clam mechanical harvester fishery license.** A hardshell clam mechanical harvester fishery license is required to operate a mechanical or hydraulic device for commercially harvesting clams, other than geoduck clams, unless the requirements of RCW 77.55.021 are fulfilled for the proposed activity. [2005 c 146 § 1005; 2000 c 107 § 46; 1993 c 340 § 19; 1989 c 316 § 12; 1985 c 457 § 19; 1983 1st ex.s. c 46 § 125; 1979 ex.s. c 141 § 3; 1969 ex.s. c 253 § 3; 1955 c 212 § 8; 1955 c 12 § 75.28.280. Prior: 1951 c 271 § 26; 1949 c 112 § 70; Rem. Supp. 1949 § 5780-508. Formerly RCW 75.28.280.]

**Part headings not law—2005 c 146:** See note following RCW 77.55.011.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Construction—Severability—1969 ex.s. c 253:** See notes following RCW 77.60.070.

**77.65.260 State oyster reserves—Oyster reserve fishery license.** A person who commercially takes shellfish from state oyster reserves under RCW 77.60.050 must have an oyster reserve fishery license. [2000 c 107 § 47; 1993 c 340 § 20; 1989 c 316 § 14; 1983 1st ex.s. c 46 § 131; 1969 ex.s. c 91 § 2; 1955 c 12 § 75.28.290. Prior: 1951 c 271 § 27; 1949 c 112 § 71; Rem. Supp. 1949 § 5780-509. Formerly RCW 75.28.290.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.270 Oyster cultch permit.** An oyster cultch permit is required for commercial cultching of oysters on state oyster reserves. The director shall require that ten percent of the cultch bags or other collecting materials be provided to the state after the oysters have set, for the purposes of increasing the supply of oysters on state oyster reserves and enhancing oyster supplies on public beaches. [1989 c 316 § 15. Formerly RCW 75.28.295.]

**77.65.280 Wholesale fish dealer's license—Fee—Exemption.** A wholesale fish dealer's license is required for:

(1) A business in the state to engage in the commercial processing of food fish or shellfish, including custom canning or processing of personal use food fish or shellfish.

(2) A business in the state to engage in the wholesale selling, buying, or brokering of food fish or shellfish. A wholesale fish dealer's license is not required of those businesses which buy exclusively from Washington licensed wholesale dealers and sell solely at retail.

(3) Fishermen who land and sell their catch or harvest in the state to anyone other than a licensed wholesale dealer within or outside the state, unless the fisher has a direct retail endorsement.

(4) A business to engage in the commercial manufacture or preparation of fertilizer, oil, meal, caviar, fish bait, or other byproducts from food fish or shellfish.

(5) A business employing a fish buyer as defined under RCW 77.65.340.

The annual license fee for a wholesale dealer is two hundred fifty dollars. A wholesale fish dealer's license is not required for persons engaged in the processing, wholesale selling, buying, or brokering of private sector cultured aquatic products as defined in RCW 15.85.020. However, if a means of identifying such products is required by rules adopted under RCW 15.85.060, the exemption from licensing requirements established by this subsection applies only if the aquatic products are identified in conformance with those rules. [2002 c 301 § 5; 2000 c 107 § 48; 1993 sp.s. c 17 § 43; 1989 c 316 § 16. Prior: 1985 c 457 § 20; 1985 c 248 § 1; 1983 1st ex.s. c 46 § 132; 1979 c 66 § 1; 1965 ex.s. c 28 § 1; 1955 c 212 § 11; 1955 c 12 § 75.28.300; prior: 1951 c 271 § 28; 1949 c 112 § 72(1); Rem. Supp. 1949 § 5780-510(1). Formerly RCW 75.28.300.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.290 Wholesale fish dealer licenses—Display.** Wholesale fish dealer licenses shall be displayed at the business premises of the licensee. [1993 c 340 § 52; 1983 1st ex.s. c 46 § 110; 1955 c 12 § 75.28.070. Prior: 1949 c 112 § 74, part; Rem. Supp. 1949 § 5780-512, part. Formerly RCW 75.28.302, 75.28.070.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.300 Wholesale fish dealer may be a fish buyer.** A wholesale dealer who is an individual may be a fish buyer. [1985 c 248 § 3. Formerly RCW 75.28.305.]

**77.65.310 Wholesale fish dealers—Documentation of commercial harvest.** Wholesale fish dealers are responsible for documenting the commercial harvest of food fish and shellfish according to the rules of the department. The director may allow only wholesale fish dealers or their designees to receive the forms necessary for the accounting of the commercial harvest of food fish and shellfish. [1996 c 267 § 29; 1985 c 248 § 4. Formerly RCW 75.28.315.]

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**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**77.65.320 Wholesale fish dealers—Performance bond.** (1) A wholesale fish dealer shall not take possession of food fish or shellfish until the dealer has deposited with the department an acceptable performance bond on forms prescribed and furnished by the department. This performance bond shall be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department. The bond shall be filed and maintained in an amount equal to one thousand dollars for each buyer engaged by the wholesale dealer. In no case shall the bond be less than two thousand dollars nor more than fifty thousand dollars.

(2) A wholesale dealer shall, within seven days of engaging additional fish buyers, notify the department and increase the amount of the bonding required in subsection (1) of this section.

(3) The director may suspend and refuse to reissue a wholesale fish dealer's license of a dealer who has taken possession of food fish or shellfish without an acceptable performance bond on deposit with the department.

(4) The bond shall be conditioned upon the compliance with the requirements of this chapter and rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of food fish or shellfish. In lieu of the surety bond required by this section the wholesale fish dealer may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account or of a savings certificate in a Washington bank on an assignment form prescribed by the department.

(5) Liability under the bond shall be maintained as long as the wholesale fish dealer engages in activities under RCW 77.65.280 unless released. Liability under the bond may be released only upon written notification from the department. Notification shall be given upon acceptance by the department of a substitute bond or forty-five days after the expiration of the wholesale fish dealer's annual license. In no event shall the liability of the surety exceed the amount of the surety bond required under this chapter. [2000 c 107 § 49; 1996 c 267 § 30; 1985 c 248 § 6. Formerly RCW 75.28.323.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**77.65.330 Wholesale fish dealers—Performance bond—Payment of liability.** The director shall promptly notify by order a wholesale dealer and the appropriate surety when a violation of rules relating to the accounting of commercial harvest has occurred. The notification shall specify the type of violation, the liability to be imposed for damages caused by the violation, and a notice that the amount of liability is due and payable to the department by the wholesale fish dealer and the surety.

If the amount specified in the order is not paid within thirty days after receipt of the notice, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may bring an action on behalf of the state in

the superior court for Thurston county or any county in which the persons to whom the order is directed do business to recover the amount specified in the final order of the department. The surety shall be liable to the state to the extent of the bond. [1985 c 248 § 7. Formerly RCW 75.28.328.]

**77.65.340 Fish buyer's license—Fee.** (1) A fish buyer's license is required of and shall be carried by each individual engaged by a wholesale fish dealer to purchase food fish or shellfish from a licensed commercial fisherman. A fish buyer may represent only one wholesale fish dealer.

(2) The annual fee for a fish buyer's license is ninety-five dollars. [2000 c 107 § 50; 1993 sp.s. c 17 § 46; 1989 c 316 § 17; 1985 c 248 § 2. Formerly RCW 75.28.340.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.350 Salmon charter crew member—Salmon roe license—Sale of salmon roe—Conditions.** (1) A salmon roe license is required for a crew member on a boat designated on a salmon charter license to sell salmon roe as provided in subsection (2) of this section. An individual under sixteen years of age may hold a salmon roe license.

(2) A crew member on a boat designated on a salmon charter license may sell salmon roe taken from fish caught for personal use, subject to rules of the department and the following conditions:

(a) The salmon is taken by an angler fishing on the charter boat;

(b) The roe is the property of the angler until the roe is given to the crew member. The crew member shall notify the charter boat's passengers of this fact;

(c) The crew member sells the roe to a licensed wholesale dealer; and

(d) The crew member is licensed as provided in subsection (1) of this section and has the license in possession whenever the crew member sells salmon roe. [1996 c 267 § 31; 1993 c 340 § 22; 1989 c 316 § 18; 1983 1st ex.s. c 46 § 137; 1981 c 227 § 2. Formerly RCW 75.28.690.]

**Intent—Effective date—1996 c 267:** See notes following RCW 77.12.177.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.360 License fee increases—Disposition.** All revenues generated from the license fee increases in chapter 316, Laws of 1989 shall be deposited in the general fund and shall be appropriated for the food fish and shellfish enhancement programs. [1989 c 316 § 20. Formerly RCW 75.28.700.]

**77.65.370 Professional salmon guide license.** (1) A person shall not offer or perform the services of a professional salmon guide in the taking of salmon for personal use in freshwater rivers and streams, other than in that part of the Columbia river below the bridge at Longview, without a professional salmon guide license.

(2) Only an individual at least sixteen years of age may hold a professional salmon guide license. No individual may

hold more than one professional salmon guide license. [1998 c 190 § 98; 1993 c 340 § 26; 1991 c 362 § 2. Formerly RCW 75.28.710.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.380 Ocean pink shrimp—Defined.** Unless the context clearly requires otherwise, as used in this chapter "ocean pink shrimp" means the species *Pandalus jordani*. [1993 c 376 § 2. Formerly RCW 75.28.720.]

**Findings—1993 c 376:** "The legislature finds that the offshore Washington, Oregon, and California commercial ocean pink shrimp fishery is composed of a mobile fleet, fishing the entire coast from Washington to California and landing its catch in the state nearest the area being fished. The legislature further finds that the ocean pink shrimp fishery currently uses the entire available resource, and has the potential to become overcapitalized. The legislature further finds that overcapitalization can lead to economic destabilization, and that reductions in fishing opportunities from licensing restrictions imposed for conservation needs and the economic well-being of the ocean pink shrimp industry creates uncertainty. The legislature further finds that it is [in] the best interest of the ocean pink shrimp resource, commercial ocean pink shrimp fishers, and ocean pink shrimp processors in the state, to limit the number of fishers who make landings of ocean pink shrimp into the state of Washington to those persons who have historically and continuously participated in the ocean pink shrimp fishery." [1993 c 376 § 1.]

**Effective date—1993 c 376:** "This act shall take effect January 1, 1994." [1993 c 376 § 12.]

**77.65.390 Ocean pink shrimp—Delivery license—Fee.** An ocean pink shrimp delivery license is required for a commercial fishing vessel to deliver ocean pink shrimp taken for commercial purposes in offshore waters and delivered to a port in the state. As used in this section, "deliver" and "delivery" mean arrival at a place or port, and include arrivals from offshore waters to waters within the state and arrivals from state or offshore waters. The annual license fee is one hundred fifty dollars for residents and three hundred dollars for nonresidents. Ocean pink shrimp delivery licenses are transferable. [2005 c 20 § 5; 2000 c 107 § 51; 1993 c 376 § 4. Formerly RCW 75.28.730.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**77.65.400 Emerging commercial fishery—Trial or experimental fishery—Licenses and permits.** (1) The director may by rule designate a fishery as an emerging commercial fishery. The director shall include in the designation whether the fishery is one that requires a vessel.

(2) "Emerging commercial fishery" means the commercial taking of a newly classified species of food fish or shellfish, the commercial taking of a classified species with gear not previously used for that species, or the commercial taking of a classified species in an area from which that species has not previously been commercially taken. Any species of food fish or shellfish commercially harvested in Washington state as of June 7, 1990, may be designated as a species in an emerging commercial fishery, except that no fishery subject to a license limitation program in chapter 77.70 RCW may be designated as an emerging commercial fishery.

(3) A person shall not take food fish or shellfish in a fishery designated as an emerging commercial fishery without an emerging commercial fishery license and a permit from the director. The director shall issue two types of permits to

accompany emerging commercial fishery licenses: Trial fishery permits and experimental fishery permits. Trial fishery permits are governed by subsection (4) of this section. Experimental fishery permits are governed by RCW 77.70.160.

(4) The director shall issue trial fishery permits for a fishery designated as an emerging commercial fishery unless the director determines there is a need to limit the number of participants under RCW 77.70.160. A person who meets the qualifications of RCW 77.65.040 may hold a trial fishery permit. The holder of a trial fishery permit shall comply with the terms of the permit. Trial fishery permits are not transferable from the permit holder to any other person. [2000 c 107 § 52; 1998 c 190 § 99; 1993 c 340 § 18. Formerly RCW 75.28.740.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.65.410 Geoduck diver license.** Every diver engaged in the commercial harvest of geoduck clams shall obtain a nontransferable geoduck diver license. [1993 c 340 § 24; 1990 c 163 § 6; 1989 c 316 § 13; 1983 1st ex.s. c 46 § 130; 1979 ex.s. c 141 § 4; 1969 ex.s. c 253 § 4. Formerly RCW 75.28.750, 75.28.287.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Construction—Severability—1969 ex.s. c 253:** See notes following RCW 77.60.070.

*Designation of aquatic lands for geoduck harvesting:* RCW 79.135.220.

*Geoducks, harvesting for commercial purposes—License:* RCW 77.60.070.

**77.65.420 Wild salmonid policy—Establishment.** By July 1, 1994, the commission jointly with the appropriate Indian tribes, shall each establish a wild salmonid policy. The policy shall ensure that department actions and programs are consistent with the goals of rebuilding wild stock populations to levels that permit commercial and recreational fishing opportunities. [2000 c 107 § 53; 1993 sp.s. c 4 § 2. Formerly RCW 75.28.760.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

*Instream flows:* RCW 90.22.060.

*Salmon, impact of water diversion:* RCW 90.03.360.

**77.65.430 Wild salmonid policy—Management strategies and gear types.** The director shall evaluate and recommend, in consultation with the Indian tribes, salmon fishery management strategies and gear types, as well as a schedule for implementation, that will minimize the impact of commercial and recreational fishing in the mixed stock fishery on critical and depressed wild stocks of salmonids. As part of this evaluation, the director, in conjunction with the commercial and recreational fishing industries, shall evaluate commercial and recreational salmon fishing gear types developed by these industries. [2000 c 107 § 54; 1998 c 245 § 153; 1994 c 264 § 46; 1993 sp.s. c 4 § 4. Formerly RCW 75.28.770.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

**77.65.440 Alternate operator—Geoduck diver—Salmon guide—Fees.** The director shall issue the personal

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licenses listed in this section according to the requirements of this title. The licenses and their annual fees are:

Personal License	Annual Fee (RCW 77.95.090 Surcharge)		Governing Section
	Resident	Nonresident	
(1) Alternate Operator	\$ 35	\$ 35	RCW 77.65.130
(2) Geoduck Diver	\$185	\$295	RCW 77.65.410
(3) Salmon Guide	\$130 (plus \$20)	\$630 (plus \$100)	RCW 77.65.370

[2000 c 107 § 55; 1993 sp.s. c 17 § 42. Formerly RCW 75.28.780.]

**Contingent effective date—1993 sp.s. c 17 §§ 34-47:** See note following RCW 77.65.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**77.65.450 Trapper's license.** A state trapping license allows the holder to trap fur-bearing animals throughout the state; however, a trapper may not place traps on private property without permission of the owner, lessee, or tenant where the land is improved and apparently used, or where the land is fenced or enclosed in a manner designed to exclude intruders or to indicate a property boundary line, or where notice is given by posting in a conspicuous manner. A state trapping license is void on April 1st following the date of issuance. The fee for this license is thirty-six dollars for residents sixteen years of age or older, fifteen dollars for residents under sixteen years of age, and one hundred eighty dollars for non-residents. [1991 sp.s. c 7 § 3; 1987 c 372 § 3; 1985 c 464 § 4; 1981 c 310 § 23. Prior: 1980 c 78 § 113; 1980 c 24 § 2; 1975 1st ex.s. c 15 § 28. Formerly RCW 77.32.191.]

**Effective date—1991 sp.s. c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 7 § 14.]

**Effective date—1985 c 464:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 464 § 13.]

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**Effective dates—1975 1st ex.s. c 15:** "Section 19 of this 1975 amendatory act shall be effective April 1, 1976. Sections 20 through 32 of this 1975 amendatory act shall be effective January 1, 1976." [1975 1st ex.s. c 15 § 34.]

*Traps placed on private property:* RCW 77.32.545, 77.15.191.

**77.65.460 Trapper's license—Training program or examination requisite for issuance to initial licensee.** Persons purchasing a state trapping license for the first time shall present certification of completion of a course of instruction in safe, humane, and proper trapping techniques or pass an examination to establish that the applicant has the requisite knowledge.

The director shall establish a program for training persons in trapping techniques and responsibilities, including the use of trapping devices designed to painlessly capture or instantly kill. The director shall cooperate with national and state animal, humane, hunter education, and trapping organizations in the development of a curriculum. Upon successful

completion of the course, trainees shall receive a trapper's training certificate signed by an authorized instructor. This certificate is evidence of compliance with this section. [1987 c 506 § 82; 1981 c 310 § 24; 1980 c 78 § 114; 1977 c 43 § 1. Formerly RCW 77.32.197.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.65.480 Taxidermist, fur dealer, fishing guide, game farmer, anadromous game fish buyer—Licenses—Fish stocking and game contest permits.** (1) A taxidermy license allows the holder to practice taxidermy for profit. The fee for this license is one hundred eighty dollars.

(2) A fur dealer's license allows the holder to purchase, receive, or resell raw furs for profit. The fee for this license is one hundred eighty dollars.

(3) A fishing guide license allows the holder to offer or perform the services of a professional guide in the taking of game fish. The fee for this license is one hundred eighty dollars for a resident and six hundred dollars for a nonresident.

(4) A game farm license allows the holder to operate a game farm to acquire, breed, grow, keep, and sell wildlife under conditions prescribed by the rules adopted pursuant to this title. The fee for this license is seventy-two dollars for the first year and forty-eight dollars for each following year.

(5) A game fish stocking permit allows the holder to release game fish into the waters of the state as prescribed by rule of the commission. The fee for this permit is twenty-four dollars.

(6) A fishing or field trial permit allows the holder to promote, conduct, hold, or sponsor a fishing or field trial contest in accordance with rules of the commission. The fee for a fishing contest permit is twenty-four dollars. The fee for a field trial contest permit is twenty-four dollars.

(7) An anadromous game fish buyer's license allows the holder to purchase or sell steelhead trout and other anadromous game fish harvested by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty, or executive order, under conditions prescribed by rule of the director. The fee for this license is one hundred eighty dollars. [1991 sp.s. c 7 § 4; 1987 c 506 § 83; 1985 c 464 § 5; 1983 c 284 § 3; 1981 c 310 § 25; 1980 c 78 § 115; 1975 1st ex.s. c 15 § 30. Formerly RCW 77.32.211.]

**Effective date—1991 sp.s. c 7:** See note following RCW 77.65.450.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—1985 c 464:** See note following RCW 77.65.450.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**Effective dates—1975 1st ex.s. c 15:** See note following RCW 77.65.450.

**77.65.490 Activities requiring license/permit.** (1) A license issued by the director is required to:

- (a) Practice taxidermy for commercial purposes;
  - (b) Deal in raw furs for commercial purposes;
  - (c) Act as a fishing guide;
  - (d) Operate a game farm; or
  - (e) Purchase or sell anadromous game fish.
- (2) A permit issued by the director is required to:
- (a) Conduct, hold, or sponsor hunting or fishing contests or competitive field trials using live wildlife;
  - (b) Collect wild animals, wild birds, game fish, food fish, shellfish, or protected wildlife for research or display;
  - (c) Stock game fish; or
  - (d) Conduct commercial activities on department-owned or controlled lands.
- (3) Aquaculture as defined in RCW 15.85.020 is exempt from the requirements of this section, except when being stocked in public waters under contract with the department. [2001 c 253 § 56.]

**77.65.500 Reports required from persons with licenses or permits under RCW 77.65.480.** Licensed taxidermists, fur dealers, anadromous game fish buyers, fishing guides, game farmers, and persons stocking game fish or conducting a hunting, fishing, or field trial contest shall make reports as required by rules of the director. [1987 c 506 § 84; 1983 c 284 § 4; 1981 c 310 § 26; 1980 c 78 § 116; 1955 c 36 § 77.32.220. Prior: 1947 c 275 § 111; Rem. Supp. 1947 § 5992-120. Formerly RCW 77.32.220.]

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**Effective dates—Legislative intent—1981 c 310:** See notes following RCW 77.12.170.

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.65.510 Direct retail endorsement—Fee—Responsibilities of holder.** (1) The department must establish and administer a direct retail endorsement to serve as a single license that permits the holder of a Washington license to commercially harvest retail-eligible species and to clean, dress, and sell his or her catch directly to consumers at retail, including over the internet. The direct retail endorsement must be issued as an optional addition to all holders of a commercial fishing license for retail-eligible species that the department offers under this chapter.

(2) The direct retail endorsement must be offered at the time of application for the qualifying commercial fishing license. Individuals in possession of a qualifying commercial fishing license issued under this chapter may add a direct retail endorsement to their current license at any time. Individuals who do not have a commercial fishing license for retail-eligible species issued under this chapter may not receive a direct retail endorsement. The costs, conditions, responsibilities, and privileges associated with the endorsed commercial fishing license is not affected or altered in any way by the addition of a direct retail endorsement. These costs include the base cost of the license and any revenue and excise taxes.

(3) An individual need only add one direct retail endorsement to his or her license portfolio. If a direct retail endorsement is selected by an individual holding more than

one commercial fishing license issued under this chapter, a single direct retail endorsement is considered to be added to all qualifying commercial fishing licenses held by that individual, and is the only license required for the individual to sell at retail any retail-eligible species permitted by all of the underlying endorsed licenses. The direct retail endorsement applies only to the person named on the endorsed license, and may not be used by an alternate operator named on the endorsed license.

(4) In addition to any fees charged for the endorsed licenses and harvest documentation as required by this chapter or the rules of the department, the department may set a reasonable annual fee not to exceed the administrative costs to the department for a direct retail endorsement.

(5) The holder of a direct retail endorsement is responsible for documenting the commercial harvest of salmon and crab according to the provisions of this chapter, the rules of the department for a wholesale fish dealer, and the reporting requirements of the endorsed license. Any retail-eligible species caught by the holder of a direct retail endorsement must be documented on fish tickets.

(6) The direct retail endorsement must be displayed in a readily visible manner by the seller wherever and whenever a sale to someone other than a licensed wholesale dealer occurs. The commission may require that the holder of a direct retail endorsement notify the department up to eighteen hours before conducting an in-person sale of retail-eligible species, except for in-person sales that have a cumulative retail sales value of less than one hundred fifty dollars in a twenty-four hour period that are sold directly from the vessel. For sales occurring in a venue other than in person, such as over the internet, through a catalog, or on the phone, the direct retail endorsement number of the seller must be provided to the buyer both at the time of sale and the time of delivery. All internet sales must be conducted in accordance with federal laws and regulations.

(7) The direct retail endorsement is to be held by a natural person and is not transferrable or assignable. If the endorsed license is transferred, the direct retail endorsement immediately becomes void, and the transferor is not eligible for a full or prorated reimbursement of the annual fee paid for the direct retail endorsement. Upon becoming void, the holder of a direct retail endorsement must surrender the physical endorsement to the department.

(8) The holder of a direct retail endorsement must abide by the provisions of Title 69 RCW as they apply to the processing and retail sale of seafood. The department must distribute a pamphlet, provided by the department of agriculture, with the direct retail endorsement generally describing the labeling requirements set forth in chapter 69.04 RCW as they apply to seafood.

(9) The holder of a qualifying commercial fishing license issued under this chapter must either possess a direct retail endorsement or a wholesale dealer license provided for in RCW 77.65.280 in order to lawfully sell their catch or harvest in the state to anyone other than a licensed wholesale dealer.

(10) The direct retail endorsement entitles the holder to sell a retail-eligible species only at a temporary food service establishment as that term is defined in RCW 69.06.045, or directly to a restaurant or other similar food service business. [2003 c 387 § 2; 2002 c 301 § 2.]

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**Finding—2002 c 301:** "The legislature finds that commercial fishing is vitally important not just to the economy of Washington, but also to the cultural heritage of the maritime communities in the state. Fisher men and women have a long and proud history in the Pacific Northwest. State and local governments should seek out ways to enable and encourage these professionals to share the rewards of their craft with the nonfishing citizens of and visitors to the state of Washington by encouraging the exploration and development of new niche markets." [2002 c 301 § 1.]

**Effective date—2002 c 301:** "This act takes effect July 1, 2002." [2002 c 301 § 12.]

#### 77.65.515 Direct retail endorsement—Requirements.

(1) Prior to being issued a direct retail endorsement, an individual must:

(a) Obtain and submit to the department a signed letter on appropriate letterhead from the health department of the county in which the individual makes his or her official residence or where the hailing port for any documented vessel owned by the individual is located as to the fulfillment of all requirements related to county health rules, including the payment of all required fees. The local health department generating the letter may charge a reasonable fee for any necessary inspections. The letter must certify that the methods used by the individual to transport, store, and display any fresh retail-eligible species meets that county's standards and the statewide standards adopted by the board of health for food service operations; and

(b) Submit proof to the department that the individual making the direct retail sales is in possession of a valid food and beverage service worker's permit, as provided for in chapter 69.06 RCW.

(2) The requirements of subsection (1) of this section must be completed each license year before a renewal direct retail endorsement can be issued.

(3) Any individual possessing a direct retail endorsement must notify the local health department of the county in which retail sales are to occur, except for the county that conducted the initial inspection, forty-eight hours before any transaction and make his or her facilities available for inspection by a fish and wildlife officer, the local health department of any county in which he or she sells any legally harvested retail-eligible species, and any designee of the department of health or the department of agriculture.

(4) Neither the department or a local health department may be held liable in any judicial proceeding alleging that consumption of or exposure to seafood sold by the holder of a direct retail endorsement resulted in a negative health consequence, as long as the department can show that the individual holding the direct retail endorsement complied with the requirements of subsection (1) of this section prior to being issued his or her direct retail license, and neither the department nor a local health department acted in a reckless manner. For the purposes of this subsection, the department or a local health district shall not be deemed to be acting recklessly for not conducting a permissive inspection. [2003 c 387 § 3; 2002 c 301 § 3.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**77.65.520 Direct retail endorsement—Compliance—Violations—Suspension.** (1) The direct retail endorsement is conditioned upon compliance:

(a) With the requirements of this chapter as they apply to wholesale fish dealers and to the rules of the department relating to the payment of fines for violations of rules for the accounting of the commercial harvest of retail-eligible species; and

(b) With the state board of health and local rules for food service establishments.

(2) Violations of the requirements and rules referenced in subsection (1) of this section may result in the suspension of the direct retail endorsement. The suspended individual must not be reimbursed for any portion of the suspended endorsement. Suspension of the direct retail endorsement may not occur unless and until:

(a) The director has notified by order the holder of the direct retail endorsement when a violation of subsection (1) of this section has occurred. The notification must specify the type of violation, the liability to be imposed for damages caused by the violation, a notice that the amount of liability is due and payable by the holder of the direct retail endorsement, and an explanation of the options available to satisfy the liability; and

(b) The holder of the direct retail endorsement has had at least ninety days after the notification provided in (a) of this subsection was received to either make full payment for all liabilities owed or enter into an agreement with the department to pay off all liabilities within a reasonable time.

(3)(a) If, within ninety days after receipt of the order provided in subsection (2)(a) of this section, the amount specified in the order is not paid or the holder of the direct retail endorsement has not entered into an agreement with the department to pay off all liabilities, the prosecuting attorney for any county in which the persons to whom the order is directed do business, or the attorney general upon request of the department, may bring an action on behalf of the state in the superior court for Thurston county, or any county in which the persons to whom the order is directed do business, to seek suspension of the individual's direct retail endorsement for up to five years.

(b) The department may temporarily suspend the privileges provided by the direct retail endorsement for up to one hundred twenty days following the receipt of the order provided in subsection (2)(a) of this section, unless the holder of the direct retail endorsement has deposited with the department an acceptable performance bond on forms prescribed and provided by the department. This performance bond must be a corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under chapter 48.28 RCW and approved by the department. The bond must be filed and maintained in an amount equal to one thousand dollars.

(4) For violations of state board of health and local rules under subsection (1)(b) of this section only, any person inspecting the facilities of a direct retail endorsement holder under RCW 77.65.515 may suspend the privileges granted by the endorsement for up to seven days. Within twenty-four hours of the discovery of the violation, the inspecting entity must notify the department of the violation. Upon notification, the department may proceed with the procedures outlined in this section for suspension of the endorsement. If the violation of a state board of health rule is discovered by a local health department, that local jurisdiction may fine the

holder of the direct retail endorsement according to the local jurisdiction's rules as they apply to retail food operations.

(5) Subsections (2) and (3) of this section do not apply to a holder of a direct retail endorsement that executes a surety bond and abides by the conditions established in RCW 77.65.320 and 77.65.330 as they apply to wholesale dealers. [2003 c 387 § 4; 2002 c 301 § 4.]

**Finding—Effective date—2002 c 301:** See notes following RCW 77.65.510.

**77.65.900 Effective date—1989 c 316.** This act shall take effect on January 1, 1990. The \*director of fisheries may immediately take such steps as are necessary to ensure that this act is implemented on its effective date. [1989 c 316 § 22. Formerly RCW 75.28.900.]

**\*Reviser's note:** Powers, duties, and functions of the department of fisheries and the department of wildlife were transferred to the department of fish and wildlife by 1993 sp.s. c 2, effective July 1, 1994.

## Chapter 77.70 RCW

### LICENSE LIMITATION PROGRAMS

#### Sections

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**77.70.010 License renewed subject to RCW 77.65.080.** (1) A license renewed under the provisions of this chapter that has been suspended under RCW 77.65.080 shall be subject to the following provisions:

(a) A license renewal fee shall be paid as a condition of maintaining a current license; and

(b) The department shall waive any other license requirements, unless the department determines that the license holder has had sufficient opportunity to meet these requirements.

(2) The provisions of subsection (1) of this section shall apply only to a license that has been suspended under RCW 77.65.080 for a period of twelve months or less. A license holder shall forfeit a license subject to this chapter and may not recover any license renewal fees previously paid if the license holder does not meet the requirements of RCW 74.20A.320(9) within twelve months of license suspension. [2001 c 253 § 57; 1997 c 58 § 884. Formerly RCW 75.30.015.]

**Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58:** See RCW 74.08A.900 through 74.08A.904.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**77.70.020 No harvest opportunity during year—License requirements waived—Effect on license limitation programs.** (1) The director shall waive license requirements, including landing or poundage requirements, if, during the calendar year that a license issued pursuant to chapter 77.65 RCW is valid, no harvest opportunity occurs in the fishery corresponding to the license.

(2) For each license limitation program, where the person failed to hold the license and failed to make landing or poundage requirements because of a license waiver by the director during the previous year, the person shall qualify for

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a license by establishing that the person held the license during the last year in which the license was not waived. [2000 c 107 § 56; 1995 c 227 § 2. Formerly RCW 75.30.021.]

**77.70.040 Administrative review of department's decision—Hearing—Procedures.** A person aggrieved by a decision of the department under this chapter may request administrative review under the informal procedure established by this section.

In an informal hearing before a review board, the rules of evidence do not apply. A record of the proceeding shall be kept as provided by chapter 34.05 RCW. After hearing the case the review board shall notify in writing the director and the initiating party whether the review board agrees or disagrees with the department's decision and the reasons for the review board's findings. Upon receipt of the review board's findings the director may order such relief as the director deems appropriate under the circumstances.

Nothing in this section: (1) Impairs an aggrieved person's right to proceed under chapter 34.05 RCW; or (2) imposes a liability on members of a review board for their actions under this section. [2000 c 107 § 58; 1995 1st sp.s. c 2 § 32 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 139; 1977 ex.s. c 106 § 6. Formerly RCW 75.30.060.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Legislative findings—Severability—1977 ex.s. c 106:** See notes following RCW 77.70.050.

**77.70.050 Salmon charter boats—Limitation on issuance of licenses—Renewal—Transfer.** (1) After May 28, 1977, the director shall issue no new salmon charter licenses. A person may renew an existing salmon charter license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(2) Salmon charter licenses may be renewed each year. A salmon charter license which is not renewed each year shall not be renewed further.

(3) Subject to the restrictions in RCW 77.65.020, salmon charter licenses are transferrable from one license holder to another. [2000 c 107 § 59; 1993 c 340 § 28; 1983 1st ex.s. c 46 § 141; 1981 c 202 § 1; 1979 c 101 § 7; 1977 ex.s. c 106 § 2. Formerly RCW 75.30.065, 75.30.020.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—Intent—1979 c 101:** See notes following RCW 77.70.060.

**Legislative findings—1977 ex.s. c 106:** "The legislature finds that the wise management and economic health of the state's salmon fishery are of continued importance to the people of the state and to the economy of the state as a whole. The legislature finds that charter boats licensed by the state for use by the state's charter boat fishing industry have increased in quantity. The legislature finds that limitations on the number of licensed charter boats will tend to improve the management of the charter boat fishery and the economic health of the charter boat industry. The state therefore must use its authority to regulate the number of licensed boats in use by the state's charter boat industry in a manner provided in this chapter so that management and

economic health of the salmon fishery may be improved." [1977 ex.s. c 106 § 1. Formerly RCW 75.30.010.]

**Severability—1977 ex.s. c 106:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 106 § 10.]

**77.70.060 Salmon charter boats—Angler permit, when required.** (1) Except as provided in subsection (3) of this section, a person shall not operate a vessel as a charter boat from which salmon are taken in salt water without an angler permit. The angler permit shall specify the maximum number of persons that may fish from the charter boat per trip. The angler permit expires if the salmon charter license is not renewed.

(2) Only a person who holds a salmon charter license issued under RCW 77.65.150 and 77.70.050 may hold an angler permit.

(3) An angler permit shall not be required for charter boats licensed in Oregon and fishing in ocean waters within the jurisdiction of Washington state from the southern border of the state of Washington to Leadbetter Point under the same regulations as Washington charter boat operators, as long as the Oregon vessel does not land at any Washington port with the purpose of taking on or discharging passengers. The provisions of this subsection shall be in effect as long as the state of Oregon has reciprocal laws and regulations. [2000 c 107 § 60; 1998 c 190 § 100; 1993 c 340 § 29; 1989 c 147 § 2; 1983 1st ex.s. c 46 § 142; 1979 c 101 § 2. Formerly RCW 75.30.070.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—1979 c 101:** "This act shall take effect on January 1, 1980." [1979 c 101 § 10.]

**Intent—1979 c 101:** "The legislature finds that wise management of the state's salmon fishery is essential to the well-being of the state. The legislature recognizes that further restrictions on salmon fishing in the charter salmon industry are necessary and that a limitation on the number of persons fishing is preferable to reductions in the fishing season or daily bag limits, or increases in size limits." [1979 c 101 § 1.]

**77.70.070 Salmon charter boats—Angler permit—Number of anglers.** A salmon charter boat may not carry more anglers than the number specified in the angler permit issued under RCW 77.70.060. Members of the crew may fish from the boat only to the extent that the number of anglers specified in the angler permit exceeds the number of noncrew passengers on the boat at that time. [2000 c 107 § 61; 1993 c 340 § 30; 1983 1st ex.s. c 46 § 143; 1979 c 101 § 4. Formerly RCW 75.30.090.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—Intent—1979 c 101:** See notes following RCW 77.70.060.

**77.70.080 Salmon charter boats—Angler permit—Total number of anglers limited—Permit transfer.** (1) The total number of anglers authorized by the director shall not exceed the total number authorized for 1980.

(2) Angler permits issued under RCW 77.70.060 are transferable. All or a portion of the permit may be transferred to another salmon charter license holder.

(3) The angler permit holder and proposed transferee shall notify the department when transferring an angler permit, and the director shall issue a new angler permit certificate. If the original permit holder retains a portion of the permit, the director shall issue a new angler permit certificate reflecting the decrease in angler capacity.

(4) The department shall collect a fee of ten dollars for each certificate issued under subsection (3) of this section. [2000 c 107 § 62; 1993 c 340 § 31; 1983 1st ex.s. c 46 § 144; 1979 c 101 § 5. Formerly RCW 75.30.100.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—Intent—1979 c 101:** See notes following RCW 77.70.060.

**77.70.090 Commercial salmon fishing licenses and delivery licenses—Limitations—Transfer.** (1) Except as provided in subsection (2) of this section, after May 6, 1974, the director shall issue no new commercial salmon fishery licenses or salmon delivery licenses. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(2) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(3) Subject to the restrictions in RCW 77.65.020, commercial salmon fishery licenses and salmon delivery licenses are transferable from one license holder to another. [2000 c 107 § 63; 1995 c 135 § 7. Prior: 1993 c 340 § 32; 1993 c 100 § 1; 1983 1st ex.s. c 46 § 146; 1979 c 135 § 1; 1977 ex.s. c 230 § 1; 1977 ex.s. c 106 § 7; 1974 ex.s. c 184 § 2. Formerly RCW 75.30.120, 75.28.455.]

**Intent—1995 c 135:** See note following RCW 29A.08.760.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative findings—Severability—1977 ex.s. c 106:** See notes following RCW 77.70.050.

**Legislative intent—1974 ex.s. c 184:** "The legislature finds that the protection, welfare, and economic good of the commercial salmon fishing industry is of paramount importance to the people of this state. Scientific advancement has increased the efficiency of salmon fishing gear. There presently exists an overabundance of commercial salmon fishing gear in our state waters which causes great pressure on the salmon fishery resource. This situation results in great economic waste to the state and prohibits conservation programs from achieving their goals. The public welfare requires that the number of commercial salmon fishing licenses and salmon delivery permits issued by the state be limited to insure that sound conservation programs can be scientifically carried out. It is the intention of the legislature to preserve this valuable natural resource so that our food supplies from such resource can continue to meet the ever increasing demands placed on it by the people of this state." [1983 1st ex.s. c 46 § 136; 1974 ex.s. c 184 § 1. Formerly RCW 75.28.450.]

**Severability—1974 ex.s. c 184:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 184 § 11.]

**77.70.100 Commercial salmon fishery license or salmon delivery license—Reversion to department following government confiscation of vessel.** Any commercial salmon fishery license issued under RCW 77.65.160 or salmon delivery license issued under RCW 77.65.170 shall revert to the department when any government confiscates and sells the vessel designated on the license. Upon application of the person named on the license as license holder and the approval of the director, the department shall transfer the license to the applicant. Application for transfer of the license must be made within the calendar year for which the license was issued. [2000 c 107 § 64; 1993 c 340 § 33; 1986 c 198 § 2. Formerly RCW 75.30.125.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.110 Dungeness crab—Puget Sound fishery license—Limitations—Qualifications.** (1) A person shall not commercially take Dungeness crab (Cancer magister) in Puget Sound without first obtaining a Dungeness crab—Puget Sound fishery license. As used in this section, "Puget Sound" has the meaning given in RCW 77.65.160(5)(a). A Dungeness crab—Puget Sound fishery license is not required to take other species of crab, including red rock crab (Cancer productus).

(2) Except as provided in subsections (3) and (6) of this section, after January 1, 1982, the director shall issue no new Dungeness crab—Puget Sound fishery licenses. Only a person who meets the following qualification may renew an existing license: The person shall have held the Dungeness crab—Puget Sound fishery license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(3) Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended.

(4) This section does not restrict the issuance of commercial crab licenses for areas other than Puget Sound or for species other than Dungeness crab.

(5) Dungeness crab—Puget Sound fishery licenses are transferable from one license holder to another.

(6) If fewer than one hundred twenty-five persons are eligible for Dungeness crab—Puget Sound fishery licenses, the director may accept applications for new licenses. The director shall determine by random selection the successful applicants for the additional licenses. The number of additional licenses issued shall be sufficient to maintain one hundred twenty-five licenses in the Puget Sound Dungeness crab fishery. The director shall adopt rules governing the application, selection, and issuance procedures for new Dungeness crab—Puget Sound fishery licenses. [2000 c 107 § 65; 1999 c 151 § 1602; 1998 c 190 § 101. Prior: 1997 c 233 § 1; 1997 c 115 § 1; 1993 c 340 § 34; 1983 1st ex.s. c 46 § 147; 1982 c 157 § 1; 1980 c 133 § 4. Formerly RCW 75.30.130, 75.28.275.]

**Part headings not law—Effective date—1999 c 151:** See notes following RCW 18.28.010.

(2008 Ed.)

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Severability—1980 c 133:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 133 § 8.]

**Legislative findings—1980 c 133:** "The legislature finds that a significant commercial crab fishery is developing within Puget Sound. The legislature further finds that the crab fishery in Puget Sound represents a separate and distinct fishery from that of the coastal waters and is limited in quantity and is in need of conservation. The potential for depletion of the crab stocks in these waters is increasing, particularly as crab fishing becomes an attractive alternative to fishermen facing increasing restrictions on commercial salmon fishing.

The legislature finds that the number of commercial fishermen engaged in crab fishing has steadily increased. This factor, combined with advances in fishing and marketing techniques, has resulted in strong pressures on the supply of crab, unnecessary waste of an important natural resource, and economic loss to the citizens of the state.

The legislature finds that increased regulation of commercial crab fishing is necessary to preserve and efficiently manage the commercial crab fishery in the waters of Puget Sound." [1980 c 133 § 1.]

**77.70.120 Herring fishery license—Limitations on issuance.** (1) A person shall not fish commercially for herring in state waters without a herring fishery license. As used in this section, "herring fishery license" means any of the following commercial fishery licenses issued under RCW 77.65.200: Herring dip bag net; herring drag seine; herring gill net; herring lampara; herring purse seine.

(2) Except as provided in this section, a herring fishery license may be issued only to a person who held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person.

(3) Herring fishery licenses may be renewed each year. A herring fishery license that is not renewed each year shall not be renewed further.

(4) The director may issue additional herring fishery licenses if the stocks of herring will not be jeopardized by granting additional licenses.

(5) Subject to the restrictions of RCW 77.65.020, herring fishery licenses are transferable from one license holder to another. [2000 c 107 § 66; 1998 c 190 § 102; 1993 c 340 § 35; 1983 1st ex.s. c 46 § 148; 1974 ex.s. c 104 § 1; 1973 1st ex.s. c 173 § 4. Formerly RCW 75.30.140, 75.28.420.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative findings—Purpose—1973 1st ex.s. c 173:** "The legislature finds that a significant commercial herring fishing industry is presently developing in the state of Washington under the careful guidance of the department of fisheries. The legislature further finds that the stocks of herring within the waters of this state are limited in extent and are in need of strict preservation.

In addition, the legislature finds that the number of commercial fishermen engaged in fishing for herring has steadily increased. This factor, combined with advances made in fishing and marketing techniques, has resulted in strong pressures on the supply of herring, unnecessary waste in one of Washington's valuable resources, and economic loss to the citizens of this state. Therefore, it is the purpose of RCW 75.30.140 to establish reasonable procedures for controlling the extent of commercial herring fishing." [1983 1st ex.s. c 46 § 135; 1973 1st ex.s. c 173 § 2. Formerly RCW 75.28.390 and 75.28.400.]

**77.70.130 Whiting—Puget Sound fishery license—Limitation on issuance.** (1) A person shall not commer-

cially take whiting from areas that the department designates within the waters described in RCW 77.65.160(5)(a) without a whiting-Puget Sound fishery license.

(2) A whiting-Puget Sound fishery license may be issued only to an individual who:

(a) Delivered at least fifty thousand pounds of whiting during the period from January 1, 1981, through February 22, 1985, as verified by fish delivery tickets;

(b) Possessed, on January 1, 1986, all equipment necessary to fish for whiting; and

(c) Held a whiting-Puget Sound fishery license during the previous year or acquired such a license by transfer from someone who held it during the previous year.

(3) After January 1, 1995, the director shall issue no new whiting-Puget Sound fishery licenses. After January 1, 1995, only an individual who meets the following qualifications may renew an existing license: The individual shall have held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and shall not have subsequently transferred the license to another person.

(4) Whiting-Puget Sound fishery licenses may be renewed each year. A whiting-Puget Sound fishery license that is not renewed each year shall not be renewed further. [2000 c 107 § 67; 1993 c 340 § 39; 1986 c 198 § 5. Formerly RCW 75.30.170.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.140 Whiting-Puget Sound fishery license—Transferable to family members.** A whiting-Puget Sound fishery license may be transferred through gift, devise, bequest, or descent to members of the license holder's immediate family which shall be limited to spouse, children, or stepchildren. The holder of a whiting-Puget Sound fishery license shall be present on any vessel taking whiting under the license. In no instance may temporary permits be issued.

The director may adopt rules necessary to implement RCW 77.70.130 and 77.70.140. [2000 c 107 § 68; 1993 c 340 § 40; 1986 c 198 § 4. Formerly RCW 75.30.180.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.150 Sea urchin dive fishery license—Limitation on issuance—Surcharge—Sea urchin dive fishery account—Transfer of license—Issuance of new licenses.**

(1) A sea urchin dive fishery license is required to take sea urchins for commercial purposes. A sea urchin dive fishery license authorizes the use of only one diver in the water at any time during sea urchin harvest operations. If the same vessel has been designated on two sea urchin dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea urchin dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea urchin dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea urchin dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension

of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during the previous year because of a license suspension or revocation by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea urchin dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea urchin dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea urchin licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea urchin management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea urchin dive fishery license renewal for licenses issued in 2000 through 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea urchin dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea urchin dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea urchin dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000, and two thousand five hundred dollars for any subsequent transfer, whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five natural persons are eligible for sea urchin dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea urchin dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2005 c 110 § 1; 2001 c 253 § 58; 1999 c 126 § 1; 1998 c 190 § 104; 1993 c 340 § 41; 1990 c 62 § 2; 1989 c 37 § 2. Formerly RCW 75.30.210.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative finding—1990 c 62; 1989 c 37:** "The legislature finds that a significant commercial sea urchin fishery is developing within state waters. The potential for depletion of the sea urchin stocks in these waters is increasing, particularly as the sea urchin fishery becomes an attractive alternative to fishermen facing increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of vessels engaged in commercial sea urchin fishing has steadily increased. This factor, combined with

advances in marketing techniques, has resulted in strong pressures on the supply of sea urchins. The legislature desires to maintain the livelihood of those vessel owners who have historically and continuously participated in the sea urchin fishery. The legislature desires that the director have the authority to consider extenuating circumstances concerning failure to meet landing requirements for both initial endorsement issuance and endorsement renewal.

The legislature finds that increased regulation of commercial sea urchin fishing is necessary to preserve and efficiently manage the commercial sea urchin fishery in the waters of the state. The legislature is aware that the continuing license provisions of the administrative procedure act, RCW 34.05.422(3) provide procedural safeguards, but finds that the pressure on the sea urchin resource endangers both the resource and the economic well-being of the sea urchin fishery, and desires, therefore, to exempt sea urchin endorsements from the continuing license provision." [1990 c 62 § 1; 1989 c 37 § 1.]

**77.70.160 Emerging commercial fishery designation—Experimental fishery permits.** (1) The director may issue experimental fishery permits for commercial harvest in an emerging commercial fishery for which the director has determined there is a need to limit the number of participants. The director shall determine by rule the number and qualifications of participants for such experimental fishery permits. Only a person who holds an emerging commercial fishery license issued under RCW 77.65.400 and who meets the qualifications established in those rules may hold an experimental fishery permit. The director shall limit the number of these permits to prevent habitat damage, ensure conservation of the resource, and prevent overharvesting. In developing rules for limiting participation in an emerging or expanding commercial fishery, the director shall appoint a five-person advisory board representative of the affected fishery industry. The advisory board shall review and make recommendations to the director on rules relating to the number and qualifications of the participants for such experimental fishery permits.

(2) RCW 34.05.422(3) does not apply to applications for new experimental fishery permits.

(3) Experimental fishery permits are not transferable from the permit holder to any other person. [2000 c 107 § 69; 1993 c 340 § 42; 1990 c 63 § 2. Formerly RCW 75.30.220.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative finding—1990 c 63:** "The legislature finds that:

(1) A number of commercial fisheries have emerged or expanded in the past decade;

(2) Scientific information is critical to the proper management of an emerging or expanding commercial fishery; and

(3) The scientific information necessary to manage an emerging or expanding commercial fishery can best be obtained through the use of limited experimental fishery permits allowing harvest levels that will preserve and protect the state's food fish and shellfish resource." [1990 c 63 § 1.]

**77.70.170 Emerging commercial fishery designation—Legislative review.** Whenever the director promulgates a rule designating an emerging commercial fishery, the legislative standing committees of the house of representatives and senate dealing with fisheries issues shall be notified of the rule and its justification thirty days prior to the effective date of the rule. [1990 c 63 § 3. Formerly RCW 75.30.230.]

(2008 Ed.)

**77.70.180 Emerging commercial fishery—License status—Recommendations to legislature—Information included in report.** (1) Within five years after adopting rules to govern the number and qualifications of participants in an emerging commercial fishery, the director shall provide to the appropriate senate and house of representatives committees a report which outlines the status of the fishery and a recommendation as to whether a separate commercial fishery license, license fee, or limited harvest program should be established for that fishery.

(2) For any emerging commercial fishery designated under RCW 77.50.030, the report must also include:

(a) Information on the extent of the program, including to what degree mass marking and supplementation programs have been utilized in areas where emerging commercial fisheries using selective fishing gear have been authorized;

(b) Information on the benefit provided to commercial fishers including information on the effectiveness of emerging commercial fisheries using selective fishing gear in providing expanded fishing opportunity within mixed stocks of salmon;

(c) Information on the effectiveness of selective fishing gear in minimizing postrelease mortality for nontarget stocks, harvesting fish so that they are not damaged by the gear, and aiding the creation of niche markets; and

(d) Information on the department's efforts at operating hatcheries in an experimental fashion by managing wild and hatchery origin fish as a single run as an alternative to mass marking and the utilization of selective fishing gear. The department shall consult with commercial fishers, recreational fishers, federally recognized treaty tribes with a fishing right, regional fisheries enhancement groups, and other affected parties to obtain their input in preparing the report under this subsection (2). [2001 c 163 § 3; 1993 c 340 § 43; 1990 c 63 § 4. Formerly RCW 75.30.240.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.190 Sea cucumber dive fishery license—Limitation on issuance—Surcharge—Sea cucumber dive fishery account—Transfer of license—Issuance of new licenses.** (1) A sea cucumber dive fishery license is required to take sea cucumbers for commercial purposes. A sea cucumber dive fishery license authorizes the use of only one diver in the water at any time during sea cucumber harvest operations. If the same vessel has been designated on two sea cucumber dive fishery licenses, two divers may be in the water. A natural person may not hold more than two sea cucumber dive fishery licenses.

(2) Except as provided in subsection (6) of this section, the director shall issue no new sea cucumber dive fishery licenses. For licenses issued for the year 2000 and thereafter, the director shall renew existing licenses only to a natural person who held the license at the end of the previous year. If a sea cucumber dive fishery license is not held by a natural person as of December 31, 1999, it is not renewable. However, if the license is not held because of revocation or suspension of licensing privileges, the director shall renew the license in the name of a natural person at the end of the revocation or suspension if the license holder applies for renewal

of the license before the end of the year in which the revocation or suspension ends.

(3) Where a licensee failed to obtain the license during either of the previous two years because of a license suspension by the director or the court, the licensee may qualify for a license by establishing that the person held such a license during the last year in which the person was eligible.

(4) Surcharges as provided for in this section shall be collected and deposited into the sea cucumber dive fishery account hereby created in the custody of the state treasurer. Only the director or the director's designee may authorize expenditures from the account. The sea cucumber dive fishery account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Expenditures from the account shall only be used to retire sea cucumber licenses until the number of licenses is reduced to twenty-five, and thereafter shall only be used for sea cucumber management and enforcement.

(a) A surcharge of one hundred dollars shall be charged with each sea cucumber dive fishery license renewal for licenses issued in 2000 through 2010.

(b) For licenses issued for the year 2000 and thereafter, a surcharge shall be charged on the sea cucumber dive fishery license for designating an alternate operator. The surcharge shall be as follows: Five hundred dollars for the first year or each of the first two consecutive years after 1999 that any alternate operator is designated and two thousand five hundred dollars each year thereafter that any alternate operator is designated.

(5) Sea cucumber dive fishery licenses are transferable. After December 31, 1999, there is a surcharge to transfer a sea cucumber dive fishery license. The surcharge is five hundred dollars for the first transfer of a license valid for calendar year 2000 and two thousand five hundred dollars for any subsequent transfer whether occurring in the year 2000 or thereafter. Notwithstanding this subsection, a one-time transfer exempt from surcharge applies for a transfer from the natural person licensed on January 1, 2000, to that person's spouse or child.

(6) If fewer than twenty-five persons are eligible for sea cucumber dive fishery licenses, the director may accept applications for new licenses. The additional licenses may not cause more than twenty-five natural persons to be eligible for a sea cucumber dive fishery license. New licenses issued under this section shall be distributed according to rules of the department that recover the value of such licensed privilege. [2005 c 110 § 2; 2001 c 253 § 59; 1999 c 126 § 2; 1998 c 190 § 105; 1993 c 340 § 44; 1990 c 61 § 2. Formerly RCW 75.30.250.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Legislative findings—1990 c 61:** "The legislature finds that a significant commercial sea cucumber fishery is developing within state waters. The potential for depletion of the sea cucumber stocks in these waters is increasing, particularly as the sea cucumber fishery becomes an attractive alternative to commercial fishers who face increasing restrictions on other types of commercial fishery activities.

The legislature finds that the number of commercial fishers engaged in commercially harvesting sea cucumbers has rapidly increased. This factor, combined with increases in market demand, has resulted in strong pressures on the supply of sea cucumbers.

The legislature finds that increased regulation of commercial sea cucumber fishing is necessary to preserve and efficiently manage the com-

mercial sea cucumber fishery in the waters of the state.

The legislature finds that it is desirable in the long term to reduce the number of vessels participating in the commercial sea cucumber fishery to fifty vessels to preserve the sea cucumber resource, efficiently manage the commercial sea cucumber fishery in the waters of the state, and reduce conflict with upland owners.

The legislature finds that it is important to preserve the livelihood of those who have historically participated in the commercial sea cucumber fishery that began about 1970 and that the 1988 and 1989 seasons should be used to document historical participation." [1990 c 61 § 1.]

**77.70.200 Herring spawn on kelp fishery licenses—Number limited.** The legislature finds that the wise management of Washington state's herring resource is of paramount importance to the people of the state. The legislature finds that herring are an important part of the food chain for a number of the state's living marine resources. The legislature finds that both open and closed pond "spawn on kelp" harvesting techniques allow for an economic return to the state while at the same time providing for the proper management of the herring resource. The legislature finds that limitations on the number of herring harvesters tends to improve the management and economic health of the herring industry. The maximum number of herring spawn on kelp fishery licenses shall not exceed five annually. The state therefore must use its authority to regulate the number of herring spawn on kelp fishery licenses so that the management and economic health of the herring fishery may be improved. [1993 c 340 § 36; 1989 c 176 § 1. Formerly RCW 75.30.260, 75.28.235.]

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.210 Herring spawn on kelp fishery license—Auction.** (1) A herring spawn on kelp fishery license is required to commercially take herring eggs which have been deposited on vegetation of any type.

(2) A herring spawn on kelp fishery license may be issued only to a person who:

(a) Holds a herring fishery license issued under RCW 77.65.200 and 77.70.120; and

(b) Is the highest bidder in an auction conducted under subsection (3) of this section.

(3) The department shall sell herring spawn on kelp commercial fishery licenses at auction to the highest bidder. Bidders shall identify their sources of kelp. Kelp harvested from state-owned aquatic lands as defined in \*RCW 79.90.465 requires the written consent of the department of natural resources. The department shall give all holders of herring fishery licenses thirty days' notice of the auction. [2000 c 107 § 70; 1993 c 340 § 37; 1989 c 176 § 2. Formerly RCW 75.30.270, 75.28.245.]

\*Reviser's note: RCW 79.90.465 was repealed by 2005 c 155 § 1013.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.220 Geoduck fishery license—Conditions and limitations—OSHA regulations—Violations.** (1) A person shall not harvest geoduck clams commercially without a geoduck fishery license. This section does not apply to the harvest of private sector cultured aquatic products as defined in RCW 15.85.020.

(2) Only a person who has entered into a geoduck harvesting agreement with the department of natural resources under \*RCW 79.96.080 may hold a geoduck fishery license.

(3) A geoduck fishery license authorizes no taking of geoducks outside the boundaries of the public lands designated in the underlying harvesting agreement, or beyond the harvest ceiling set in the underlying harvesting agreement.

(4) A geoduck fishery license expires when the underlying geoduck harvesting agreement terminates.

(5) The director shall determine the number of geoduck fishery licenses that may be issued for each geoduck harvesting agreement, the number of units of gear whose use the license authorizes, and the type of gear that may be used, subject to RCW 77.60.070. In making those determinations, the director shall seek to conserve the geoduck resource and prevent damage to its habitat.

(6) The holder of a geoduck fishery license and the holder's agents and representatives shall comply with all applicable commercial diving safety regulations adopted by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists on May 8, 1979, 84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq. A violation of those regulations is a violation of this subsection. For the purposes of this section, persons who dive for geoducks are "employees" as defined by the federal occupational safety and health act. A violation of this subsection is grounds for suspension or revocation of a geoduck fishery license following a hearing under the procedures of chapter 34.05 RCW. The director shall not suspend or revoke a geoduck fishery license if the violation has been corrected within ten days of the date the license holder receives written notice of the violation. If there is a substantial probability that a violation of the commercial diving standards could result in death or serious physical harm to a person engaged in harvesting geoduck clams, the director shall suspend the license immediately until the violation has been corrected. If the license holder is not the operator of the harvest vessel and has contracted with another person for the harvesting of geoducks, the director shall not suspend or revoke the license if the license holder terminates its business relationship with that person until compliance with this subsection is secured. [2000 c 107 § 71; 1998 c 190 § 106; 1993 c 340 § 46. Formerly RCW 75.30.280.]

\*Reviser's note: RCW 79.96.080 was recodified as RCW 79.135.210 pursuant to 2005 c 155 § 1010.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**77.70.230 Ocean pink shrimp—Delivery license—Requirements and criteria—Continuous participation.** A person shall not commercially deliver into any Washington state port ocean pink shrimp caught in offshore waters without an ocean pink shrimp delivery license issued under RCW 77.65.390, or an ocean pink shrimp single delivery license issued under RCW 77.70.260. An ocean pink shrimp delivery license shall be issued to a vessel that:

(1) Landed a total of at least five thousand pounds of ocean pink shrimp in Washington in any single calendar year between January 1, 1983, and December 31, 1992, as documented by a valid shellfish receiving ticket; and

(2) Can show continuous participation in the Washington, Oregon, or California ocean pink shrimp fishery by being eligible to land ocean pink shrimp in either Washington, Oregon, or California each year since the landing made under subsection (1) of this section. Evidence of such eligibility shall be a certified statement from the relevant state licensing agency that the applicant for a Washington ocean pink shrimp delivery license held at least one of the following permits:

(a) For Washington: Possession of a delivery permit or delivery license issued under RCW 77.65.210;

(b) For Oregon: Possession of a vessel permit issued under Oregon Revised Statute 508.880; or

(c) For California: A trawl permit issued under California Fish and Game Code sec. 8842. [2000 c 107 § 72; 1998 c 190 § 107; 1993 c 376 § 5. Formerly RCW 75.30.290.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**77.70.240 Ocean pink shrimp—Delivery license—Requirements and criteria—Historical participation.** An applicant who can show historical participation under RCW 77.70.230(1) but does not satisfy the continuous participation requirement of RCW 77.70.230(2) shall be issued an ocean pink shrimp delivery license if:

(1) The owner can prove that the owner was in the process on December 31, 1992, of constructing a vessel for the purpose of ocean pink shrimp harvest. For purposes of this section, "construction" means having the keel laid, and "for the purpose of ocean pink shrimp harvest" means the vessel is designed as a trawl vessel. An ocean pink shrimp delivery license issued to a vessel under construction is not renewable after December 31, 1994, unless the vessel lands a total of at least five thousand pounds of ocean pink shrimp into a Washington state port before December 31, 1994; or

(2) The applicant's vessel is a replacement for a vessel that is otherwise eligible for an ocean pink shrimp delivery license. [2000 c 107 § 73; 1993 c 376 § 6. Formerly RCW 75.30.300.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**77.70.250 Ocean pink shrimp—Delivery license—License transfer—License suspension.** After December 31, 1994, an ocean pink shrimp delivery license may only be issued to a vessel that held an ocean pink shrimp delivery license in 1994, and each year thereafter. If the license is transferred to another vessel, the license history shall also be transferred to the transferee vessel.

Where the failure to hold the license in any given year was the result of a license suspension, the vessel may qualify if the vessel held an ocean pink shrimp delivery license in the year immediately preceding the year of the license suspension. [1993 c 376 § 7. Formerly RCW 75.30.310.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**77.70.260 Ocean pink shrimp—Single delivery license.** The owner of an ocean pink shrimp fishing vessel that does not qualify for an ocean pink shrimp delivery license issued under RCW 77.65.390 shall obtain an ocean

pink shrimp single delivery license in order to make a landing into a state port of ocean pink shrimp taken in offshore waters. The director shall not issue an ocean pink shrimp single delivery license unless, as determined by the director, a bona fide emergency exists. A maximum of six ocean pink shrimp single delivery licenses may be issued annually to any vessel. The fee for an ocean pink shrimp single delivery license is one hundred dollars. [2000 c 107 § 74; 1993 c 376 § 8. Formerly RCW 75.30.320.]

**Findings—Effective date—1993 c 376:** See notes following RCW 77.65.380.

**77.70.280 Crab fishery—License required—Dungeness crab-coastal fishery license—Dungeness crab-coastal class B fishery license—Coastal crab and replacement vessel defined—Federal fleet reduction program.**

(1) A person shall not commercially fish for coastal crab in Washington state waters without a Dungeness crab—coastal or a Dungeness crab—coastal class B fishery license. Gear used must consist of one buoy attached to each crab pot. Each crab pot must be fished individually.

(2) A Dungeness crab—coastal fishery license is transferable. Except as provided in subsections (3) and (8) of this section, such a license shall only be issued to a person who proved active historical participation in the coastal crab fishery by having designated, after December 31, 1993, a vessel or a replacement vessel on the qualifying license that singly or in combination meets the following criteria:

(a) Made a minimum of eight coastal crab landings totaling a minimum of five thousand pounds per season in at least two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets; and showed historical and continuous participation in the coastal crab fishery by having held one of the following licenses or their equivalents each calendar year beginning 1990 through 1993, and was designated on the qualifying license of the person who held one of the following licenses in 1994:

(i) Crab pot—Non-Puget Sound license, issued under RCW 77.65.220(1)(b);

(ii) Nonsalmon delivery license, issued under RCW 77.65.210;

(iii) Salmon troll license, issued under RCW 77.65.160;

(iv) Salmon delivery license, issued under RCW 77.65.170;

(v) Food fish trawl license, issued under RCW 77.65.200; or

(vi) Shrimp trawl license, issued under RCW 77.65.220; or

(b) Made a minimum of four Washington landings of coastal crab totaling two thousand pounds during the period from December 1, 1991, to March 20, 1992, and made a minimum of eight crab landings totaling a minimum of five thousand pounds of coastal crab during each of the following periods: December 1, 1991, to September 15, 1992; December 1, 1992, to September 15, 1993; and December 1, 1993, to September 15, 1994. For landings made after December 31, 1993, the vessel shall have been designated on the qualifying license of the person making the landings; or

(c) Made any number of coastal crab landings totaling a minimum of twenty thousand pounds per season in at least

two of the four qualifying seasons identified in subsection (5) of this section, as documented by valid Washington state shellfish receiving tickets, showed historical and continuous participation in the coastal crab fishery by having held one of the qualifying licenses each calendar year beginning 1990 through 1993, and the vessel was designated on the qualifying license of the person who held that license in 1994.

(3) A Dungeness crab-coastal fishery license shall be issued to a person who had a new vessel under construction between December 1, 1988, and September 15, 1992, if the vessel made coastal crab landings totaling a minimum of five thousand pounds by September 15, 1993, and the new vessel was designated on the qualifying license of the person who held that license in 1994. All landings shall be documented by valid Washington state shellfish receiving tickets. License applications under this subsection may be subject to review by the advisory review board in accordance with \*RCW 77.70.030. For purposes of this subsection, "under construction" means either:

(a)(i) A contract for any part of the work was signed before September 15, 1992; and

(ii) The contract for the vessel under construction was not transferred or otherwise alienated from the contract holder between the date of the contract and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988; or

(b)(i) The keel was laid before September 15, 1992; and

(ii) Vessel ownership was not transferred or otherwise alienated from the owner between the time the keel was laid and the issuance of the Dungeness crab-coastal fishery license; and

(iii) Construction had not been completed before December 1, 1988.

(4) A Dungeness crab—coastal class B fishery license is not transferable. Such a license shall be issued to persons who do not meet the qualification criteria for a Dungeness crab—coastal fishery license, if the person has designated on a qualifying license after December 31, 1993, a vessel or replacement vessel that, singly or in combination, made a minimum of four landings totaling a minimum of two thousand pounds of coastal crab, documented by valid Washington state shellfish receiving tickets, during at least one of the four qualifying seasons, and if the person has participated continuously in the coastal crab fishery by having held or by having owned a vessel that held one or more of the licenses listed in subsection (2) of this section in each calendar year subsequent to the qualifying season in which qualifying landings were made through 1994. Dungeness crab—coastal class B fishery licenses cease to exist after December 31, 1999, and the continuing license provisions of RCW 34.05.422(3) are not applicable.

(5) The four qualifying seasons for purposes of this section are:

(a) December 1, 1988, through September 15, 1989;

(b) December 1, 1989, through September 15, 1990;

(c) December 1, 1990, through September 15, 1991; and

(d) December 1, 1991, through September 15, 1992.

(6) For purposes of this section and RCW 77.70.340, "coastal crab" means Dungeness crab (cancer magister) taken in all Washington territorial and offshore waters south of the

United States-Canada boundary and west of the Bonilla-Tatoosh line (a line from the western end of Cape Flattery to Tatoosh Island lighthouse, then to the buoy adjacent to Duntz Rock, then in a straight line to Bonilla Point of Vancouver island), Grays Harbor, Willapa Bay, and the Columbia river.

(7) For purposes of this section, "replacement vessel" means a vessel used in the coastal crab fishery in 1994, and that replaces a vessel used in the coastal crab fishery during any period from 1988 through 1993, and which vessel's licensing and catch history, together with the licensing and catch history of the vessel it replaces, qualifies a single applicant for a Dungeness crab—coastal or Dungeness crab—coastal class B fishery license. A Dungeness crab—coastal or Dungeness crab—coastal class B fishery license may only be issued to a person who designated a vessel in the 1994 coastal crab fishery and who designated the same vessel in 1995.

(8) A Dungeness crab—coastal fishery license may not be issued to a person who participates in the federal fleet reduction program created in RCW 77.70.460 within ten years of that person's participation in the federal program, if reciprocal restrictions are imposed by the states of Oregon and California on persons participating in the federal fleet reduction program. [2003 c 174 § 5; 2000 c 107 § 76; 1998 c 190 § 108; 1995 c 252 § 1; 1994 c 260 § 2. Formerly RCW 75.30.350.]

**\*Reviser's note:** RCW 77.70.030 was repealed by 2001 c 291 § 501, effective July 1, 2001.

**Finding—1994 c 260:** "The legislature finds that the commercial crab fishery in coastal and offshore waters is overcapitalized. The legislature further finds that this overcapitalization has led to the economic destabilization of the coastal crab industry, and can cause excessive harvesting pressures on the coastal crab resources of Washington state. In order to provide for the economic well-being of the Washington crab industry and to protect the livelihood of Washington crab fishers who have historically and continuously participated in the coastal crab fishery, the legislature finds that it is in the best interests of the economic well-being of the coastal crab industry to reduce the number of fishers taking crab in coastal waters, to reduce the number of vessels landing crab taken in offshore waters, to limit the number of future licenses, and to limit fleet capacity by limiting vessel size." [1994 c 260 § 1.]

**Severability—1994 c 260:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 260 § 24.]

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** "Sections 1 through 5, 9 through 19, and 21 through 24 of this act shall take effect January 1, 1995." [1994 c 260 § 25.]

**77.70.290 Crab taken in offshore waters—Criteria for landing in Washington state—Limitations.** (1) The director shall allow the landing into Washington state of crab taken in offshore waters only if:

(a) The crab are legally caught and landed by fishers with a valid Washington state Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license; or

(b)(i) The director determines that the landing of offshore Dungeness crab by fishers without a Washington state Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license is in the best interest of the coastal crab processing industry; (ii) the director has been requested to allow such landings by at least three Dungeness crab processors; (iii) the landings are permitted only between

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the dates of December 1st to February 15th inclusively; (iv) only crab fishers commercially licensed to fish by Oregon or California are permitted to land, if the crab was taken with gear that consisted of one buoy attached to each crab pot, and each crab pot was fished individually; (v) the fisher landing the crab has obtained a valid delivery license; and (vi) the decision is made on a case-by-case basis for the sole reason of improving the economic stability of the commercial crab fishery.

(2) Nothing in this section allows the commercial fishing of Dungeness crab in waters within three miles of Washington state by fishers who do not possess a valid Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license. Landings of offshore Dungeness crab by fishers without a valid Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license do not qualify the fisher for such licenses. [1997 c 418 § 2; 1994 c 260 § 3. Formerly RCW 75.30.360.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.300 Crab taken in offshore waters—Dungeness crab offshore delivery license—Fee.** A person commercially fishing for Dungeness crab in offshore waters outside of Washington state jurisdiction shall obtain a Dungeness crab offshore delivery license from the director if the person does not possess a valid Dungeness crab-coastal fishery license or a valid Dungeness crab-coastal class B fishery license and the person wishes to land Dungeness crab into a place or a port in the state. The annual fee for a Dungeness crab offshore delivery license is two hundred fifty dollars. The director may specify restrictions on landings of offshore Dungeness crab in Washington state as authorized in RCW 77.70.290.

Fees from the offshore Dungeness crab delivery license shall be placed in the coastal crab account created in RCW 77.70.320. [2000 c 107 § 77; 1994 c 260 § 4. Formerly RCW 75.30.370.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.310 Transfer of Dungeness crab-coastal fishery licenses—Fee.** Dungeness crab-coastal fishery licenses are freely transferable on a willing seller-willing buyer basis after paying the transfer fee in RCW 77.65.020. [2000 c 107 § 78; 1997 c 418 § 3; 1994 c 260 § 5. Formerly RCW 75.30.380.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.320 Coastal crab account—Created—Revenues—Expenditures.** The coastal crab account is created in the custody of the state treasurer. The account shall consist of revenues from fees from the transfer of each Dungeness crab-coastal fishery license assessed under RCW 77.65.020, deliv-

ery fees assessed under RCW 77.70.300, and the license surcharge under RCW 77.65.240. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. Funds may be used for coastal crab management activities as provided in RCW 77.70.330. [2000 c 107 § 79; 1997 c 418 § 4; 1994 c 260 § 6. Formerly RCW 75.30.390.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**77.70.330 Coastal crab account expenditures—Management of coastal crab resource.** Expenditures from the coastal crab account may be made by the department for management of the coastal crab resource. Management activities may include studies of resource viability, interstate negotiations concerning regulation of the offshore crab resource, resource enhancement projects, or other activities as determined by the department. [1994 c 260 § 8. Formerly RCW 75.30.410.]

**Effective date—1994 c 260 § 8:** "Section 8 of this act shall take effect January 1, 1997." [1994 c 260 § 26.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**77.70.340 Criteria for nonresident Dungeness crab-coastal fishery license for Oregon residents—Section effective contingent upon reciprocal statutory authority in Oregon.** (1) An Oregon resident who can show historical and continuous participation in the Washington state coastal crab fishery by having held a nonresident non-Puget Sound crab pot license issued under RCW 77.65.220 each year from 1990 through 1994, and who has delivered a minimum of eight landings totaling five thousand pounds of crab into Oregon during any two of the four qualifying seasons as provided in RCW 77.70.280(5) as evidenced by valid Oregon fish receiving tickets, shall be issued a nonresident Dungeness crab-coastal fishery license valid for fishing in Washington state waters north from the Oregon-Washington boundary to United States latitude forty-six degrees thirty minutes north. Such license shall be issued upon application and submission of proof of delivery.

(2) This section shall become effective contingent upon reciprocal statutory authority in the state of Oregon providing for equal access for Washington state coastal crab fishers to Oregon territorial coastal waters north of United States latitude forty-five degrees fifty-eight minutes north, and Oregon waters of the Columbia river. [2000 c 107 § 80; 1994 c 260 § 9. Formerly RCW 75.30.420.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.350 Restrictions on vessel designations and substitutions on Dungeness crab-coastal fishery licenses.**

(1) The following restrictions apply to vessel designations and substitutions on Dungeness crab-coastal fishery licenses:

(a) The holder of the license may not:

(i) Designate on the license a vessel the hull length of which exceeds ninety-nine feet; or

(ii) Change vessel designation if the hull length of the vessel proposed to be designated exceeds the hull length designated on the license on June 7, 2006, by more than ten feet. However, if such vessel designation is the result of an emergency transfer, the applicable vessel length would be the most recent permanent vessel designation on the license prior to June 7, 2006;

(b) If the hull length of the vessel proposed to be designated is comparable to or exceeds by up to one foot the hull length of the currently designated vessel, the department may change the vessel designation no more than once in any two consecutive Washington state coastal crab seasons unless the currently designated vessel is lost or in disrepair such that it does not safely operate, in which case the department may allow a change in vessel designation;

(c) If the hull length of the vessel proposed to be designated exceeds by between one and ten feet the hull length of the designated vessel on June 7, 2006, the department may change the vessel designation no more than once on or after June 7, 2006, unless a request is made by the license holder during a Washington state coastal crab season for an emergency change in vessel designation. If such an emergency request is made, the director may allow a temporary change in designation to another vessel, if the hull length of the other vessel does not exceed by more than ten feet the hull length of the currently designated vessel.

(2) For the purposes of this section, "hull length" means the length overall of a vessel's hull as shown by marine survey or by manufacturer's specifications.

(3) By December 31, 2010, the department must, in cooperation with the coastal crab fishing industry, evaluate the effectiveness of this section and, if necessary, recommend any statutory changes to the appropriate committees of the senate and house of representatives. [2006 c 159 § 1; 1994 c 260 § 10. Formerly RCW 75.30.430.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.360 Dungeness crab-coastal fishery licenses—Limitation on new licenses—Requirements for renewal.**

Except as provided under \*RCW 77.70.380, the director shall issue no new Dungeness crab-coastal fishery licenses after December 31, 1995. A person may renew an existing license only if the person held the license sought to be renewed during the previous year or acquired the license by transfer from someone who held it during the previous year, and if the person has not subsequently transferred the license to another person. Where the person failed to obtain the license during the previous year because of a license suspension, the person may qualify for a license by establishing that the person held such a license during the last year in which the license was not suspended. [2000 c 107 § 81; 1994 c 260 § 13. Formerly RCW 75.30.440.]

\*Reviser's note: RCW 77.70.380 was repealed by 2003 c 174 § 6.

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.370 Limitation on taking crab in the exclusive economic zone of Oregon or California—Section effective contingent upon reciprocal legislation by both Oregon and California.** (1) A Dungeness crab—coastal fishery licensee shall not take Dungeness crab in the waters of the exclusive economic zone westward of the states of Oregon or California and land crab taken in those waters into Washington state unless the licensee also holds the licenses, permits, or endorsements, required by Oregon or California to land crab into Oregon or California, respectively.

(2) This section becomes effective only upon reciprocal legislation being enacted by both the states of Oregon and California. For purposes of this section, "exclusive economic zone" means that zone defined in the federal fishery conservation and management act (16 U.S.C. Sec. 1802) as of January 1, 1995, or as of a subsequent date adopted by rule of the director. [1998 c 190 § 109; 1994 c 260 § 16. Formerly RCW 75.30.450.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.390 Reduction of landing requirements under RCW 77.70.280—Procedure.** The director may reduce the landing requirements established under RCW 77.70.280 upon the recommendation of an advisory review board established under \*RCW 77.70.030, but the director may not entirely waive the landing requirement. The advisory review board may recommend a reduction of the landing requirement in individual cases if in the advisory review board's judgment, extenuating circumstances prevented achievement of the landing requirement. The director shall adopt rules governing the operation of the advisory review board and defining "extenuating circumstances." Extenuating circumstances may include situations in which a person had a vessel under construction such that qualifying landings could not be made. In defining extenuating circumstances, special consideration shall be given to individuals who can provide evidence of lack of access to capital based on past discrimination due to race, creed, color, sex, national origin, or disability. [2000 c 107 § 83; 1994 c 260 § 19. Formerly RCW 75.30.470.]

**\*Reviser's note:** RCW 77.70.030 was repealed by 2001 c 291 § 501, effective July 1, 2001.

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**Effective date—1994 c 260 §§ 1-5, 9-19, and 21-24:** See note following RCW 77.70.280.

**77.70.400 Coastal Dungeness crab resource plan.** The department, with input from Dungeness crab—coastal fishery licensees and processors, shall prepare a resource plan to achieve even-flow harvesting and long-term stability of the coastal Dungeness crab resource. The plan may include pot limits, further reduction in the number of vessels, individual quotas, trip limits, area quotas, or other measures as determined by the department. The provisions of such a resource plan that are designed to effect a gear reduction or effort reduction based upon historical landing criteria are subject to the provisions of RCW 77.70.390 with respect to the consid-

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eration of extenuating circumstances. [2001 c 228 § 1; 1998 c 245 § 154; 1994 c 260 § 20. Formerly RCW 75.30.480.]

**Finding—Severability—1994 c 260:** See notes following RCW 77.70.280.

**77.70.410 Shrimp pot-Puget Sound fishery—Limited entry fishery—License analogous to personal property—Transferability—Alternate operator designation.** (1) The shrimp pot-Puget Sound fishery is a limited entry fishery and a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp pot gear except under the provisions of a shrimp pot-Puget Sound fishery license issued under RCW 77.65.220.

(2) A shrimp pot-Puget Sound fishery license shall only be issued to a natural person who held a shrimp pot-Puget Sound fishery license during the previous year, except upon the death of the licensee the license shall be treated as analogous to personal property for purposes of inheritance and intestacy.

(3) No more than two shrimp pot-Puget Sound fishery licenses may be owned by a licensee. The licensee must transfer the second license into the licensee's name, and designate on the second license the same vessel as is designated on the first license at the time of the transfer. Licensees who hold two shrimp pot-Puget Sound fishery licenses may not transfer one of the two licenses for a twelve-month period beginning on the date the second license is transferred to the licensee, but the licensee may transfer both licenses to another natural person. The nontransferability provisions of this subsection start anew for the receiver of the two licenses. Licensees who hold two shrimp pot-Puget sound fishery licenses may fish one and one-half times the maximum number of pots allowed for Puget Sound shrimp, and may retain and land one and one-half times the maximum catch limits established for Puget Sound shrimp taken with shellfish pot gear.

(4) Through December 31, 2001, shrimp pot-Puget Sound fishery licenses are transferable only to a current shrimp pot-Puget Sound fishery licensee, or upon death of the licensee. Beginning January 1, 2002, shrimp pot-Puget Sound commercial fishery licenses are transferable, except holders of two shrimp pot-Puget Sound licenses are subject to nontransferability provisions as provided for in this section.

(5) Through December 31, 2001, a shrimp pot-Puget Sound licensee may designate any natural person as the alternate operator for the license. Beginning January 1, 2002, a shrimp pot-Puget Sound licensee may designate only an immediate family member, as defined in RCW 77.12.047, as the alternate operator. A licensee with a bona fide medical emergency may designate a person other than an immediate family member as the alternate operator for a period not to exceed two years, provided the licensee documents the medical emergency with letters from two medical doctors describing the illness or condition that prevents the licensee from participating in the fishery. The two-year period may be extended by the director upon recommendation of a department-appointed Puget Sound shrimp advisory board. If the licensee has no immediate family member who is capable of operating the license, the licensee may make a request to the Puget Sound shrimp advisory board to designate an alternate operator who is not an immediate family member, and upon

recommendation of the Puget Sound shrimp advisory board, the director may allow designation of an alternate operator who is not an immediate family member. [2001 c 105 § 1; 2000 c 107 § 84; 1999 c 239 § 3. Formerly RCW 75.30.490.]

**Finding—Purpose—Intent—1999 c 239:** See note following RCW 77.65.220.

**77.70.420 Shrimp trawl-Puget Sound fishery—Limited entry fishery—License analogous to personal property—Transferability—Alternate operator.** (1) The shrimp trawl-Puget Sound fishery is a limited entry fishery and a person shall not fish for shrimp taken from Puget Sound for commercial purposes with shrimp trawl gear except under the provisions of a shrimp trawl-Puget Sound fishery license issued under RCW 77.65.220.

(2) A shrimp trawl-Puget Sound fishery license shall only be issued to a natural person who held a shrimp trawl-Puget Sound fishery license during the previous licensing year, except upon the death of the licensee the license shall be treated as analogous to personal property for purposes of inheritance and intestacy.

(3) No more than one shrimp trawl-Puget Sound fishery license may be owned by a licensee.

(4) Through December 31, 2001, shrimp trawl-Puget Sound fishery licenses are nontransferable, except upon death of the licensee. Beginning January 1, 2002, shrimp trawl-Puget Sound licenses are transferable.

(5) Through December 31, 2001, a shrimp trawl-Puget Sound licensee may designate any natural person as the alternate operator for the license. Beginning January 1, 2002, a shrimp trawl-Puget Sound licensee may designate only an immediate family member, as defined in RCW 77.12.047, as the alternate operator. A licensee with a bona fide medical emergency may designate a person other than an immediate family member as the alternate operator for a period not to exceed two years, provided the licensee documents the medical emergency with letters from two medical doctors describing the illness or condition that prevents the immediate family member from participating in the fishery. The two-year period may be extended by the director upon recommendation of a department-appointed Puget Sound shrimp advisory board. If the licensee has no immediate family member who is capable of operating the license, the licensee may make a request to the Puget Sound shrimp advisory board to designate an alternate operator who is not an immediate family member, and upon recommendation of the Puget Sound shrimp advisory board, the director may allow designation of an alternate operator who is not an immediate family member. [2001 c 105 § 2; 2000 c 107 § 85; 1999 c 239 § 4. Formerly RCW 75.30.500.]

**Finding—Purpose—Intent—1999 c 239:** See note following RCW 77.65.220.

**77.70.430 Puget Sound crab pot buoy tag program—Fee—Coastal crab pot buoy tag program—Fee—Review.** (1) In order to administer a Puget Sound crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—Puget Sound fishery license to reimburse the department for the production of Puget Sound crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program.

(2) In order to administer a Washington coastal Dungeness crab pot buoy tag program, the department may charge a fee to holders of a Dungeness crab—coastal or a Dungeness crab coastal class B fishery license and to holders of out-of-state licenses who are issued a pot certificate by the department to reimburse the department for the production of Washington coastal crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program.

(3) The department shall annually review the costs of crab pot buoy tag production under this section with the goal of minimizing the per tag production costs. Any savings in production costs shall be passed on to the fishers required to purchase crab pot buoy tags under this section in the form of a lower tag fee. [2006 c 143 § 1; 2005 c 395 § 1; 2001 c 234 § 1.]

**Effective date—2001 c 234:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2001]." [2001 c 234 § 3.]

**77.70.440 Puget Sound crab pot buoy tag account.** The Puget Sound crab pot buoy tag account is created in the custody of the state treasurer. All revenues from fees from RCW 77.70.430(1) must be deposited into the account. Expenditures from this account may be used for the production of crab pot buoy tags and the administration of a Puget Sound crab pot buoy tag program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. [2005 c 395 § 2; 2001 c 234 § 2.]

**Effective date—2001 c 234:** See note following RCW 77.70.430.

**77.70.442 Washington coastal crab pot buoy tag account.** The Washington coastal crab pot buoy tag account is created in the custody of the state treasurer. All revenues from fees from RCW 77.70.430(2) must be deposited into the account. Expenditures from this account may be used for the production of crab pot buoy tags and the administration of a Washington coastal crab pot buoy tag program. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW but no appropriation is required for expenditures. [2005 c 395 § 3.]

**77.70.450 Commercial fisheries buyback account.** The commercial fisheries buyback account is created in the custody of the state treasurer. All receipts from money collected by the commission under RCW 77.70.460, moneys appropriated for the purposes of this section, and other gifts, grants, or donations specifically made to the fund must be deposited into the account. Expenditures from the account may be used only for the purpose of repaying moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government, or for other fleet reduction efforts, commercial fishing license buyback programs, or similar programs designed to reduce the harvest capacity in a commercial fishery. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an

appropriation is not required for expenditures. [2003 c 174 § 1.]

**77.70.460 Collection of fee—Fee schedule—Deposit of moneys. (Contingent expiration date.)** (1) The commission shall collect a fee upon all deliveries of fish or shellfish from persons holding: (a) A federal pacific groundfish limited entry permit with a trawl endorsement; (b) an ocean pink shrimp delivery license issued under RCW 77.65.390; (c) a Dungeness crab—coastal fishery license issued under RCW 77.70.280; (d) a food fish delivery license issued under RCW 77.65.200; or (e) a shrimp trawl license under RCW 77.65.220, to repay the federal government for moneys advanced by the federal government under a groundfish fleet reduction program established by the federal government.

(2) The commission shall adopt a fee schedule by rule for the collection of the fee required by subsection (1) of this section. The fee schedule adopted shall limit the total amount of moneys collected through the fee to the minimum amount necessary to repay the moneys advanced by the federal government, but be sufficient to repay the debt obligation of each fishery. The fee charged to the holders of a Dungeness crab—coastal fishery license may not exceed two percent of the total ex-vessel value of annual landings, and the fee charged to all other eligible license holders may not exceed five percent of the total ex-vessel value of annual landings. The commission may adjust the fee schedule as necessary to ensure that the funds collected are adequate to repay the debt obligation of each fishery.

(3) The commission shall deposit moneys collected under this section in the commercial fisheries buyback account created in RCW 77.70.450. [2003 c 174 § 2.]

**Contingent expiration date—2003 c 174 §§ 2 and 3:** "Sections 2 and 3 of this act expire January 1, 2033, or when the groundfish fleet reduction program referenced in section 2 of this act is completed, whichever is sooner." [2003 c 174 § 4.]

**77.70.470 Ban on assessing fee under RCW 77.70.460. (Contingent expiration date.)** The commission may not assess the fee specified under RCW 77.70.460 until after the federal government creates a groundfish fleet reduction program. [2003 c 174 § 3.]

**Contingent expiration date—2003 c 174 §§ 2 and 3:** See note following RCW 77.70.460.

**Chapter 77.75 RCW**

**COMPACTS AND OTHER AGREEMENTS**

Sections

COLUMBIA RIVER COMPACT

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PACIFIC MARINE FISHERIES COMPACT

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- 77.75.150 Wildlife restoration—Federal act.
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COLUMBIA RIVER COMPACT

**77.75.010 Columbia River Compact—Provisions.**

There exists between the states of Washington and Oregon a definite compact and agreement as follows:

All laws and regulations now existing or which may be necessary for regulating, protecting or preserving fish in the waters of the Columbia river, or its tributaries, over which the states of Washington and Oregon have concurrent jurisdiction, or which would be affected by said concurrent jurisdiction, shall be made, changed, altered and amended in whole or in part, only with the mutual consent and approbation of both states. [1983 1st ex.s. c 46 § 149; 1955 c 12 § 75.40.010. Prior: 1949 c 112 § 80; Rem. Supp. 1949 § 5780-701. Formerly RCW 75.40.010.]

**77.75.020 Columbia River Compact—Commission to represent state.**

The commission may give to the state of Oregon such consent and approbation of the state of Washington as is necessary under the compact set out in RCW 77.75.010. For the purposes of RCW 77.75.010, the states of Washington and Oregon have concurrent jurisdiction in the concurrent waters of the Columbia river. [2000 c 107 § 86; 1995 1st sp.s. c 2 § 19 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 150; 1955 c 12 § 75.40.020. Prior: 1949 c 112 § 81; Rem. Supp. 1949 § 5780-702. Formerly RCW 75.40.020.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

PACIFIC MARINE FISHERIES COMPACT

**77.75.030 Pacific Marine Fisheries Compact—Provisions.**

There exists between the states of Alaska, California, Idaho, Oregon and Washington a definite compact and agreement as follows:

THE PACIFIC MARINE FISHERIES COMPACT

The contracting states do hereby agree as follows:

ARTICLE I.

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell and anadro-

mous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

#### ARTICLE II.

This agreement shall become operative immediately as to those states executing it whenever the compacting states have executed it in the form that is in accordance with the laws of the executing states and the congress has given its consent.

#### ARTICLE III.

Each state joining herein shall appoint, as determined by state statutes, one or more representatives to a commission hereby constituted and designated as The Pacific Marine Fisheries Commission, of whom one shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be a body with the powers and duties set forth herein.

The term of each commissioner of The Pacific Marine Fisheries Commission shall be four years. A commissioner shall hold office until his successor shall be appointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

#### ARTICLE IV.

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell, and anadromous in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell and anadromous fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states and when two or more of the said states shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

#### ARTICLE V.

The commission shall elect from its number a chairman and a vice chairman and shall appoint and at its pleasure, remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

#### ARTICLE VI.

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

#### ARTICLE VII.

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of The Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fishermen, commercial fishing industry and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

#### ARTICLE VIII.

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of

any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE IX.

Continued absence of representation or of any representative on the commission from any state party hereto, shall be brought to the attention of the governor thereof.

ARTICLE X.

The states agree to make available annual funds for the support of the commission on the following basis:

Eighty percent of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; not less than five percent of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five-year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10 of the Constitution of the United States.

ARTICLE XI.

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' notice in writing of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII.

The states of Alaska or Hawaii, or any state having rivers or streams tributary to the Pacific Ocean may become a contracting state by enactment of The Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection and prevention of physical waste of fisheries in which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs.

This article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon and Washington and upon ratification by congress by virtue of the authority vested in it under Article I, section 10, of the Constitution of the United States. [1983 1st ex.s. c 46 § 151; 1969 ex.s. c 101 § 2; 1959 ex.s. c 7 § 1; 1955 c 12 § 75.40.030. Prior: 1949 c 112 § 82(1); Rem. Supp. 1949 § 5780-703(1). Formerly RCW 75.40.030.]

**Reviser's note:** The 24th annual report (1971 p 40) of the Pacific Marine Fisheries Compact commission indicates congressional approval effective July 10, 1970, by P.L. 91-315, 91st congress; 84 Stat. 415.

**Effective date—1969 ex.s. c 101:** "The provisions of this 1969 amendatory act shall not take effect until such time as the proposed amendment to The Pacific Marine Fisheries Compact contained herein is approved by the congress of the United States." [1969 ex.s. c 101 § 1.]

(2008 Ed.)

**77.75.040 Pacific Marine Fisheries Compact—Representatives of state on Pacific Marine Fisheries Commission.** A member selected by or a designee of the fish and wildlife commission, ex officio, and two appointees of the governor representing the fishing industry shall act as the representatives of this state on the Pacific Marine Fisheries Commission. The appointees of the governor are subject to confirmation by the state senate. [1995 1st sp.s. c 2 § 20 (Referendum Bill No. 45, approved November 7, 1995); 1983 1st ex.s. c 46 § 152; 1963 c 171 § 2; 1955 c 12 § 75.40.040. Prior: 1949 c 112 § 82(2); Rem. Supp. 1949 § 5780-703(2). Formerly RCW 75.40.040.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

COASTAL ECOSYSTEMS COMPACT

**77.75.050 Coastal ecosystems compact authorized.**

The state of Washington is authorized to enter into an interstate compact or compacts with all or any of the states of California, Idaho, and Oregon to protect and restore coastal ecosystems of these states to levels that will prevent the need for listing any native salmonid fish species under the federal endangered species act of 1973, as amended, or under any comparable state legislation. [1994 c 148 § 1. Formerly RCW 75.40.100.]

**Effective date—1994 c 148:** "This act shall take effect July 1, 1994." [1994 c 148 § 3.]

**77.75.060 Coastal ecosystems cooperative agreements authorized.** Until such time as the agencies in California, Idaho, Oregon, and Washington present a final proposed interstate compact for enactment by their respective legislative bodies, the governor may establish cooperative agreements with the states of California, Idaho, and Oregon that allow the states to coordinate their individual efforts in developing state programs that further the region-wide goals set forth under RCW 77.75.050. [2000 c 107 § 87; 1994 c 148 § 2. Formerly RCW 75.40.110.]

**Effective date—1994 c 148:** See note following RCW 77.75.050.

WILDLIFE VIOLATOR COMPACT

**77.75.070 Wildlife violator compact—Established.**

The wildlife violator compact is hereby established in the form substantially as follows, and the Washington state department of fish and wildlife is authorized to enter into such compact on behalf of the state with all other jurisdictions legally joining therein:

ARTICLE I

FINDINGS, DECLARATION OF POLICY AND PURPOSE

- (a) The party states find that:
  - (1) Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.
  - (2) The protection of their respective wildlife resources can be materially affected by the degree of compliance with

state statute, law, regulation, ordinance, or administrative rule relating to the management of those resources.

(3) The preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of these natural resources.

(4) Wildlife resources are valuable without regard to political boundaries, therefore, all persons should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of all party states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife.

(5) Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.

(6) The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

(7) In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:

(i) Must post collateral or bond to secure appearance for a trial at a later date; or

(ii) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or

(iii) Is taken directly to court for an immediate appearance.

(8) The purpose of the enforcement practices described in paragraph (7) of this subdivision is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.

(9) In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.

(10) The practice described in paragraph (7) of this subdivision causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial, or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.

(11) The enforcement practices described in paragraph (7) of this subdivision consume an undue amount of law enforcement time.

(b) It is the policy of the party states to:

(1) Promote compliance with the statutes, laws, ordinances, regulations, and administrative rules relating to management of wildlife resources in their respective states.

(2) Recognize the suspension of wildlife license privileges of any person whose license privileges have been suspended by a party state and treat this suspension as if it had occurred in their state.

(3) Allow violators to accept a wildlife citation, except as provided in subdivision (b) of Article III, and proceed on the violator's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the violator's home state is party to this compact.

(4) Report to the appropriate party state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.

(5) Allow the home state to recognize and treat convictions recorded for their residents which occurred in another party state as if they had occurred in the home state.

(6) Extend cooperation to its fullest extent among the party states for obtaining compliance with the terms of a wildlife citation issued in one party state to a resident of another party state.

(7) Maximize effective use of law enforcement personnel and information.

(8) Assist court systems in the efficient disposition of wildlife violations.

(c) The purpose of this compact is to:

(1) Provide a means through which the party states may participate in a reciprocal program to effectuate policies enumerated in subdivision (b) of this article in a uniform and orderly manner.

(2) Provide for the fair and impartial treatment of wildlife violators operating within party states in recognition of the person's right of due process and the sovereign status of a party state.

## ARTICLE II DEFINITIONS

Unless the context requires otherwise, the definitions in this article apply through this compact and are intended only for the implementation of this compact:

(a) "Citation" means any summons, complaint, ticket, penalty assessment, or other official document issued by a wildlife officer or other peace officer for a wildlife violation containing an order which requires the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial, in connection with the issuance by a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal, or payment of fines, costs, and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management, or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance, or administrative rule, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment, or a plea of nolo contendere, or the imposition of a deferred or suspended sentence by the court.

(e) "Court" means a court of law, including Magistrate's Court and the Justice of the Peace Court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the party state which issues a wildlife citation to the violator.

(h) "License" means any license, permit, or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing, or taking any wildlife regulated by statute, law, regulation, ordinance, or administrative rule of a party state.

(i) "Licensing authority" means the department or division within each party state which is authorized by law to issue or approve licenses or permits to hunt, fish, trap, or possess wildlife.

(j) "Party state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada, or other countries.

(m) "Suspension" means any revocation, denial, or withdrawal of any or all license privileges, including the privilege to apply for, purchase, or exercise the benefits conferred by any license.

(n) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(o) "Wildlife" means all species of animals, including but not necessarily limited to mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance, or administrative rule in a party state. "Wildlife" also means food fish and shellfish as defined by statute, law, regulation, ordinance, or administrative rule in a party state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on local law.

(p) "Wildlife law" means any statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

(q) "Wildlife officer" means any individual authorized by a party state to issue a citation for a wildlife violation.

(r) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance, or administrative rule developed and enacted to manage wildlife resources and the use thereof.

ARTICLE III  
PROCEDURES FOR ISSUING STATE

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a party state in the same manner as if the person were a resident of the home state and shall not require the person to post collateral to secure appearance, subject to the exceptions contained in subdivision (b) of this article, if the officer receives the person's personal recognizance that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

(1) If not prohibited by local law or the compact manual; and

(2) If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the party state in which the wildlife citation was issued. The report shall be made in accordance with procedures specified by the issuing state and shall contain the

information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by subdivision (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state of the violator the information in a form and content as contained in the compact manual.

ARTICLE IV  
PROCEDURES FOR HOME STATE

(a) Upon receipt of a report of failure to comply with the terms of a citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator, shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards will be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as if it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

ARTICLE V  
RECIPROCAL RECOGNITION OF SUSPENSION

All party states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

ARTICLE VI  
APPLICABILITY OF OTHER LAWS

Except as expressly required by provisions of this compact, nothing herein shall be construed to affect the right of any party state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a party state and a nonparty state concerning wildlife law enforcement.

ARTICLE VII  
COMPACT ADMINISTRATOR PROCEDURES

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one representative from each of the party states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each party state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board

member by an alternate. An alternate may not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of votes on the board are cast in favor thereof. Action by the board shall be only at a meeting at which a majority of the party states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a party state, for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact all donations and grants of money, equipment, supplies, materials, and services, conditional or otherwise, from any state, the United States, or any governmental agency, and may receive, utilize, and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, corporation, or any private non-profit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

#### ARTICLE VIII

##### ENTRY INTO COMPACT AND WITHDRAWAL

(a) This compact shall become effective when it has been adopted by at least two states.

(b)(1) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board.

(2) The resolution shall be in a form and content as provided in the compact manual and shall include statements that in substance are as follows:

(i) A citation of the authority by which the state is empowered to become a party to this compact;

(ii) Agreement to comply with the terms and provisions of the compact; and

(iii) That compact entry is with all states then party to the compact and with any state that legally becomes a party to the compact.

(3) The effective date of entry shall be specified by the applying state, but shall not be less than sixty days after notice has been given by the chairperson of the board of compact administrators or by the secretariat of the board to each party state that the resolution from the applying state has been received.

(c) A party state may withdraw from this compact by official written notice to the other party states, but a withdrawal shall not take effect until ninety days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining party states.

#### ARTICLE IX

##### AMENDMENTS TO THE COMPACT

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one or more party states.

(b) Adoption of an amendment shall require endorsement by all party states and shall become effective thirty days after the date of the last endorsement.

(c) Failure of a party state to respond to the compact chairperson within one hundred twenty days after receipt of the proposed amendment shall constitute endorsement.

#### ARTICLE X

##### CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, individual, or circumstance is held invalid, the compact shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### ARTICLE XI

##### TITLE

This compact shall be known as the wildlife violator compact. [1994 c 264 § 55; 1993 c 82 § 1. Formerly RCW 77.17.010.]

**Revoked licenses—Application—1993 c 82:** "The provisions of this compact shall also apply to individuals whose licenses under Title 77 RCW are currently in revoked status." [1993 c 82 § 4.]

**77.75.080 Licensing authority defined.** For purposes of Article VII of RCW 77.75.070, the term "licensing authority," with reference to this state, means the department. The director is authorized to appoint a compact administrator. [2000 c 107 § 261; 1994 c 264 § 56; 1993 c 82 § 2. Formerly RCW 77.17.020.]

**Revoked licenses—Application—1993 c 82:** See note following RCW 77.75.070.

**77.75.090 Administration facilitation.** The director shall furnish to the appropriate authorities of the participating states any information or documents reasonably necessary to facilitate the administration of the compact. [1994 c 264 § 57; 1993 c 82 § 3. Formerly RCW 77.17.030.]

**Revoked licenses—Application—1993 c 82:** See note following RCW 77.75.070.

#### SNAKE RIVER BOUNDARY

**77.75.100 Snake river boundary—Cooperation with Idaho for adoption and enforcement of rules regarding wildlife.** The commission may cooperate with the Idaho fish and game commission in the adoption and enforcement of

rules regarding wildlife on that portion of the Snake river forming the boundary between Washington and Idaho. [1980 c 78 § 62; 1967 c 62 § 1. Formerly RCW 77.12.450.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.75.110 Snake river boundary—Concurrent jurisdiction of Idaho and Washington courts and law enforcement officers.** To enforce RCW 77.75.120 and 77.75.130, courts in the counties contiguous to the boundary waters, fish and wildlife officers, and ex officio fish and wildlife officers have jurisdiction over the boundary waters to the furthestmost shoreline. This jurisdiction is concurrent with the courts and law enforcement officers of Idaho. [2000 c 107 § 222; 1980 c 78 § 63; 1967 c 62 § 3. Formerly RCW 77.12.470.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.75.120 Snake river boundary—Honoring licenses to take wildlife of either state.** The taking of wildlife from the boundary waters or islands of the Snake river shall be in accordance with the wildlife laws of the respective states. Fish and wildlife officers and ex officio fish and wildlife officers shall honor the license of either state and the right of the holder to take wildlife from the boundary waters and islands in accordance with the laws of the state issuing the license. [2000 c 107 § 223; 1980 c 78 § 64; 1967 c 62 § 4. Formerly RCW 77.12.480.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.75.130 Snake river boundary—Purpose—Restrictions.** The purpose of RCW 77.75.100 through 77.75.130 is to avoid the conflict, confusion, and difficulty of locating the state boundary in or on the boundary waters and islands of the Snake river. These sections do not allow the holder of a Washington license to fish or hunt on the shoreline, sloughs, or tributaries on the Idaho side, nor allow the holder of an Idaho license to fish or hunt on the shoreline, sloughs, or tributaries on the Washington side. [2000 c 107 § 224; 1980 c 78 § 65; 1967 c 62 § 5. Formerly RCW 77.12.490.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

MISCELLANEOUS

**77.75.140 Treaty between United States and Canada concerning Pacific salmon.** The commission may adopt and enforce the provisions of the treaty between the government of the United States and the government of Canada concerning Pacific salmon, treaty document number 99-2, entered into force March 18, 1985, at Quebec City, Canada, and the regulations of the commission adopted under authority of the treaty. [1995 1st sp.s. c 2 § 21 (Referendum Bill No. 45, approved November 7, 1995); 1989 c 130 § 2; 1983 1st ex.s. c 46 § 153; 1955 c 12 § 75.40.060. Prior: 1949 c 112 § 83; Rem. Supp. 1949 § 5780-704. Formerly RCW 75.40.060.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

(2008 Ed.)

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.75.150 Wildlife restoration—Federal act.** The state assents to the act of congress entitled: "An Act to provide that the United States shall aid the states in wildlife restoration projects, and for other purposes," (50 Stat. 917; 16 U.S.C. Sec. 669). The department shall establish and conduct cooperative wildlife restoration projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of agriculture. [1980 c 78 § 60; 1955 c 36 § 77.12.430. Prior: 1939 c 140 § 1; RRS § 5855-12. Formerly RCW 77.12.430.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

**77.75.160 Fish restoration and management projects—Federal act.** The state assents to the act of congress entitled: "An Act to provide that the United States shall aid the states in fish restoration and management projects, and for other purposes," (64 Stat. 430; 16 U.S.C. Sec. 777). The department shall establish, conduct, and maintain fish restoration and management projects, as defined in the act, and shall comply with the act and related rules adopted by the secretary of the interior. [1993 sp.s. c 2 § 69; 1987 c 506 § 47; 1982 c 26 § 2; 1980 c 78 § 61; 1955 c 36 § 77.12.440. Prior: 1951 c 124 § 1. Formerly RCW 77.12.440.]

**Effective date—1993 sp.s. c 2 § 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Intent—1982 c 26:** "The legislature recognizes that funds from the federal Dingell-Johnson Act (64 Stat. 430; 16 U.S.C. Sec. 777) are derived from a tax imposed on the sale of recreational fishing tackle, and that these funds are granted to the state for fish restoration and management projects. The intent of this 1982 amendment to RCW 77.12.440 is to provide for the allocation of the Dingell-Johnson aid for fish restoration and management projects of the department of game and the department of fisheries. Such funds shall be subject to appropriation by the legislature." [1982 c 26 § 1.]

**Effective date—1982 c 26:** "This act shall take effect on October 1, 1982." [1982 c 26 § 3.]

**Effective date—Intent, construction—Savings—Severability—1980 c 78:** See notes following RCW 77.04.010.

Chapter 77.80 RCW

PROGRAM TO PURCHASE FISHING VESSELS AND LICENSES

Sections

- 77.80.020 Program authorized—Conditions.
- 77.80.030 Determination of purchase price—Maximum price.
- 77.80.040 Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes.
- 77.80.050 Rules—Administration of chapter.
- 77.80.060 Vessel, gear, license, and permit reduction fund.

**77.80.020 Program authorized—Conditions.** (1)(a) The department may purchase commercial fishing vessels and appurtenant gear, and the current state commercial fishing licenses, delivery permits, and charter boat licenses if the license or permit holder was substantially restricted in fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States

District Court for Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976).

(b) The department may also make such purchases if the license or permit holder was substantially restricted in fishing as a result of compliance with *United States of America et al. v. State of Washington et al.*, 873 F. Supp. 1422 (W.D. Wash. 1994) as affirmed in part, reversed in part, and remanded 157 F.3d 630 (9th Cir., 1998), if the federal government provides funding to the state for the purpose of initiating these purchases.

(2) The department shall not purchase a vessel under this section without also purchasing all current Washington commercial fishing licenses and delivery permits and charter boat licenses issued to the vessel or its owner. The department may purchase current licenses and delivery permits without purchasing the vessel. [2008 c 252 § 2; 1984 c 67 § 1; 1983 1st ex.s. c 46 § 156; 1979 ex.s. c 43 § 1; 1977 ex.s. c 230 § 4; 1975 1st ex.s. c 183 § 4. Formerly RCW 75.44.110, 75.28.510.]

**Legislative finding and intent—1975 1st ex.s. c 183:** "The legislature finds that the protection, welfare, and economic well-being of the commercial fishing industry is important to the people of this state. There presently exists an overabundance of commercial fishing gear in our state waters which causes great pressure on the fishing resources. This results in great economic waste to the state and prohibits conservation and harvesting programs from achieving their goals. This adverse situation has been compounded by the federal court decisions, *United States of America et al. v. State of Washington et al.*, Civil No. 9213, United States District Court for the Western District of Washington, February 12, 1974, and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Oregon, 1969), as amended, affirmed, and remanded 529 F. 2d 570 (9th Cir., 1976). As a result, large numbers of commercial fishermen face personal economic hardship, and the state commercial fishing industry is confronted with economic difficulty. The public welfare requires that the state have the authority to purchase commercial fishing vessels, licenses, gear, and permits offered for sale, as appropriate, in a manner which will provide relief to the individual vessel owner, and which will effect a reduction in the amount of commercial fishing gear in use in the state so as to insure increased economic opportunity for those persons in the industry and to insure that sound scientific conservation and harvesting programs can be carried out. It is the intention of the legislature to provide relief to commercial fishermen adversely affected by the current economic situation in the state fishery and to preserve this valuable state industry and these natural resources." [1977 ex.s. c 230 § 2; 1975 1st ex.s. c 183 § 2. Formerly RCW 75.28.500.]

**77.80.030 Determination of purchase price—Maximum price.** The purchase price of a vessel and appurtenant gear shall be based on a survey conducted by a qualified marine surveyor. A license or delivery permit shall be valued separately.

The director may specify a maximum price to be paid for a vessel, gear, license, or delivery permit purchased under RCW 77.80.020. A license or delivery permit purchased under RCW 77.80.020 shall be permanently retired by the department. [2000 c 107 § 89; 1983 1st ex.s. c 46 § 157; 1975 1st ex.s. c 183 § 5. Formerly RCW 75.44.120, 75.28.515.]

**Legislative finding and intent—1975 1st ex.s. c 183:** See note following RCW 77.80.020.

**77.80.040 Disposition of vessels and gear—Prohibition against using purchased vessels for fishing purposes.** The department may arrange for the insurance, storage, and resale or other disposition of vessels and gear purchased

under RCW 77.80.020. Vessels shall not be resold by the department to the seller or the seller's immediate family. The vessels shall not be used by any owner or operator: (1) As a commercial fishing or charter vessel in state waters; or (2) to deliver fish to a place or port in the state. The department shall require that the purchasers and other users of vessels sold by the department execute suitable instruments to insure compliance with the requirements of this section. The director may commence suit or be sued on such an instrument in a state court of record or United States district court having jurisdiction. [2000 c 107 § 90; 1983 1st ex.s. c 46 § 158; 1979 ex.s. c 43 § 2; 1975 1st ex.s. c 183 § 6. Formerly RCW 75.44.130, 75.28.520.]

**Legislative finding and intent—1975 1st ex.s. c 183:** See note following RCW 77.80.020.

**77.80.050 Rules—Administration of chapter.** The director shall adopt rules for the administration of this chapter. To assist the department in the administration of this chapter, the director may contract with persons not employed by the state and may enlist the aid of other state agencies. [2008 c 252 § 3; 1995 c 269 § 3201; 1983 1st ex.s. c 46 § 159; 1979 ex.s. c 43 § 4; 1975-'76 2nd ex.s. c 34 § 172; 1975 1st ex.s. c 183 § 8. Formerly RCW 75.44.140, 75.28.530.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

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

**Legislative finding and intent—1975 1st ex.s. c 183:** See note following RCW 77.80.020.

**77.80.060 Vessel, gear, license, and permit reduction fund.** (1) The director is responsible for the administration and disbursement of all funds, goods, commodities, and services received by the state under this chapter.

(2) There is created within the state treasury a fund to be known as the "vessel, gear, license, and permit reduction fund". This fund shall be used for purchases under RCW 77.80.020 and for the administration of this chapter. This fund shall be credited with federal or other funds received to carry out the purposes of this chapter and the proceeds from the sale or other disposition of property purchased under RCW 77.80.020. [2008 c 252 § 4; 2000 c 107 § 91; 1983 1st ex.s. c 46 § 160; 1977 ex.s. c 230 § 5; 1975 1st ex.s. c 183 § 9. Formerly RCW 75.44.150, 75.28.535.]

**Legislative finding and intent—1975 1st ex.s. c 183:** See note following RCW 77.80.020.

## Chapter 77.85 RCW SALMON RECOVERY

### Sections

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**77.85.005 Findings—Intent.** The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.

The legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government, and that the state may best accomplish this objective by integrating local and regional recovery activities into a statewide strategy that can make the most effective use of provisions of federal laws allowing for a state lead in salmon recovery, delivered through implementation activities consistent with regional and watershed recovery plans. The legislature also finds that a statewide salmon recovery strategy must be developed and implemented through an active public involvement process in order to ensure public participation in, and support for, salmon recovery. The legislature also finds that there is a substantial link between the provisions of the federal endangered species act and the federal clean water act (33 U.S.C. Sec. 1251 et seq.). The legislature further finds that habitat restoration is a vital component of salmon recovery efforts. Therefore, it is the intent of the legislature to specifically address salmon habitat restoration in a coordinated manner and to develop a structure that allows for the coordinated delivery of federal, state, and local assistance to communities for habitat projects that will assist in the recovery and enhancement of salmon stocks. A strong watershed-

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based locally implemented plan is essential for local, regional, and statewide salmon recovery.

The legislature also finds that credible scientific review and oversight is essential for any salmon recovery effort to be successful.

The legislature further finds that it is important to monitor the overall health of the salmon resource to determine if recovery efforts are providing expected returns. It is important to monitor salmon habitat projects and salmon recovery activities to determine their effectiveness in order to secure federal acceptance of the state's approach to salmon recovery. Adaptive management cannot exist without monitoring. For these reasons, the legislature believes that a coordinated and integrated monitoring system should be developed and implemented.

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end, the salmon recovery office should be created within the governor's office to provide overall coordination of the state's response; an independent science panel is needed to provide scientific review and oversight; a coordinated state funding process should be established through a salmon recovery funding board; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat projects to be funded by state agencies; habitat projects should be implemented without delay; and a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively. [2005 c 309 § 1; 1999 sp.s. c 13 § 1; 1998 c 246 § 1. Formerly RCW 75.46.005.]

**Severability—1999 sp.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 13 § 24.]

**Effective date—1999 sp.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 sp.s. c 13 § 25.]

**77.85.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under RCW 77.85.060(2). Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the

current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, state agency, a combination of such governments through interlocal or interagency agreements, a nonprofit organization, regional fisheries enhancement group, or one or more private citizens. A project sponsored by a state agency may be funded by the board only if it is included on the habitat project list submitted by the lead entity for that area and the state agency has a local partner that would otherwise qualify as a project sponsor.

(7) "Regional recovery organization" or "regional salmon recovery organization" means an entity formed under RCW 77.85.090 for the purpose of recovering salmon, which is recognized in statute or by the governor's salmon recovery office created in RCW 77.85.030.

(8) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(9) "Salmon recovery plan" means a state or regional plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(10) "Salmon recovery region" means geographic areas of the state identified or formed under RCW 77.85.090 that encompass groups of watersheds in the state with common stocks of salmon identified for recovery activities, and that generally are consistent with the geographic areas within the state identified by the national oceanic and atmospheric administration or the United States fish and wildlife service for activities under the federal endangered species act.

(11) "Salmon recovery strategy" means the strategy adopted under RCW 77.85.150 and includes the compilation of all subbasin and regional salmon recovery plans developed in response to a proposed or actual listing under the federal endangered species act with state hatchery, harvest, and hydropower plans compiled in accordance with RCW 77.85.150.

(12) "Tribe" or "tribes" means federally recognized Indian tribes.

(13) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(14) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owner's property. [2007 c 444 § 1; 2005 c 309 § 2; 2002 c 210 § 1; 2000 c 107 § 92; 1998 c 246 § 2. Formerly RCW 75.46.010.]

**77.85.020 Report to the legislature and governor.** (1) No later than January 31, 2009, and every odd-numbered year until and including 2015, the governor's salmon recovery office shall submit a biennial state of the salmon report to the

legislature and the governor regarding the implementation of the state's salmon recovery strategy. The report must include the following:

(a) A summary of habitat projects including but not limited to:

(i) A summary of accomplishments in removing barriers to salmon passage and an identification of existing barriers;

(ii) A summary of salmon restoration efforts undertaken in the past two years;

(iii) A summary of the role which private volunteer initiatives contribute in salmon habitat restoration efforts; and

(iv) A summary of efforts taken to protect salmon habitat;

(b) A summary of harvest and hatchery management activities affecting salmon recovery;

(c) A summary of the number and types of violations of existing laws pertaining to salmon. The summary may include information about the types of sanctions imposed for these violations.

(2) The report may include the following:

(a) A description of the amount of in-kind financial contributions, including volunteer, private, state, federal, tribal, as available, and local government funds directly spent on salmon recovery in response to endangered species act listings; and

(b) Information on the estimated carrying capacity of new habitat created pursuant to chapter 246, Laws of 1998.

(3) The report shall summarize the monitoring data coordinated by the forum on monitoring salmon recovery and watershed health. The summary may include but is not limited to data and analysis related to:

(a) Measures of progress in fish recovery;

(b) Measures of factors limiting recovery as well as trends in such factors; and

(c) The status of implementation of projects and activities.

(4) The department, the department of ecology, the department of natural resources, the state conservation commission, and the forum on monitoring salmon recovery and watershed health shall provide to the governor's salmon recovery office information requested by the office necessary to prepare the state of the salmon report and other reports produced by the office. [2007 c 444 § 2; 2005 c 309 § 3; 1998 c 246 § 4. Formerly RCW 75.46.030.]

**77.85.030 Governor's salmon recovery office—Creation—Purpose and duties.** (*Expires June 30, 2015.*) (1)

The governor's salmon recovery office is created within the office of the governor to coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. The primary purpose of the office is to coordinate and assist in the development, implementation, and revision of regional salmon recovery plans as an integral part of a statewide strategy developed consistent with the guiding principles and procedures under RCW 77.85.150.

(2) The governor's salmon recovery office is responsible for maintaining the statewide salmon recovery strategy to reflect applicable provisions of regional recovery plans, habitat protection and restoration plans, water quality plans, and

other private, local, regional, state agency and federal plans, projects, and activities that contribute to salmon recovery.

(3) The governor's salmon recovery office shall also gather regional recovery plans from regional recovery organizations and submit the plans to the federal fish services for adoption as federal recovery plans. The governor's salmon recovery office shall also work with regional salmon recovery organizations on salmon recovery issues in order to ensure a coordinated and consistent statewide approach to salmon recovery. The governor's salmon recovery office shall work with federal agencies to accomplish implementation of federal commitments in the recovery plans.

(4) The governor's salmon recovery office may also:

(a) Assist state agencies, local governments, landowners, and other interested parties in obtaining federal assurances that plans, programs, or activities are consistent with fish recovery under the federal endangered species act;

(b) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive branch agencies for issues related to the state's salmon recovery plans;

(c) Provide periodic reports pursuant to RCW 77.85.020;

(d) Provide, as appropriate, technical and administrative support to the independent science panel or other science-related panels on issues pertaining to salmon recovery;

(e) In cooperation with the regional recovery organizations, prepare a timeline and implementation plan that, together with a schedule and recommended budget, identifies specific actions in regional recovery plans for state agency actions and assistance necessary to implement local and regional recovery plans; and

(f) As necessary, provide recommendations to the legislature that would further the success of salmon recovery, including recommendations for state agency actions in the succeeding biennium and state financial and technical assistance for projects and activities to be undertaken in local and regional salmon recovery plans. The recommendations may include:

(i) The need to expand or improve nonregulatory programs and activities; and

(ii) The need for state funding assistance to recovery activities and projects.

(5) This section expires June 30, 2015. [2007 c 444 § 3; 2005 c 309 § 4; 2000 c 107 § 93; 1999 sp.s. c 13 § 8; 1998 c 246 § 5. Formerly RCW 75.46.040.]

**Effective date—2007 c 444 § 3:** "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 30, 2007." [2007 c 444 § 9.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.040 Independent science panel on salmon recovery—Purpose.** (1) The governor may request the Washington academy of sciences, when organized pursuant to chapter 305, Laws of 2005, to impanel an independent science panel on salmon recovery to respond to requests for review pursuant to subsection (2) of this section. The panel shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

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Based upon available funding, the governor's salmon recovery office may contract for services of the independent science panel for compensation under chapter 39.29 RCW.

(2) The independent science panel shall be governed by guidelines and practices governing the activities of the Washington academy of sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office may, during the time it is constituted, request that the panel review, investigate, and provide its findings on scientific questions relating to the state's salmon recovery efforts. The science panel does not have the authority to review individual projects or habitat project lists developed under RCW 77.85.050 or 77.85.060 or to make policy decisions. The panel shall submit its findings and recommendations under this subsection to the legislature and the governor. [2007 c 444 § 4; 2005 c 309 § 5; 2000 c 107 § 94; 1999 sp.s. c 13 § 10; 1998 c 246 § 6. Formerly RCW 75.46.050.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.050 Habitat project lists.** (1)(a) Counties, cities, and tribal governments must jointly designate, by resolution or by letters of support, the area for which a habitat project list is to be developed and the lead entity that is to be responsible for submitting the habitat project list. No project included on a habitat project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, regional recovery organization, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups, business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other habitat interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat.

(c) The committee shall compile a list of habitat projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIs, or any other area as agreed to by the counties, cities, and tribes in resolutions or in letters of support meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

(3) The lead entity shall submit the habitat project list to the [salmon recovery funding] board in accordance with procedures adopted by the board. [2005 c 309 § 6; 1999 sp.s. c 13 § 11; 1998 c 246 § 7. Formerly RCW 75.46.060.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.060 Critical pathways methodology—Habitat work schedule.** (1) Critical pathways methodology shall be used to develop a habitat project list and a habitat work

schedule that ensures salmon habitat projects will be prioritized and implemented in a logical sequential manner that produces habitat capable of sustaining healthy populations of salmon.

(2) The critical pathways methodology shall:

(a) Include a limiting factors analysis for salmon in streams, rivers, tributaries, estuaries, and subbasins in the region. The technical advisory group shall have responsibility for the limiting factors analysis;

(b) Identify local habitat projects that sponsors are willing to undertake. The projects identified must have a written agreement from the landowner on which the project is to be implemented. Project sponsors shall have the lead responsibility for this task;

(c) Identify how projects will be monitored and evaluated. The project sponsor, in consultation with the technical advisory group and the appropriate landowner, shall have responsibility for this task;

(d) Include a review of monitoring data, evaluate project performance, and make recommendations to the committee established under RCW 77.85.050 and to the technical review team. The technical advisory group has responsibility for this task; and

(e) Describe the adaptive management strategy that will be used. The committee established under RCW 77.85.050 shall have responsibility for this task. If a committee has not been formed, the technical advisory group shall have the responsibility for this task.

(3) The habitat work schedule shall include all projects developed pursuant to subsection (2) of this section, and shall identify and coordinate with any other salmon habitat project implemented in the region, including habitat preservation projects funded through the Washington wildlife and recreation program, the conservation reserve enhancement program, and other conservancy programs. The habitat work schedule shall also include the start date, duration, estimated date of completion, estimated cost, and, if appropriate, the affected salmonid species of each project. Each schedule shall be updated on an annual basis to depict new activities. [2000 c 107 § 95; 1999 sp.s. c 13 § 12; 1998 c 246 § 8. Formerly RCW 75.46.070.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.080 Sea grant program—Technical assistance authorized.** The sea grant program at the University of Washington is authorized to provide technical assistance to volunteer groups and other project sponsors in designing and implementing habitat projects that address the limiting factors analysis required under RCW 77.85.060. The cost for such assistance may be covered on a fee-for-service basis. [2000 c 107 § 98; 1999 sp.s. c 13 § 14; 1998 c 246 § 11. Formerly RCW 75.46.100.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.090 Southwest Washington salmon recovery region—Created—Recognition as a regional recovery organization—Puget Sound salmon recovery organizations.** (1) The southwest Washington salmon recovery

region, whose boundaries are provided in chapter 60, Laws of 1998, is created.

(2) Lead entities within a salmon recovery region that agree to form a regional salmon recovery organization may be recognized by the governor's salmon recovery office created in RCW 77.85.030, during the time it is constituted, as a regional recovery organization. The regional recovery organization may plan, coordinate, and monitor the implementation of a regional recovery plan in accordance with RCW 77.85.150. Regional recovery organizations existing as of July 24, 2005, that have developed draft recovery plans approved by the governor's salmon recovery office by July 1, 2005, may continue to plan, coordinate, and monitor the implementation of regional recovery plans.

(3) Beginning January 1, 2008, the leadership council, created under chapter 90.71 RCW, shall serve as the regional salmon recovery organization for Puget Sound salmon species, except for the program known as the Hood Canal summer chum evolutionarily significant unit area, which the Hood Canal coordinating council shall continue to administer under chapter 90.88 RCW. [2007 c 444 § 5; 2007 c 341 § 49; 2005 c 309 § 7; 2000 c 107 § 99; 1998 c 246 § 12. Formerly RCW 75.46.110.]

**Reviser's note:** This section was amended by 2007 c 341 § 49 and by 2007 c 444 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**77.85.100 Work group—Evaluation of mitigation alternatives.** (1) The departments of transportation, fish and wildlife, and ecology, and tribes shall convene a work group to develop policy guidance to evaluate mitigation alternatives. The policy guidance shall be designed to enable committees established under RCW 77.85.050 to develop and implement habitat project lists that maximize environmental benefits from project mitigation while reducing project design and permitting costs. The work group shall seek technical assistance to ensure that federal, state, treaty right, and local environmental laws and ordinances are met. The purpose of this section is not to increase regulatory requirements or expand departmental authority.

(2) The work group shall develop guidance for determining alternative mitigation opportunities. Such guidance shall include criteria and procedures for identifying and evaluating mitigation opportunities within a watershed. Such guidance shall create procedures that provide alternative mitigation that has a low risk to the environment, yet has high net environmental, social, and economic benefits compared to status quo options.

(3) The evaluation shall include:

(a) All elements of mitigation, including but not limited to data requirements, decision making, state and tribal agency coordination, and permitting; and

(b) Criteria and procedures for identifying and evaluating mitigation opportunities, including but not limited to the criteria in chapter 90.74 RCW.

(4) Committees established under RCW 77.85.050 shall coordinate voluntary collaborative efforts between habitat project proponents and mitigation project proponents. Miti-

gation funds may be used to implement projects identified by a work plan to mitigate for the impacts of a transportation or other development proposal or project.

(5) For the purposes of this section, "mitigation" has the same meaning as provided in RCW 90.74.010. [2000 c 107 § 100; 1998 c 246 § 16. Formerly RCW 75.46.120.]

**77.85.110 Salmon recovery funding board—Creation—Membership.** (1) The salmon recovery funding board is created consisting of ten members.

(2) Five members of the board shall be voting members who are appointed by the governor, subject to confirmation by the senate. One of these voting members shall be a cabinet-level appointment as the governor's representative to the board. Board members who represent the general public shall not have a financial or regulatory interest in salmon recovery. The governor shall appoint one of the general public members of the board as the chair. The voting members of the board shall be appointed for terms of four years, except that two members initially shall be appointed for terms of two years and three members shall initially be appointed for terms of three years. In making the appointments, the governor shall seek a board membership that collectively provide the expertise necessary to provide strong fiscal oversight of salmon recovery expenditures, and that provide extensive knowledge of local government processes and functions and an understanding of issues relevant to salmon recovery in Washington state. The governor shall appoint at least three of the voting members of the board no later than ninety days after July 1, 1999. Vacant positions on the board shall be filled in the same manner as the original appointments. The governor may remove members of the board for good cause.

In addition to the five voting members of the board, the following five state officials shall serve as ex officio nonvoting members of the board: The director of the department of fish and wildlife, the executive director of the conservation commission, the secretary of transportation, the director of the department of ecology, and the commissioner of public lands. The state officials serving in an ex officio capacity may designate a representative of their respective agencies to serve on the board in their behalf. Such designations shall be made in writing and in such manner as is specified by the board.

(3) Staff support to the board shall be provided by the recreation and conservation office. For administrative purposes, the board shall be located with the recreation and conservation office.

(4) Members of the board who do not represent state agencies shall be compensated as provided by RCW 43.03.250. Members of the board shall be reimbursed for travel expenses as provided by RCW 43.03.050 and 43.03.060. [2007 c 241 § 20; 1999 sp.s. c 13 § 3. Formerly RCW 75.46.150.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.120 Board responsibilities—Grants and loans administration assistance.** (1) The salmon recovery funding board is responsible for making grants and loans for

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salmon habitat projects and salmon recovery activities from the amounts appropriated to the board for this purpose. To accomplish this purpose the board may:

(a) Provide assistance to grant applicants regarding the procedures and criteria for grant and loan awards;

(b) Make and execute all manner of contracts and agreements with public and private parties as the board deems necessary, consistent with the purposes of this chapter;

(c) Accept any gifts, grants, or loans of funds, property, or financial or other aid in any form from any other source on any terms that are not in conflict with this chapter;

(d) Adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter; and

(e) Do all acts and things necessary or convenient to carry out the powers expressly granted or implied under this chapter.

(2) The recreation and conservation office shall provide all necessary grants and loans administration assistance to the board, and shall distribute funds as provided by the board in RCW 77.85.130. [2007 c 241 § 21; 2000 c 107 § 101; 1999 sp.s. c 13 § 4. Formerly RCW 75.46.160.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.130 Allocation of funds—Procedures and criteria.**

(1) The salmon recovery funding board shall develop procedures and criteria for allocation of funds for salmon habitat projects and salmon recovery activities on a statewide basis to address the highest priorities for salmon habitat protection and restoration. To the extent practicable the board shall adopt an annual allocation of funding. The allocation should address both protection and restoration of habitat, and should recognize the varying needs in each area of the state on an equitable basis. The board has the discretion to partially fund, or to fund in phases, salmon habitat projects. The board may annually establish a maximum amount of funding available for any individual project, subject to available funding. No projects required solely as a mitigation or a condition of permitting are eligible for funding.

(2)(a) In evaluating, ranking, and awarding funds for projects and activities the board shall give preference to projects that:

(i) Are based upon the limiting factors analysis identified under RCW 77.85.060;

(ii) Provide a greater benefit to salmon recovery based upon the stock status information contained in the department of fish and wildlife salmonid stock inventory (SASSI), the salmon and steelhead habitat inventory and assessment project (SSHIAP), and any comparable science-based assessment when available;

(iii) Will benefit listed species and other fish species;

(iv) Will preserve high quality salmonid habitat;

(v) Are included in a regional or watershed-based salmon recovery plan that accords the project, action, or area a high priority for funding;

(vi) Are, except as provided in RCW 77.85.240, sponsored by an entity that is a Puget Sound partner, as defined in RCW 90.71.010; and

(vii) Are projects referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(b) In evaluating, ranking, and awarding funds for projects and activities the board shall also give consideration to projects that:

- (i) Are the most cost-effective;
- (ii) Have the greatest matched or in-kind funding;
- (iii) Will be implemented by a sponsor with a successful record of project implementation;
- (iv) Involve members of the veterans conservation corps established in RCW 43.60A.150; and
- (v) Are part of a regionwide list developed by lead entities.

(3) The board may reject, but not add, projects from a habitat project list submitted by a lead entity for funding.

(4) The board shall establish criteria for determining when block grants may be made to a lead entity. The board may provide block grants to the lead entity to implement habitat project lists developed under RCW 77.85.050, subject to available funding. The board shall determine an equitable minimum amount of project funds for each recovery region, and shall distribute the remainder of funds on a competitive basis. The board may also provide block grants to the lead entity or regional recovery organization to assist in carrying out functions described under this chapter. Block grants must be expended consistent with the priorities established for the board in subsection (2) of this section. Lead entities or regional recovery organizations receiving block grants under this subsection shall provide an annual report to the board summarizing how funds were expended for activities consistent with this chapter, including the types of projects funded, project outcomes, monitoring results, and administrative costs.

(5) The board may waive or modify portions of the allocation procedures and standards adopted under this section in the award of grants or loans to conform to legislative appropriations directing an alternative award procedure or when the funds to be awarded are from federal or other sources requiring other allocation procedures or standards as a condition of the board's receipt of the funds. The board shall develop an integrated process to manage the allocation of funding from federal and state sources to minimize delays in the award of funding while recognizing the differences in state and legislative appropriation timing.

(6) The board may award a grant or loan for a salmon recovery project on private or public land when the landowner has a legal obligation under local, state, or federal law to perform the project, when expedited action provides a clear benefit to salmon recovery, and there will be harm to salmon recovery if the project is delayed. For purposes of this subsection, a legal obligation does not include a project required solely as a mitigation or a condition of permitting.

(7) Property acquired or improved by a project sponsor may be conveyed to a federal agency if: (a) The agency agrees to comply with all terms of the grant or loan to which the project sponsor was obligated; or (b) the board approves: (i) Changes in the terms of the grant or loan, and the revision or removal of binding deed of right instruments; and (ii) a memorandum of understanding or similar document ensuring that the facility or property will retain, to the extent feasible, adequate habitat protections; and (c) the appropriate legisla-

tive authority of the county or city with jurisdiction over the project area approves the transfer and provides notification to the board.

(8) Any project sponsor receiving funding from the salmon recovery funding board that is not subject to disclosure under chapter 42.56 RCW must, as a mandatory contractual prerequisite to receiving the funding, agree to disclose any information in regards to the expenditure of that funding as if the project sponsor was subject to the requirements of chapter 42.56 RCW.

(9) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2007 c 341 § 36; 2007 c 257 § 1. Prior: 2005 c 309 § 8; 2005 c 271 § 1; 2005 c 257 § 3; prior: 2000 c 107 § 102; 2000 c 15 § 1; 1999 sp.s. c 13 § 5. Formerly RCW 75.46.170.]

**Reviser's note:** This section was amended by 2007 c 257 § 1 and by 2007 c 341 § 36, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Findings—Purpose—2005 c 257:** See note following RCW 43.60A.150.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.135 Habitat project funding—Statement of environmental benefits—Development of outcome-focused performance measures.** In providing funding for habitat projects, the salmon recovery funding board shall require recipients to incorporate the environmental benefits of the project into their grant applications, and the board shall utilize the statement of environmental benefits in its prioritization and selection process. The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the board should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section. [2001 c 227 § 9.]

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**77.85.140 Habitat project lists—Tracking of funds—Report.** (1) Habitat project lists shall be submitted to the salmon recovery funding board for funding at least once a year on a schedule established by the board. The board shall provide the legislature with a list of the proposed projects and a list of the projects funded by October 1st of each year for informational purposes. Project sponsors who complete salmon habitat projects approved for funding from habitat project lists and have met grant application deadlines will be paid by the salmon recovery funding board within thirty days of project completion.

(2) The recreation and conservation office shall track all funds allocated for salmon habitat projects and salmon recovery activities on behalf of the board, including both funds allocated by the board and funds allocated by other state or

federal agencies for salmon recovery or water quality improvement.

(3) Beginning in December 2000, the board shall provide a biennial report to the governor and the legislature on salmon recovery expenditures. This report shall be coordinated with the state of the salmon report required under RCW 77.85.020. [2007 c 241 § 22; 2001 c 303 § 1; 2000 c 107 § 103; 1999 sp.s. c 13 § 6. Formerly RCW 75.46.180.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.150 Statewide salmon recovery strategy—Prospective application.** (1) The governor shall, with the assistance of the governor's salmon recovery office, during the time it is constituted, maintain and revise, as appropriate, a statewide salmon recovery strategy.

(2) The governor and the salmon recovery office shall be guided by the following considerations in maintaining and revising the strategy:

(a) The strategy should identify statewide initiatives and responsibilities with regional recovery plans and local watershed initiatives as the principal means for implementing the strategy;

(b) The strategy should emphasize collaborative, incentive-based approaches;

(c) The strategy should address all factors limiting the recovery of Washington's listed salmon stocks, including habitat and water quality degradation, harvest and hatchery management, inadequate streamflows, and other barriers to fish passage. Where other limiting factors are beyond the state's jurisdictional authorities to respond to, such as some natural predators and high seas fishing, the strategy shall include the state's requests for federal action to effectively address these factors;

(d) The strategy should identify immediate actions necessary to prevent extinction of a listed salmon stock, establish performance measures to determine if restoration efforts are working, recommend effective monitoring and data management, and recommend to the legislature clear and certain measures to be implemented if performance goals are not met;

(e) The strategy shall rely on the best scientific information available and provide for incorporation of new information as it is obtained;

(f) The strategy should seek a fair allocation of the burdens and costs upon economic and social sectors of the state whose activities may contribute to limiting the recovery of salmon; and

(g) The strategy should seek clear measures and procedures from the appropriate federal agencies for removing Washington's salmon stocks from listing under the federal act.

(3) If the strategy is updated, an active and thorough public involvement process, including early and meaningful opportunity for public comment, must be utilized. In obtaining public comment, the governor's salmon recovery office shall work with regional salmon recovery organizations throughout the state and shall encourage regional and local

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recovery planning efforts to ensure an active public involvement process.

(4) This section shall apply prospectively only and not retroactively. Nothing in this section shall be construed to invalidate actions taken in recovery planning at the local, regional, or state level prior to July 1, 1999. [2007 c 444 § 6; 2005 c 309 § 9; 1999 sp.s. c 13 § 9. Formerly RCW 75.46.190.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.160 Salmon monitoring data, information.**

State salmon monitoring data provided by lead entities, regional fisheries enhancement groups, and others shall be included in the database of SASSI [salmon and steelhead stock inventory] and SSHIAP [salmon and steelhead habitat inventory assessment project]. Information pertaining to habitat preservation projects funded through the Washington wildlife and recreation program, the conservation reserve enhancement program, and other conservancy programs related to salmon habitat shall be included in the SSHIAP database. [1999 sp.s. c 13 § 13. Formerly RCW 75.46.200.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.170 Salmon recovery account.** The salmon recovery account is created in the state treasury. To the account shall be deposited such funds as the legislature directs or appropriates to the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for salmon recovery. [1999 sp.s. c 13 § 16. Formerly RCW 75.46.210.]

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**77.85.180 Findings.** (1) The legislature finds that the forests and fish report as defined in RCW 76.09.020 was developed through extensive negotiations with the federal agencies responsible for administering the endangered species act and the clean water act. The legislature further finds that the forestry industry, small landowners, tribal governments, state and federal agencies, and counties have worked diligently for nearly two years to reach agreement on scientifically based changes to the forest practices rules, set forth in the forests and fish report as defined in RCW 76.09.020. The legislature further finds that if existing forest practices rules are amended as proposed in the forests and fish report as defined in RCW 76.09.020, the resulting changes in forest practices (a) will lead to: (i) Salmon habitat that meets riparian functions vital to the long-term recovery of salmon on more than sixty thousand miles of streams in this state; (ii) identification of forest roads contributing to habitat degradation and corrective action to remedy those problems to protect salmon habitat; (iii) increased protection of steep and unstable slopes; and (iv) the implementation of scientifically based adaptive management and monitoring processes for evaluating the impacts of forest practices on aquatic resources, as defined in RCW 76.09.020, and a process for amending the forest practices rules to incorporate new information as it becomes available; (b) will lead to the protection of aquatic resources to the maximum extent practicable con-

sistent with maintaining commercial forest management as an economically viable use of lands suitable for that purpose; and (c) will provide a regulatory climate and structure more likely to keep landowners from converting forest lands to other uses that would be less desirable for salmon recovery.

(2) The legislature further finds that the changes in laws and rules contemplated by chapter 4, Laws of 1999 sp. sess., taken as a whole, constitute a comprehensive and coordinated program to provide substantial and sufficient contributions to salmon recovery and water quality enhancement in areas impacted by forest practices and are intended to fully satisfy the requirements of the endangered species act (16 U.S.C. Sec. 1531 et seq.) with respect to incidental take of salmon and other aquatic resources and the clean water act (33 U.S.C. Sec. 1251 et seq.) with respect to nonpoint source pollution attributable to forest practices.

(3) The legislature finds that coordination is needed between the laws relating to forestry in chapter 76.09 RCW and the state salmon recovery strategy being developed under this chapter. The coordination should ensure that nonfederal forest lands are managed in ways that make appropriate contributions to the recovery of salmonid fish, water quality, and related environmental amenities while encouraging continued investments in those lands for commercial forestry purposes. Specifically, the legislature finds that forest practices rules relating to water quality, salmon, certain other species of fish, certain species of stream-associated amphibians, and their respective habitats should be coordinated with the rules and policies relating to other land uses through the statewide salmon recovery planning process. The legislature further finds that this subchapter is but one part of a comprehensive salmon strategy as required in this chapter, and this investment in salmon habitat will be of little value if a comprehensive state plan is not completed and fully implemented.

(4) The legislature recognizes that the adoption of forest practices rules consistent with the forests and fish report as defined in RCW 76.09.020 will impose substantial financial burdens on forest landowners which, if not partially offset through other changes in the laws and rules governing forestry, could lead to significantly reduced silvicultural investments on nonfederal lands, deterioration in the quality, condition, and amounts of forests on those lands, and long-term adverse effects on fish and wildlife habitat and other environmental amenities associated with well managed forests. Moreover, as the benefits of the proposed revisions to the forest practices rules will benefit the general public, chapter 4, Laws of 1999 sp. sess. suggests that some of these costs be shared with the general public.

(5) As an integral part of implementing the salmon recovery strategy, chapter 4, Laws of 1999 sp. sess. (a) provides direction to the forest practices board, the department of natural resources, and the department of ecology with respect to the adoption, implementation, and enforcement of rules relating to forest practices and the protection of aquatic resources; (b) provides additional enforcement tools to the department of natural resources to enforce the forest practices rules; (c) anticipates the need for adequate and consistent funding for the various programmatic elements necessary to fully implement the strategy over time and derive the long-term benefits; (d) provides for the acquisition by the state of forest lands within certain stream channel migration zones

where timber harvest will not be allowed; (e) provides for small landowners to have costs shared for a portion of any extraordinary economic losses attributable to the revisions to the forest practices rules required by chapter 4, Laws of 1999 sp. sess.; and (f) amends other existing laws to aid in the implementation of the recommendations set forth in the forests and fish report as defined in RCW 76.09.020. [1999 sp.s. c 4 § 101. Formerly RCW 75.46.300.]

**Part headings not law—1999 sp.s. c 4:** "Part headings used in this act are not any part of the law." [1999 sp.s. c 4 § 1403.]

**77.85.190 Federal assurances in forests and fish report—Events constituting failure of assurances—Governor's authority to negotiate.**

(1) Chapter 4, Laws of 1999 sp. sess. has been enacted on the assumption that the federal assurances described in the forests and fish report as defined in RCW 76.09.020 will be obtained and that forest practices conducted in accordance with chapter 4, Laws of 1999 sp. sess. and the rules adopted under chapter 4, Laws of 1999 sp. sess. will not be subject to additional regulations or restrictions for aquatic resources except as provided in the forests and fish report.

(2) The occurrence of any of the following events shall constitute a failure of assurances:

(a) Either (i) the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering each aquatic resource that is listed as threatened under the endangered species act within two years after the date on which the aquatic resource is so listed or, in the case of bull trout, within two years after August 18, 1999; or (ii) any such rule fails to permit any incidental take that would occur from the conduct of forest practices in compliance with the rules adopted under chapter 4, Laws of 1999 sp. sess. or fails to confirm that such forest practices would not otherwise be in violation of the endangered species act and the regulations promulgated under that act. However, this subsection (2)(a) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(b) Either the national marine fisheries service or the United States fish and wildlife service shall promulgate an effective rule under 16 U.S.C. Sec. 1533(d) covering any aquatic resource that would preclude the conduct of forest practices consistent with the prescriptions outlined in the forests and fish report. However, this subsection (2)(b) is not applicable to any aquatic resource covered by an incidental take permit described in (c) of this subsection;

(c) Either the secretary of the interior or the secretary of commerce fails to issue an acceptable incidental take permit under 16 U.S.C. Sec. 1539(a) covering all fish and wildlife species included within aquatic resources on or before June 30, 2005. An acceptable incidental take permit will (i) permit the incidental take, if any, of all fish and wildlife species included within aquatic resources resulting from the conduct of forest practices in compliance with the prescriptions outlined in the forests and fish report; (ii) provide protection to the state of Washington and its subdivisions and to landowners and operators; (iii) not require the commitment of additional resources beyond those required to be committed under the forests and fish report; and (iv) provide "no-surprises" protection as described in 50 C.F.R. Parts 17 and 222 (1998);

(d) Either the national marine fisheries service or the United States fish and wildlife service fails to promulgate an effective rule under 16 U.S.C. Sec. 1533(d) within five years after the date on which a fish species is listed as threatened or endangered under the endangered species act which prohibits actions listed under 16 U.S.C. 1538;

(e) The environmental protection agency or department of ecology fails to provide the clean water act assurances described in appendix M to the forests and fish report; or

(f) The assurances described in (a) through (e) of this subsection are reversed or otherwise rendered ineffective by subsequent federal legislation or rule making or by final decision of any court of competent jurisdiction.

Upon the occurrence of a failure of assurances, any agency, tribe, or other interested person including, without limitation, any forest landowner, may provide written notice of the occurrence of such failure of assurances to the legislature and to the office of the governor. Promptly upon receipt of such a notice, the governor shall review relevant information and if he or she determines that a failure of assurances has occurred, the governor shall make such a finding in a written report with recommendations and deliver such report to the legislature. Upon notice of the occurrence of a failure of assurances, the legislature shall review chapter 4, Laws of 1999 sp. sess., all rules adopted by the forest practices board, the department of ecology, or the department of fish and wildlife at any time after January 1, 1999, that were adopted primarily for the protection of one or more aquatic resources and affect forest practices and the terms of the forests and fish report, and shall take such action, including the termination of funding or the modification of other statutes, as it deems appropriate.

(3) The governor may negotiate with federal officials, directly or through designated representatives, on behalf of the state and its agencies and subdivisions, to obtain assurances from federal agencies to the effect that compliance with the forest practices rules as amended under chapter 4, Laws of 1999 sp. sess. and implementation of the recommendations in the forests and fish report will satisfy federal requirements under the endangered species act and the clean water act and related regulations, including the negotiation of a rule adopted under section 4(d) of the endangered species act, entering into implementation agreements and receiving incidental take permits under section 10 of the endangered species act or entering into other intergovernmental agreements.

(4)(a) It is expressly understood that the state will pursue a rule delineating federal assurances under 16 U.S.C. Sec. 1533(d) and may concurrently develop a Sec. 10(a) habitat conservation plan by June 2005. The department of natural resources must report regularly to the house of representatives and senate natural resources committees on the progress of the program, and on any technical or legal issues that may arise.

(b) The forest and fish agreement as embodied in chapter 4, Laws of 1999 sp. sess. and this chapter, the rules adopted by the forest practices board to implement this chapter, and all protections for small forest landowners, are reaffirmed as part of the extension of time granted in chapter 228, Laws of 2002 and will be collectively included in the federal assurances sought by the state of Washington. [2002 c 228 § 1; 1999 sp.s. c 4 § 1301. Formerly RCW 75.46.350.]

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**Part headings not law—1999 sp.s. c 4:** See note following RCW 77.85.190.

**77.85.200 Salmon and steelhead recovery program—Management board—Duties—Termination of program.**

(1) A program for salmon and steelhead recovery is established in Clark, Cowlitz, Lewis, Skamania, and Wahkiakum counties within the habitat areas classified as the lower Columbia evolutionarily significant units by the federal national marine fisheries service. The management board created under subsection (2) of this section is responsible for developing and overseeing the implementation of the habitat portion of the salmon and steelhead recovery plan and is empowered to receive and disburse funds for the salmon and steelhead recovery initiatives. The management board created pursuant to this section shall constitute the lead entity and the committee established under RCW 77.85.050 responsible for fulfilling the requirements and exercising powers under this chapter.

(2) A management board consisting of fifteen voting members is created within the lower Columbia evolutionarily significant units. The members shall consist of one county commissioner or designee from each of the five participating counties selected by each county legislative authority; one member representing the cities contained within the lower Columbia evolutionarily significant units as a voting member selected by the cities in the lower Columbia evolutionarily significant units; a representative of the Cowlitz Tribe appointed by the tribe; one state legislator elected from one of the legislative districts contained within the lower Columbia evolutionarily significant units selected by that group of state legislators representing the area; five representatives to include at least one member who represents private property interests appointed by the five county commissioners or designees; one hydro utility representative nominated by hydro utilities and appointed by the five county commissioners or designees; and one representative nominated from the environmental community who resides in the lower Columbia evolutionarily significant units appointed by the five county commissioners or designees. The board shall appoint and consult a technical advisory committee, which shall include four representatives of state agencies one each appointed by the directors of the departments of ecology, fish and wildlife, and transportation, and the commissioner of public lands. The board may also appoint additional persons to the technical advisory committee as needed. The chair of the board shall be selected from among the members of the management board by the five county commissioners or designees and the legislator on the board. In making appointments under this subsection, the county commissioners shall consider recommendations of interested parties. Vacancies shall be filled in the same manner as the original appointments were selected. No action may be brought or maintained against any management board member, the management board, or any of its agents, officers, or employees for any noncontractual acts or omissions in carrying out the purposes of this section.

(3)(a) The management board shall participate in the development of a habitat recovery plan to implement its responsibilities under (b) of this subsection. The management board shall consider local watershed efforts and activi-

ties as well as habitat conservation plans in the development and implementation of the recovery plan. Any of the participating counties may continue its own efforts for restoring steelhead habitat. Nothing in this section limits the authority of units of local government to enter into interlocal agreements under chapter 39.34 RCW or any other provision of law.

(b) The management board is responsible for the development of a lower Columbia salmon and steelhead habitat recovery plan and for coordinating and monitoring the implementation of the plan. The management board will submit all future plans and amendments to plans to the governor's salmon recovery office for the incorporation of hatchery, harvest, and hydropower components of the statewide salmon recovery strategy for all submissions to the national marine fisheries service. In developing and implementing the habitat recovery plan, the management board will work with appropriate federal and state agencies, tribal governments, local governments, and the public to make sure hatchery, harvest, and hydropower components receive consideration in context with the habitat component. The management board may work in cooperation with the state and the national marine fisheries service to modify the plan, or to address habitat for other aquatic species that may be subsequently listed under the federal endangered species act. The management board may not exercise authority over land or water within the individual counties or otherwise preempt the authority of any units of local government.

(c) The management board shall prioritize as appropriate and approve projects and programs related to the recovery of lower Columbia river salmon and steelhead runs, including the funding of those projects and programs, and coordinate local government efforts as prescribed in the recovery plan. The management board shall establish criteria for funding projects and programs based upon their likely value in salmon and steelhead recovery. The management board may consider local economic impact among the criteria, but jurisdictional boundaries and factors related to jurisdictional population may not be considered as part of the criteria.

(d) The management board shall assess the factors for decline along each tributary basin in the lower Columbia. The management board is encouraged to take a stream-by-stream approach in conducting the assessment which utilizes state and local expertise, including volunteer groups, interest groups, and affected units of local government.

(4) The management board has the authority to hire and fire staff, including an executive director, enter into contracts, accept grants and other moneys, disburse funds, make recommendations to cities and counties about potential code changes and the development of programs and incentives upon request, pay all necessary expenses, and may choose a fiduciary agent. The management board shall report on its progress on a biennial basis to the legislative bodies of the five participating counties and the state natural resource-related agencies. The management board shall prepare a final report at the conclusion of the program describing its efforts and successes in developing and implementing the lower Columbia salmon and steelhead recovery plan. The final report shall be transmitted to the appropriate committees of the legislature, the legislative bodies of the participating counties, and the state natural resource-related agencies.

(5) The program terminates on July 1, 2010.

(6) For purposes of this section, "evolutionarily significant unit" means the habitat area identified for an evolutionarily significant unit of an aquatic species listed or proposed for listing as a threatened or endangered species under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). [2005 c 308 § 1; 2001 c 135 § 1; 2000 c 107 § 121; 1998 c 60 § 2. Formerly RCW 75.56.050.]

**Effective date—2001 c 135:** "This act takes effect August 1, 2001." [2001 c 135 § 3.]

**Finding—Intent—1998 c 60:** "The legislature recognizes the need to address listings that are made under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.) in a way that will make the most efficient use of existing efforts. The legislature finds that the principle of adaptive management requires that different models should be tried so that the lessons learned from these models can be put to use throughout the state. It is the intent of the legislature to create a program for southwestern Washington to address the recent steelhead listings and which takes full advantage of all state and local efforts at habitat restoration in that area to date." [2001 c 135 § 2; 1998 c 60 § 1.]

**Effective date—1998 c 60:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 19, 1998]." [1998 c 60 § 3.]

**77.85.220 Salmon intertidal habitat restoration planning process—Task force—Reports.** (1) If a limiting factors analysis has been conducted under this chapter for a specific geographic area and that analysis shows insufficient intertidal salmon habitat, the department of fish and wildlife and the county legislative authorities of the affected counties may jointly initiate a salmon intertidal habitat restoration planning process to develop a plan that addresses the intertidal habitat goals contained in the limiting factors analysis. The fish and wildlife commission and the county legislative authorities of the geographic area shall jointly appoint a task force composed of the following members:

(a) One representative of the fish and wildlife commission, appointed by the chair of the commission;

(b) Two representatives of the agricultural industry familiar with agricultural issues in the geographic area, one appointed by an organization active in the geographic area and one appointed by a statewide organization representing the industry;

(c) Two representatives of environmental interest organizations with familiarity and expertise of salmon habitat, one appointed by an organization in the geographic area and one appointed by a statewide organization representing environmental interests;

(d) One representative of a diking and drainage district, appointed by the individual districts in the geographic area or by an association of diking and drainage districts;

(e) One representative of the lead entity for salmon recovery in the geographic area, appointed by the lead entity;

(f) One representative of each county in the geographic area, appointed by the respective county legislative authorities; and

(g) One representative from the office of the governor.

(2) Representatives of the United States environmental protection agency, the United States natural resources conservation service, federal fishery agencies, as appointed by their regional director, and tribes with interests in the geo-

graphic area shall be invited and encouraged to participate as members of the task force.

(3) The task force shall elect a chair and adopt rules for conducting the business of the task force. Staff support for the task force shall be provided by the Washington state conservation commission.

(4) The task force shall:

(a) Review and analyze the limiting factors analysis for the geographic area;

(b) Initiate and oversee intertidal salmon habitat studies for enhancement of the intertidal area as provided in RCW 77.85.230;

(c) Review and analyze the completed assessments listed in RCW 77.85.230;

(d) Develop and draft an overall plan that addresses identified intertidal salmon habitat goals that has public support; and

(e) Identify appropriate demonstration projects and early implementation projects that are of high priority and should commence immediately within the geographic area.

(5) The task force may request briefings as needed on legal issues that may need to be considered when developing or implementing various plan options.

(6) Members of the task force shall be reimbursed by the conservation commission for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(7) The task force shall provide annual reports that provide an update on its activities to the fish and wildlife commission, to the involved county legislative authorities, and to the lead entity formed under this chapter. [2003 c 391 § 4.]

**Initiation of process—2003 c 391 §§ 4 and 5:** "The process established in sections 4 and 5 of this act shall be initiated as soon as practicable in Skagit county." [2003 c 391 § 7.]

**Severability—Effective date—2003 c 391:** See notes following RCW 77.57.030.

**77.85.230 Intertidal salmon enhancement plan—Elements—Initial and final plan.** (1) In consultation with the \*task force, the conservation commission may contract with universities, private consultants, nonprofit groups, or other entities to assist it in developing a plan incorporating the following elements:

(a) An inventory of existing tide gates located on streams in the county. The inventory shall include location, age, type, and maintenance history of the tide gates and other factors as determined by the task force in consultation with the county and diking and drainage districts;

(b) An assessment of the role of tide gates located on streams in the county; the role of intertidal fish habitat for various life stages of salmon; the quantity and characterization of intertidal fish habitat currently accessible to fish; the quantity and characterization of the present intertidal fish habitat created at the time the dikes and outlets were constructed; the quantity of potential intertidal fish habitat on public lands and alternatives to enhance this habitat; the effects of saltwater intrusion on agricultural land, including the effects of backfeeding of saltwater through the underground drainage system; the role of tide gates in drainage systems, including relieving excess water from saturated soil and providing reservoir functions between tides; the effect of saturated soils on production of crops; the characteristics of

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properly functioning intertidal fish habitat; a map of agricultural lands designated by the county as having long-term commercial significance and the effect of that designation; and the economic impacts to existing land uses for various alternatives for tide gate alteration; and

(c) A long-term plan for intertidal salmon habitat enhancement to meet the goals of salmon recovery and protection of agricultural lands. The proposal shall consider all other means to achieve salmon recovery without converting farmland. The proposal shall include methods to increase fish passage and otherwise enhance intertidal habitat on public lands pursuant to subsection (2) of this section, voluntary methods to increase fish passage on private lands, a priority list of intertidal salmon enhancement projects, and recommendations for funding of high priority projects. The task force also may propose pilot projects that will be designed to test and measure the success of various proposed strategies.

(2) In conjunction with other public landowners and the \*task force, the department shall develop an initial salmon intertidal habitat enhancement plan for public lands in the county. The initial plan shall include a list of public properties in the intertidal zone that could be enhanced for salmon, a description of how those properties could be altered to support salmon, a description of costs and sources of funds to enhance the property, and a strategy and schedule for prioritizing the enhancement of public lands for intertidal salmon habitat. This initial plan shall be submitted to the task force at least six months before the deadline established in subsection (3) of this section.

(3) The final intertidal salmon enhancement plan shall be completed within two years from the date the task force is formed and funding has been secured. A final plan shall be submitted by the task force to the lead entity for the geographic area established under this chapter. [2003 c 391 § 5.]

**\*Reviser's note:** The task force referred to is apparently the task force created in RCW 77.85.220.

**Initiation of process—2003 c 391 §§ 4 and 5:** See note following RCW 77.85.220.

**Severability—Effective date—2003 c 391:** See notes following RCW 77.57.030.

**77.85.240 Puget Sound partners.** When administering funds under this chapter, the board shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 37.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**77.85.250 Findings—Forum on monitoring salmon recovery and watershed health—Creation—Duties—Report to the governor and legislature. (Expires June 30, 2015.)** (1) The legislature finds that pursuant to chapter 298, Laws of 2001, and acting upon recommendations of the state's independent science panel, the monitoring oversight

committee developed recommendations for a comprehensive statewide strategy for monitoring watershed health, with a focus upon salmon recovery, entitled *The Washington Comprehensive Monitoring Strategy and Action Plan for Watershed Health and Salmon Recovery*. The legislature further finds that funding to begin implementing the strategy and action plan was provided in the 2003-2005 biennial budget, and that executive order 04-03 was issued to coordinate state agency implementation activities. It is therefore the purpose of this section to adopt the strategy and action plan and to provide guidance to ensure that the coordination activities directed by executive order 04-03 are effectively carried out.

(2) The forum on monitoring salmon recovery and watershed health is created. The governor shall appoint a person with experience and expertise in natural resources and environmental quality monitoring to chair the forum. The chair shall serve four-year terms and may serve successive terms. The forum shall include representatives of the following state agencies and regional entities that have responsibilities related to monitoring of salmon recovery and watershed health:

- (a) Department of ecology;
- (b) Salmon recovery funding board;
- (c) Salmon recovery office;
- (d) Department of fish and wildlife;
- (e) Department of natural resources;
- (f) Puget Sound action team, or a successor state agency;
- (g) Conservation commission;
- (h) Department of agriculture;
- (i) Department of transportation; and
- (j) Each of the regional salmon recovery organizations.

(3) The forum on monitoring salmon recovery and watershed health shall provide a multiagency venue for coordinating technical and policy issues and actions related to monitoring salmon recovery and watershed health.

(4) The forum on monitoring salmon recovery and watershed health shall recommend a set of measures for use by the governor's salmon recovery office in the state of the salmon report to convey results and progress on salmon recovery and watershed health in ways that are easily understood by the general public.

(5) The forum on monitoring salmon recovery and watershed health shall invite the participation of federal, tribal, regional, and local agencies and entities that carry out salmon recovery and watershed health monitoring, and work toward coordination and standardization of measures used.

(6) The forum on monitoring salmon recovery and watershed health shall periodically report to the governor and the appropriate standing committees of the senate and house of representatives on the forum's activities and recommendations for improving monitoring programs by state agencies, coordinating with the governor's salmon recovery office biennial report as required by RCW 77.85.020.

(7) The forum shall review pilot monitoring programs including those that integrate (a) data collection, management, and access; and (b) information regarding habitat projects and project management.

(8) The forum on monitoring salmon recovery and watershed health shall review and make recommendations to the office of financial management and the appropriate legislative committees on agency budget requests related to mon-

itoring salmon recovery and watershed health. These recommendations must be made no later than September 15th of each year. The goal of this review is to prioritize and integrate budget requests across agencies.

(9) This section expires June 30, 2015. [2007 c 444 § 8.]

**77.85.900 Captions not law.** Captions used in this chapter are not any part of the law. [1998 c 246 § 18. Formerly RCW 75.46.900.]

## Chapter 77.90 RCW

### SALMON ENHANCEMENT FACILITIES— BOND ISSUE

#### Sections

77.90.010	General obligation bonds authorized—Purpose—Terms—Appropriation required.
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77.90.030	"Facilities" defined.
77.90.040	Form, terms, conditions, etc., of bonds.
77.90.050	Anticipation notes—Authorized—Payment of principal and interest on bonds and notes.
77.90.060	Salmon enhancement construction bond retirement fund—Created—Purpose.
77.90.070	Availability of sufficient revenue required before bonds issued.
77.90.080	Bonds legal investment for public funds.

**77.90.010 General obligation bonds authorized—Purpose—Terms—Appropriation required.** For the purpose of providing funds for the planning, acquisition, construction, and improvement of salmon hatcheries, other salmon propagation facilities including natural production sites, and necessary supporting facilities within the state, the state finance committee may issue general obligation bonds of the state of Washington in the sum of twenty-nine million two hundred thousand dollars or so much thereof as may be required to finance the improvements defined in this chapter and all costs incidental thereto. These bonds shall be paid and discharged within thirty years. No bonds authorized by this chapter may be offered for sale without prior legislative appropriation of the proceeds of such bonds to be sold. [1990 1st ex.s. c 15 § 10. Prior: 1989 1st ex.s. c 14 § 15; 1989 c 136 § 8; 1985 ex.s. c 4 § 10; 1983 1st ex.s. c 46 § 162; 1981 c 261 § 1; 1980 c 15 § 1; 1977 ex.s. c 308 § 2. Formerly RCW 75.48.020.]

**Severability—1990 1st ex.s. c 15:** See note following RCW 43.99H.010.

**Severability—Effective dates—1989 1st ex.s. c 14:** See RCW 43.99H.900 and 43.99H.901.

**Intent—1989 c 136:** See note following RCW 43.83A.020.

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

**Legislative finding—1977 ex.s. c 308:** "The long range economic development goals for the state of Washington must include the restoration of salmon runs to provide an increased supply of this renewable resource for the benefit of commercial and recreational users and the economic well-being of the state." [1977 ex.s. c 308 § 1. Formerly RCW 75.48.010.]

**77.90.020 Administration of proceeds.** The proceeds from the sale of the bonds deposited in the salmon enhancement construction account of the general fund under the terms of this chapter shall be administered by the department subject to legislative appropriation. [1983 1st ex.s. c 46 § 164; 1977 ex.s. c 308 § 4. Formerly RCW 75.48.040.]

**77.90.030 "Facilities" defined.** As used in this chapter, "facilities" means salmon propagation facilities including, but not limited to, all equipment, utilities, structures, real property, and interests in and improvements on real property, as well as stream bed clearing, for or incidental to the acquisition, construction, or development of salmon propagation facilities. Specifically, the term includes a spawning channel on the Skagit river. [1983 1st ex.s. c 46 § 165; 1981 c 261 § 2; 1977 ex.s. c 308 § 5. Formerly RCW 75.48.050.]

**77.90.040 Form, terms, conditions, etc., of bonds.** The state finance committee may prescribe the form, terms, conditions, and covenants of the bonds, the time or times of sale of all or any portion of them, and the conditions and manner of their sale and issuance. [1989 c 136 § 9; 1983 1st ex.s. c 46 § 166; 1977 ex.s. c 308 § 6. Formerly RCW 75.48.060.]

**Intent—1989 c 136:** See note following RCW 43.83A.020.

**77.90.050 Anticipation notes—Authorized—Payment of principal and interest on bonds and notes.** When the state finance committee has decided to issue the bonds or a portion thereof, it may, pending the issuing of the bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The portion of the proceeds of the sale of the bonds as may be required for the purpose shall be applied to the payment of the principal of and interest on the anticipation notes which have been issued. The bonds and notes shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. The state finance committee may authorize the use of a printed facsimile of the seal of the state of Washington in the issuance of the bonds and notes. [1983 1st ex.s. c 46 § 167; 1977 ex.s. c 308 § 7. Formerly RCW 75.48.070.]

**77.90.060 Salmon enhancement construction bond retirement fund—Created—Purpose.** The salmon enhancement construction bond retirement fund is created in the state treasury. This fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which the interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the salmon enhancement construction bond retirement fund an amount equal to the amount certified by the state finance committee to be due on such payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed herein. [1983 1st ex.s. c 46 § 168; 1977 ex.s. c 308 § 8. Formerly RCW 75.48.080.]

**77.90.070 Availability of sufficient revenue required before bonds issued.** The bonds authorized by this chapter

shall be issued only after the director has certified, based upon reasonable estimates and data provided to the department, that sufficient revenues will be available from sport and commercial salmon license sales and from salmon fees and taxes to meet the requirements of RCW 77.90.060 during the life of the bonds. [2000 c 107 § 104; 1983 1st ex.s. c 46 § 170; 1977 ex.s. c 308 § 10. Formerly RCW 75.48.100.]

**77.90.080 Bonds legal investment for public funds.** The bonds authorized in this chapter are a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1983 1st ex.s. c 46 § 171; 1977 ex.s. c 308 § 11. Formerly RCW 75.48.110.]

## Chapter 77.95 RCW

### SALMON ENHANCEMENT PROGRAM

#### Sections

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**77.95.010 Legislative findings.** Currently, many of the salmon stocks of Washington state are critically reduced from their sustainable level. The best interests of all fishing groups and the citizens as a whole are served by a stable and productive salmon resource. Immediate action is needed to reverse the severe decline of the resource and to insure its very survival. The legislature finds a state of emergency exists and that immediate action is required to restore its fishery.

Disagreement and strife have dominated the salmon fisheries for many years. Conflicts among the various fishing interests have only served to erode the resource. It is time for the state of Washington to make a major commitment to increasing productivity of the resource and to move forward with an effective rehabilitation and enhancement program. The commission is directed to dedicate its efforts and the efforts of the department to seek resolution to the many conflicts that involve the resource.

Success of the enhancement program can only occur if projects efficiently produce salmon or restore habitat. The expectation of the program is to optimize the efficient use of funding on projects that will increase artificially and naturally produced salmon, restore and improve habitat, or identify ways to increase the survival of salmon. The full utilization of state resources and cooperative efforts with interested groups are essential to the success of the program. [1995 1st sp.s. c 2 § 33 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 45; 1985 c 458 § 1. Formerly RCW 75.50.010.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

#### **77.95.020 Long-term regional policy statements.** (1)

The commission shall develop long-term regional policy statements regarding the salmon fishery resources before December 1, 1985. The commission shall consider the following in formulating and updating regional policy statements:

- (a) Existing resource needs;
- (b) Potential for creation of new resources;
- (c) Successful existing programs, both within and outside the state;
- (d) Balanced utilization of natural and hatchery production;
- (e) Desires of the fishing interest;
- (f) Need for additional data or research;
- (g) Federal court orders; and
- (h) Salmon advisory council recommendations.

(2) The commission shall review and update each policy statement at least once each year. [1995 1st sp.s. c 2 § 34 (Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 2. Formerly RCW 75.50.020.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.95.030 Salmon enhancement plan—Enhancement projects.** (1) The commission shall develop a detailed salmon enhancement plan with proposed enhancement projects. The plan and the regional policy statements shall be submitted to the secretary of the senate and chief clerk of the house of representatives for legislative distribution by June 30, 1986. The enhancement plan and regional policy statements shall be provided by June 30, 1986, to the natural resources committees of the house of representatives and the

senate. The commission shall provide a maximum opportunity for the public to participate in the development of the salmon enhancement plan. To insure full participation by all interested parties, the commission shall solicit and consider enhancement project proposals from Indian tribes, sports fishermen, commercial fishermen, private aquaculturists, and other interested groups or individuals for potential inclusion in the salmon enhancement plan. Joint or cooperative enhancement projects shall be considered for funding.

(2) The following criteria shall be used by the commission in formulating the project proposals:

- (a) Compatibility with the long-term policy statement;
- (b) Benefit/cost analysis;
- (c) Needs of all fishing interests;
- (d) Compatibility with regional plans, including harvest management plans;
- (e) Likely increase in resource productivity;
- (f) Direct applicability of any research;
- (g) Salmon advisory council recommendations;
- (h) Compatibility with federal court orders;
- (i) Coordination with the salmon and steelhead advisory commission program;
- (j) Economic impact to the state;
- (k) Technical feasibility; and
- (l) Preservation of native salmon runs.

(3) The commission shall not approve projects that serve as replacement funding for projects that exist prior to May 21, 1985, unless no other sources of funds are available.

(4) The commission shall prioritize various projects and establish a recommended implementation time schedule. [1995 1st sp.s. c 2 § 35 (Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 3. Formerly RCW 75.50.030.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.95.040 Commission to monitor enhancement projects and enhancement plan.** Upon approval by the legislature of funds for its implementation, the commission shall monitor the progress of projects detailed in the salmon enhancement plan.

The commission shall be responsible for establishing criteria which shall be used to measure the success of each project in the salmon enhancement plan. [1995 1st sp.s. c 2 § 36 (Referendum Bill No. 45, approved November 7, 1995); 1985 c 458 § 4. Formerly RCW 75.50.040.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**77.95.050 "Enhancement project" defined.** As used in this chapter, "enhancement project" means salmon propagation activities including, but not limited to, hatcheries, spawning channels, rearing ponds, egg boxes, fishways, fish screens, stream bed clearing, erosion control, habitat restoration, net pens, applied research projects, and any equipment, real property, or other interest necessary to the proper operation thereof. [1985 c 458 § 6. Formerly RCW 75.50.060.]

**77.95.060 Regional fisheries enhancement group authorized.** The legislature finds that it is in the best interest of the salmon resource of the state to encourage the development of regional fisheries enhancement groups. The accomplishments of one existing group, the Grays Harbor fisheries enhancement task force, have been widely recognized as being exemplary. The legislature recognizes the potential benefits to the state that would occur if each region of the state had a similar group of dedicated citizens working to enhance the salmon resource.

The legislature authorizes the formation of regional fisheries enhancement groups. These groups shall be eligible for state financial support and shall be actively supported by the commission and the department. The regional groups shall be operated on a strictly nonprofit basis, and shall seek to maximize the efforts of volunteer and private donations to improve the salmon resource for all citizens of the state. [1995 1st sp.s. c 2 § 38 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 46; 1989 c 426 § 1. Formerly RCW 75.50.070.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1989 c 426:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 426 § 10.]

#### **77.95.070 Regional fisheries enhancement groups—**

**Goals.** Regional fisheries enhancement groups, consistent with the long-term regional policy statements developed under RCW 77.95.020, shall seek to:

(1) Enhance the salmon and steelhead resources of the state;

(2) Maximize volunteer efforts and private donations to improve the salmon and steelhead resources for all citizens;

(3) Assist the department in achieving the goal to double the statewide salmon and steelhead catch by the year 2000; and

(4) Develop projects designed to supplement the fishery enhancement capability of the department. [2000 c 107 § 105; 1997 c 389 § 5; 1993 sp.s. c 2 § 47; 1989 c 426 § 4. Formerly RCW 75.50.080.]

**Findings—1997 c 389:** See note following RCW 77.95.100.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1989 c 426:** See note following RCW 77.95.060.

#### **77.95.080 Regional fisheries enhancement groups—**

**Incorporation prerequisites.** Each regional fisheries enhancement group shall be incorporated pursuant to Title 24 RCW. Any interested person or group shall be permitted to join. It is desirable for the group to have representation from all categories of fishers and other parties that have interest in salmon within the region, as well as the general public. [1990 c 58 § 2. Formerly RCW 75.50.090.]

(2008 Ed.)

**Findings—1990 c 58:** "The legislature finds that: (1) It is in the best interest of the state to encourage nonprofit regional fisheries enhancement groups authorized in RCW 75.50.070 to participate in enhancing the state's salmon population including, but not limited to, salmon research, increased natural and artificial production, and through habitat improvement; (2) such regional fisheries enhancement groups interested in improving salmon habitat and rearing salmon shall be eligible for financial assistance; (3) such regional fisheries enhancement groups should seek to maximize the efforts of volunteer personnel and private donations; (4) this program will assist the state in its goal to double the salmon catch by the year 2000; (5) this program will benefit both commercial and recreational fisheries and improve cooperative efforts to increase salmon production through a coordinated approach with similar programs in other states and Canada; and (6) the Grays Harbor fisheries enhancement task force's exemplary performance in salmon enhancement provides a model for establishing regional fisheries enhancement groups by rule adopted under RCW 75.50.070, 75.50.080, and 75.50.090 through 75.50.110." [1990 c 58 § 1.]

**77.95.090 Regional fisheries enhancement group account—Revenue sources, uses, and limitations.** The dedicated regional fisheries enhancement group account is created in the custody of the state treasurer. Only the commission or the commission's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

A portion of each recreational fishing license fee shall be used as provided in RCW 77.32.440. A surcharge of one hundred dollars shall be collected on each commercial salmon fishery license, each salmon delivery license, and each salmon charter license sold in the state. All receipts shall be placed in the regional fisheries enhancement group account and shall be used exclusively for regional fisheries enhancement group projects for the purposes of RCW 77.95.110. Funds from the regional fisheries enhancement group account shall not serve as replacement funding for department operated salmon projects that exist on January 1, 1991.

All revenue from the department's sale of salmon carcasses and eggs that return to group facilities shall be deposited in the regional fisheries enhancement group account for use by the regional fisheries enhancement group that produced the surplus. The commission shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [2000 c 107 § 106. Prior: 1998 c 245 § 155; 1998 c 191 § 27; 1995 1st sp.s. c 2 § 39 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 17 § 11; 1993 c 340 § 53; 1990 c 58 § 3. Formerly RCW 75.50.100.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Finding, intent—Captions not law—Effective date—Severability—1993 c 340:** See notes following RCW 77.65.010.

**Effective date—1990 c 58 § 3:** "Section 3 of this act shall take effect January 1, 1991." [1990 c 58 § 6.]

**Findings—1990 c 58:** See note following RCW 77.95.080.

**77.95.100 Regional fisheries enhancement groups—Start-up funds.** The department may provide start-up funds to regional fisheries enhancement groups for costs associated with any enhancement project. The regional fisheries

enhancement group advisory board and the commission shall develop guidelines for providing funds to the regional fisheries enhancement groups. [2000 c 107 § 107; 1997 c 389 § 2. Formerly RCW 75.50.105.]

**Findings—1997 c 389:** "(1) The legislature finds that:

(a) Currently, many of the salmon stocks on the Washington coast and in Puget Sound are severely depressed and may soon be listed under the federal endangered species act.

(b) Immediate action is needed to reverse the severe decline of this resource and ensure its very survival.

(c) The cooperation and participation of private landowners is crucial in efforts to restore and enhance salmon populations.

(d) Regional fisheries enhancement groups have been exceptionally successful in their efforts to work with private landowners to restore and enhance salmon habitat on private lands.

(e) State funding for regional fisheries enhancement groups has been declining and is a significant limitation to current fisheries enhancement and habitat restoration efforts.

(f) Therefore, a stable funding source is essential to the success of the regional enhancement groups and their efforts to work cooperatively with private landowners to restore salmon resources.

(2) The legislature further finds that:

(a) The increasing population and continued development throughout the state, and the transportation system needed to serve this growth, have exacerbated problems associated with culverts, creating barriers to fish passage.

(b) These barriers obstruct habitat and have resulted in reduced production and survival of anadromous and resident fish at a time when salmonid stocks continue to decline.

(c) Current state laws do not appropriately direct resources for the correction of fish passage obstructions related to transportation facilities.

(d) Current fish passage management efforts related to transportation projects lack necessary coordination on a watershed, regional, and statewide basis, have inadequate funding, and fail to maximize use of available resources.

(e) Therefore, the legislature finds that the department of transportation and the department of fish and wildlife should work with state, tribal, local government, and volunteer entities to develop a coordinated, watershed-based fish passage barrier removal program." [1997 c 389 § 1.]

**77.95.110 Regional fisheries enhancement group advisory board.** (1) A regional fisheries enhancement group advisory board is established to make recommendations to the commission. The members shall be appointed by the commission and consist of two commercial fishing representatives, two recreational fishing representatives, and three at-large positions. At least two of the advisory board members shall be members of a regional fisheries enhancement group. Advisory board members shall serve three-year terms. The advisory board membership shall include two members serving ex officio to be nominated, one through the Northwest Indian fisheries commission, and one through the Columbia river intertribal fish commission. The chair of the regional fisheries enhancement group advisory board shall be elected annually by members of the regional fisheries enhancement group advisory board. The advisory board shall meet at least quarterly. All meetings of the advisory board shall be open to the public under the open public meetings act, chapter 42.30 RCW.

The department shall invite the advisory board to comment and provide input into all relevant policy initiatives, including, but not limited to, wild stock, hatcheries, and habitat restoration efforts.

(2) Members shall not be compensated but shall receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(3) The department may use account funds to provide agency assistance to the groups, to provide professional, administrative or clerical services to the advisory board, or to implement the training and technical assistance services plan as developed by the advisory board pursuant to RCW 77.95.120. The level of account funds used by the department shall be determined by the commission after review of recommendation by the regional fisheries enhancement group advisory board and shall not exceed twenty percent of annual contributions to the account. [2000 c 107 § 108. Prior: 1995 1st sp.s. c 2 § 40 (Referendum Bill No. 45, approved November 7, 1995); 1995 c 367 § 5; 1990 c 58 § 4. Formerly RCW 75.50.110.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**Findings—1990 c 58:** See note following RCW 77.95.080.

**77.95.120 Regional fisheries enhancement group advisory board—Duties and authority.** (1) The regional fisheries enhancement group advisory board shall:

(a) Assess the training and technical assistance needs of the regional fisheries enhancement groups;

(b) Develop a training and technical assistance services plan in order to provide timely, topical technical assistance and training services to regional fisheries enhancement groups. The plan shall be provided to the director and to the senate and house of representatives natural resources committees no later than October 1, 1995, and shall be updated not less than every year. The advisory board shall provide ample opportunity for the public and interested parties to participate in the development of the plan. The plan shall include but is not limited to:

(i) Establishment of an information clearinghouse service that is readily available to regional fisheries enhancement groups. The information clearinghouse shall collect, collate, and make available a broad range of information on subjects that affect the development, implementation, and operation of diverse fisheries and habitat enhancement projects. The information clearinghouse service may include periodical news and informational bulletins;

(ii) An ongoing program in order to provide direct, on-site technical assistance and services to regional fisheries enhancement groups. The advisory board shall assist regional fisheries enhancement groups in soliciting federal, state, and local agencies, tribal governments, institutions of higher education, and private business for the purpose of providing technical assistance and services to regional fisheries enhancement group projects; and

(iii) A cost estimate for implementing the plan;

(c) Propose a budget to the director for operation of the advisory board and implementation of the technical assistance plan;

(d) Make recommendations to the director regarding regional enhancement group project proposals and funding of those proposals; and

(e) Establish criteria for the redistribution of unspent project funds for any regional enhancement group that has a year ending balance exceeding one hundred thousand dollars.

(2) The regional fisheries enhancement group advisory board may:

(a) Facilitate resolution of disputes between regional fisheries enhancement groups and the department;

(b) Promote community and governmental partnerships that enhance the salmon resource and habitat;

(c) Promote environmental ethics and watershed stewardship;

(d) Advocate for watershed management and restoration;

(e) Coordinate regional fisheries enhancement group workshops and training;

(f) Monitor and evaluate regional fisheries enhancement projects;

(g) Provide guidance to regional fisheries enhancement groups; and

(h) Develop recommendations to the director to address identified impediments to the success of regional fisheries enhancement groups.

(3)(a) The regional fisheries enhancement group advisory board shall develop recommendations for limitations on the amount of overhead that a regional fisheries enhancement group may charge from each of the following categories of funding provided to the group:

(i) Federal funds;

(ii) State funds;

(iii) Local funds; and

(iv) Private donations.

(b) The advisory board shall develop recommendations for limitations on the number and salary of paid employees that are employed by a regional fisheries enhancement group. The regional fisheries enhancement group advisory board shall adhere to the founding principles for regional groups that emphasize the volunteer nature of the groups, maximization of field-related fishery resource benefits, and minimization of overhead.

(c) The advisory board shall evaluate and make recommendations for the limitation or elimination of commissions, finders fees, or other reimbursements to regional fisheries enhancement group employees. [2000 c 107 § 109; 1998 c 96 § 1; 1995 c 367 § 6. Formerly RCW 75.50.115.]

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**77.95.130 Regional fisheries enhancement salmonid recovery account—Created.** The regional fisheries enhancement salmonid recovery account is created in the state treasury. All receipts from federal sources and moneys from state sources specified by law must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used for the sole purpose of fisheries enhancement and habitat restoration by regional fisheries enhancement groups. [1997 c 389 § 3. Formerly RCW 75.50.125.]

**Findings—1997 c 389:** See note following RCW 77.95.100.

**77.95.140 Skagit river salmon recovery plan.** The commission shall prepare a salmon recovery plan for the Skagit river. The plan shall include strategies for employing

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displaced timber workers to conduct salmon restoration and other tasks identified in the plan. The plan shall incorporate the best available technology in order to achieve maximum restoration of depressed salmon stocks. The plan must encourage the restoration of natural spawning areas and natural rearing of salmon but must not preclude the development of an active hatchery program. [1995 1st sp.s. c 2 § 41 (Referendum Bill No. 45, approved November 7, 1995); 1993 sp.s. c 2 § 48; 1992 c 88 § 1. Formerly RCW 75.50.130.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**Effective date—1995 1st sp.s. c 2:** See note following RCW 43.17.020.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.95.150 Coordination with regional enhancement groups—Findings.** The legislature finds that:

(1) Regional enhancement groups are a valuable resource for anadromous fish recovery. They improve critical fish habitat and directly contribute to anadromous fish populations through fish restoration technology.

(2) Due to a decrease in recreational and commercial salmon license sales, regional enhancement groups are receiving fewer financial resources at a time when recovery efforts are needed most.

(3) To maintain regional enhancement groups as an effective enhancement resource, technical assets of state agencies must be coordinated and utilized to maximize the financial resources of regional enhancement groups and overall fish recovery efforts. [1995 c 367 § 1. Formerly RCW 75.50.150.]

**Severability—1995 c 367:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 367 § 12.]

**Effective date—1995 c 367:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 367 § 13.]

**77.95.160 Fish passage barrier removal task force—Membership—Recommendations.** The department and the department of transportation shall convene a fish passage barrier removal task force. The task force shall consist of one representative each from the department, the department of transportation, the department of ecology, tribes, cities, counties, a business organization, an environmental organization, regional fisheries enhancement groups, and other interested entities as deemed appropriate by the cochairs. The persons representing the department and the department of transportation shall serve as cochairs of the task force and shall appoint members to the task force. The task force shall make recommendations to expand the program in RCW 77.95.180 to identify and expedite the removal of human-made or caused impediments to anadromous fish passage in the most efficient manner practical. Program recommendations shall include a funding mechanism and other necessary mechanisms to coordinate and prioritize state, tribal, local, and volunteer efforts within each water resource inventory area. A priority shall be given to projects that immediately increase

access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. The department or the department of transportation may contract with cities and counties to assist in the identification and removal of impediments to anadromous fish passage. [2000 c 107 § 110; 1997 c 389 § 6; 1995 c 367 § 2. Formerly RCW 75.50.160.]

**Findings—1997 c 389:** See note following RCW 77.95.100.

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**77.95.170 Salmonid fish passage—Removing impediments—Grant program—Administration—Database directory.** (1) The department of transportation and the department of fish and wildlife may administer and coordinate all state grant programs specifically designed to assist state agencies, local governments, private landowners, tribes, organizations, and volunteer groups in identifying and removing impediments to salmonid fish passage. The transportation improvement board may administer all grant programs specifically designed to assist cities, counties, and local governments with fish passage barrier corrections associated with transportation projects. All grant programs must be administered and be consistent with the following:

(a) Salmonid-related corrective projects, inventory, assessment, and prioritization efforts;

(b) Salmonid projects subject to a competitive application process; and

(c) A minimum dollar match rate that is consistent with the funding authority's criteria. If no funding match is specified, a match amount of at least twenty-five percent per project is required. For local, private, and volunteer projects, in-kind contributions may be counted toward the match requirement.

(2) Priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. Priority shall also be given to project applications that are coordinated with other efforts within a watershed.

(3) Except for projects administered by the transportation improvement board, all projects shall be reviewed and approved by the fish passage barrier removal task force or an alternative oversight committee designated by the state legislature.

(4) Other agencies that administer natural resource based grant programs that may include fish passage barrier removal projects shall use fish passage selection criteria that are consistent with this section.

(5) The departments of transportation and fish and wildlife shall establish a centralized database directory of all fish passage barrier information. The database directory must include, but is not limited to, existing fish passage inventories, fish passage projects, grant program applications, and other databases. These data must be used to coordinate and assist in habitat recovery and project mitigation projects. [1999 c 242 § 4; 1998 c 249 § 16. Formerly RCW 75.50.165.]

**Findings—Purpose—Report—Effective date—1998 c 249:** See notes following RCW 77.55.181.

**77.95.180 Fish passage barrier removal program.** To maximize available state resources, the department and the

department of transportation shall work in partnership with the regional fisheries enhancement group advisory board to identify cooperative projects to eliminate fish passage barriers caused by state roads and highways. The advisory board may provide input to the department to aid in identifying priority barrier removal projects that can be accomplished with the assistance of regional fisheries enhancement groups. The department of transportation shall provide engineering and other technical services to assist regional fisheries enhancement groups with fish passage barrier removal projects, provided that the barrier removal projects have been identified as a priority by the department of fish and wildlife and the department of transportation has received an appropriation to continue the fish barrier removal program. [1995 c 367 § 3. Formerly RCW 75.50.170.]

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**77.95.190 Field testing of remote site incubators.** The department shall coordinate with the regional fisheries enhancement group advisory board to field test coho and chinook salmon remote site incubators. The purpose of field testing efforts shall be to gather conclusive scientific data on the effectiveness of coho and chinook remote site incubators. [1995 c 367 § 10. Formerly RCW 75.50.180.]

**Severability—Effective date—1995 c 367:** See notes following RCW 77.95.150.

**77.95.200 Remote site incubator program—Reports to the legislature.** (1) The department shall develop and implement a program utilizing remote site incubators in Washington state. The program shall identify sites in tributaries that are suitable for reestablishing self-sustaining, locally adapted populations of coho, chum, or chinook salmon. The initial selection of sites shall be completed by July 1, 1999, and updated annually thereafter.

(2) The department may only approve a remote site incubator project if the department deems it is consistent with the conservation of wild salmon and trout. The department shall only utilize appropriate salmonid eggs in remote site incubators, and may acquire eggs by gift or purchase.

(3) The department shall depend chiefly upon volunteer efforts to implement the remote site incubator program through volunteer cooperative projects and the regional fisheries enhancement groups. The department may prioritize remote site incubator projects within regional enhancement areas.

(4) The department may purchase remote site incubators and may use agency employees to construct remote site incubators. The director and the secretary of the department of corrections shall jointly investigate the potential of producing remote site incubators through the prison industries program of the department of corrections, and shall jointly report their finding to the natural resources committees of the house of representatives and the senate by December 1, 1999.

(5) The department shall investigate the use of the remote site incubator technology for the production of warm water fish.

(6) The department shall evaluate the initial results of the program and report to the legislature by December 1, 2000. Annual reports on the progress of the program shall be pro-

vided to the fish and wildlife commission. [1998 c 251 § 2. Formerly RCW 75.50.190.]

**Finding—1998 c 251:** "The legislature finds that trout and salmon populations are depleted in many state waters. Restoration of these populations to a healthy status requires improved protection of these species and their habitats. However, in some instances restoration of self-sustaining populations also requires the reintroduction of the fish into their native habitat.

Remote site incubators have been shown to be a cost-effective means of bypassing the early period of high mortality experienced by salmonid eggs that are naturally spawned in streams. In addition, remote site incubators provide an efficient method for reintroduction of fish into areas that are not seeded by natural spawning. The technology for remote site incubators is well developed, and their application is easily accomplished in a wide variety of habitat by persons with a moderate level of training.

It is a goal of the remote site incubator program to assist the reestablishment of wild salmon and trout populations that are self-sustaining through natural spawning. In other cases, where the habitat has been permanently damaged and natural populations cannot sustain themselves, the remote site incubator program may become a cost-effective long-term solution for supplementation of fish populations." [1998 c 251 § 1.]

**77.95.210 Sale of surplus salmon eggs—Order of priority.** (1) Except as provided in subsection (2) of this section, the department may supply, at a reasonable charge, surplus salmon eggs to a person for use in the cultivation of salmon. The department shall not intentionally create a surplus of salmon to provide eggs for sale. The department shall only sell salmon eggs from stocks that are not suitable for salmon population rehabilitation or enhancement in state waters in Washington after the salmon harvest on surplus salmon has been first maximized by both commercial and recreational fishers.

(2) The department shall not destroy hatchery origin salmon for the purposes of destroying viable eggs that would otherwise be useful for propagation or salmon recovery purposes, as determined by the department and Indian tribes with treaty fishing rights in a collaborative manner, for replenishing fish runs. Eggs deemed surplus by the state must be provided, in the following order of priority, to:

(a) Voluntary cooperative salmon culture programs under the supervision of the department under chapter 77.100 RCW;

(b) Regional fisheries enhancement group salmon culture programs under the supervision of the department under this chapter;

(c) Salmon culture programs requested by lead entities and approved by the salmon funding recovery board under chapter 77.85 RCW;

(d) Hatcheries of federally approved tribes in Washington to whom eggs are moved, not sold, under the interlocal cooperation act, chapter 39.34 RCW; and

(e) Governmental hatcheries in Washington, Oregon, and Idaho.

The order of priority established in this subsection for distributing surplus eggs does not apply when there is a shortfall in the supply of eggs.

(3) All sales, provisions, distributions, or transfers shall be consistent with the department's egg transfer and aquaculture disease control regulations as now existing or hereafter amended. Prior to department determination that eggs of a salmon stock are surplus and available for sale, the department shall assess the productivity of each watershed that is suitable for receiving eggs. [2001 c 337 § 1; 2000 c 107 § 11;

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1988 c 115 § 1; 1983 1st ex.s. c 46 § 25; 1974 ex.s. c 23 § 1; 1971 c 35 § 4. Formerly RCW 75.08.245, 75.16.120.]

*Sale of surplus salmon eggs and carcasses by volunteer cooperative fish projects:* RCW 77.100.040.

**77.95.220 Legislative finding.** The legislature finds that:

(1) The fishery resources of Washington are critical to the social and economic needs of the citizens of the state;

(2) Salmon production is dependent on both wild and artificial production;

(3) The department is directed to enhance Washington's salmon runs; and

(4) Full utilization of the state's salmon rearing facilities is necessary to enhance commercial and recreational fisheries. [1993 sp.s. c 2 § 24; 1989 c 336 § 1. Formerly RCW 75.08.400.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Severability—1989 c 336:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 336 § 7.]

**77.95.230 Director's determination of salmon production costs.** The director shall determine the cost of operating all state-funded salmon production facilities at full capacity and shall provide this information with the department's biennial budget request. [1989 c 336 § 2. Formerly RCW 75.08.410.]

**Severability—1989 c 336:** See note following RCW 77.95.220.

**77.95.240 State purchase of private salmon smolts.** The director may contract with cooperatives or private aquaculturists for the purchase of quality salmon smolts for release into public waters if all department fish rearing facilities are operating at full capacity. The intent of cooperative and private sector contracting is to explore the opportunities of cooperatively producing more salmon for the public fisheries without incurring additional capital expense for the department. [1989 c 336 § 3. Formerly RCW 75.08.420.]

**Severability—1989 c 336:** See note following RCW 77.95.220.

**77.95.250 State purchase of private salmon smolts—Bids.** If the director elects to contract with cooperatives or private aquaculturists for the purpose of purchasing quality salmon smolts, contracting shall be done by a competitive bid process. In awarding contracts to private contractors, the director shall give preference to nonprofit corporations. The director shall establish the criteria for the contract, which shall include but not be limited to species, size of smolt, stock composition, quantity, quality, rearing location, release location, and other pertinent factors. [1989 c 336 § 4. Formerly RCW 75.08.430.]

**Severability—1989 c 336:** See note following RCW 77.95.220.

**77.95.260 State purchase of private salmon smolts—Private ocean ranching not authorized.** Nothing in chapter 336, Laws of 1989 shall authorize the practice of private ocean ranching. Privately contracted smolts become the

property of the state at the time of release. [1989 c 336 § 5. Formerly RCW 75.08.440.]

**Severability—1989 c 336:** See note following RCW 77.95.220.

**77.95.270 State purchase of private salmon smolts—Availability of excess salmon eggs.** Except as provided in RCW 77.95.210, the department may make available to private contractors salmon eggs in excess of department hatchery needs for the purpose of contract rearing to release the smolts into public waters. However, providing salmon eggs as specified in RCW 77.95.210(2) has the highest priority. The priority of providing eggs surplus after meeting the requirements of RCW 77.95.210(2) to contract rearing is a higher priority than providing eggs to aquaculture purposes that are not destined for release into Washington public waters. [2001 c 337 § 2; 1989 c 336 § 6. Formerly RCW 75.08.450.]

**Severability—1989 c 336:** See note following RCW 77.95.220.

**77.95.280 Chinook and coho salmon—External marking of hatchery-produced fish—Findings.** The legislature declares that the state has a vital interest in the continuation of recreational fisheries for chinook salmon and coho salmon in mixed stock areas, and that the harvest of hatchery origin salmon should be encouraged while wild salmon should be afforded additional protection when required. A program of selective harvest shall be developed utilizing hatchery salmon that are externally marked in a conspicuous manner, regulations that promote the unharmed release of unmarked fish, when and where appropriate, and a public information program that educates the public about the need to protect depressed stocks of wild salmon.

The legislature further declares that the establishment of other incentives for commercial fishing and fish processing in Washington will complement the program of selective harvest in mixed stock fisheries anticipated by this legislation. [1995 c 372 § 1. Formerly RCW 75.08.500.]

**77.95.290 Chinook and coho salmon—External marking of hatchery-produced fish—Program.** The department shall mark appropriate coho salmon that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers for the purpose of maximized catch while sustaining wild and hatchery reproduction.

The department shall mark all appropriate chinook salmon targeted for contribution to the Washington catch that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers.

The goal of the marking program is: (1) The annual marking by June 30, 1997, of all appropriate hatchery origin coho salmon produced by the department with marking to begin with the 1994 Puget Sound coho brood; and (2) the annual marking by June 30, 1999, of all appropriate hatchery origin chinook salmon produced by the department with marking to begin with the 1998 chinook brood. The department may experiment with different methods for marking hatchery salmon with the primary objective of maximum sur-

vival of hatchery marked fish, maximum contribution to fisheries, and minimum cost consistent with the other goals.

The department shall coordinate with other entities that are producing hatchery chinook and coho salmon for release into public waters to enable the broadest application of the marking program to all hatchery produced chinook and coho salmon. The department shall work with the treaty Indian tribes in order to reach mutual agreement on the implementation of the mass marking program. The ultimate goal of the program is the coast-wide marking of appropriate hatchery origin chinook and coho salmon, and the protection of all wild chinook and coho salmon, where appropriate. [1999 c 372 § 15; 1998 c 250 § 2; 1995 c 372 § 2. Formerly RCW 75.08.510.]

**Findings—Intent—1998 c 250:** "The legislature finds that mass marking of hatchery-raised salmon is an effective tool for implementing selective salmon fisheries in this state. Mass marking of coho salmon is currently underway and holds great promise for maintaining both recreational and commercial fishing opportunities while protecting wild stocks. In view of the anticipated listing of Puget Sound chinook salmon as endangered under the federal endangered species act, the legislature finds that it is essential to expeditiously proceed with implementing a mass marking program for chinook salmon in Puget Sound and elsewhere in the state.

Through a cooperative effort by state and federal agencies and private enterprise, appropriate technologies have been developed for marking chinook salmon. It is the intent of the legislature to use these newly developed tools to implement chinook salmon mass marking beginning in April 1999." [1998 c 250 § 1.]

**77.95.300 Chinook and coho salmon—External marking of hatchery-produced fish—Rules.** The department shall adopt rules to control the mixed stock chinook and coho fisheries of the state so as to sustain healthy stocks of wild salmon, allow the maximum survival of wild salmon, allow for spatially separated fisheries that target on hatchery stocks, foster the best techniques for releasing wild chinook and coho salmon, and contribute to the economic viability of the fishing businesses of the state. [1995 c 372 § 3. Formerly RCW 75.08.520.]

**77.95.310 Annual report—Salmon and steelhead harvest.** Beginning September 1, 1998, and each September 1st thereafter, the department shall submit a report to the appropriate standing committees of the legislature identifying the total salmon and steelhead harvest of the preceding season. This report shall include the final commercial harvests and recreational harvests. At a minimum, the report shall clearly identify:

(1) The total treaty tribal and nontribal harvests by species and by management unit;

(2) Where and why the nontribal harvest does not meet the full allocation allowed under *United States v. Washington*, 384 F. Supp. 312 (1974) (Boldt I) including a summary of the key policies within the management plan that result in a less than full nontribal allocation; and

(3) The location and quantity of salmon and steelhead harvested under the wastage provisions of *United States v. Washington*, 384 F. Supp. 312 (1974). [1997 c 414 § 1. Formerly RCW 75.08.530.]

**77.95.900 Severability—1985 c 458.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1985 c 458 § 12. Formerly RCW 75.50.900.]

### Chapter 77.100 RCW

## VOLUNTEER FISH AND WILDLIFE ENHANCEMENT PROGRAM

#### Sections

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**77.100.010 Legislative findings—Department to administer cooperative enhancement program.** The fish and wildlife resources of the state benefit by the contribution of volunteer recreational and commercial fishing organizations, schools, and other volunteer groups in cooperative projects under agreement with the department. These projects provide educational opportunities, improve the communication between the natural resources agencies and the public, and increase the fish and game resources of the state. In an effort to increase these benefits and realize the full potential of cooperative projects, the department shall administer a cooperative fish and wildlife enhancement program and enter agreements with volunteer groups relating to the operation of cooperative projects. [1993 sp.s. c 2 § 49; 1988 c 36 § 41; 1984 c 72 § 1. Formerly RCW 75.52.010.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

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

(1) "Volunteer group" means any person or group of persons interested in or party to an agreement with the department relating to a cooperative fish or wildlife project.

(2) "Cooperative project" means a project conducted by a volunteer group that will benefit the fish, shellfish, game bird, nongame wildlife, or game animal resources of the state and for which the benefits of the project, including fish and wildlife reared and released, are available to all citizens of the state. Indian tribes may elect to participate in cooperative fish and wildlife projects with the department. [2000 c 107 § 111; 1993 sp.s. c 2 § 50; 1988 c 36 § 42; 1984 c 72 § 2. Formerly RCW 75.52.020.]

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**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**77.100.030 Cooperative projects—Types.** The department shall encourage and support the development and operation of cooperative projects of the following types:

(1) Cooperative food fish and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Cooperative fish habitat improvement projects, including but not limited to fish migration improvement, spawning bed rehabilitation, habitat restoration, reef construction, lake fertilization, pond construction, pollution abatement, and endangered stock protection;

(3) Cooperative fish or game research projects if the project is clearly of a research nature and if the results are readily available to the public;

(4) Cooperative game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding;

(5) Cooperative nongame wildlife projects, including but not limited to habitat improvement and restoration, nest box installation, establishment of wildlife interpretive areas or facilities, pollution abatement, supplemental feeding, and endangered species preservation and enhancement; and

(6) Cooperative information and education projects, including but not limited to landowner relations, outdoor ethics, natural history of Washington's fish, shellfish, and wildlife, and outdoor survival. [1984 c 72 § 3. Formerly RCW 75.52.030.]

**77.100.040 Cooperative projects—Sale of surplus salmon eggs and carcasses.** The department may authorize the sale of surplus salmon eggs and carcasses by permitted cooperative projects for the purposes of defraying the expenses of the cooperative project. In no instance shall the department allow a profit to be realized through such sales. The department shall adopt rules to implement this section pursuant to chapter 34.05 RCW. [1993 sp.s. c 2 § 51; 1987 c 48 § 1. Formerly RCW 75.52.035.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

*Sale of surplus salmon eggs by department: RCW 77.95.210.*

**77.100.050 Duties of department.** (1) The department shall:

(a) Encourage and support the establishment of cooperative agreements for the development and operation of cooperative food fish, shellfish, game fish, game bird, game animal, and nongame wildlife projects, and projects which provide an opportunity for volunteer groups to become involved in resource and habitat-oriented activities. All cooperative projects shall be fairly considered in the approval of cooperative agreements;

(b) Identify regions and species or activities that would be particularly suitable for cooperative projects providing benefits compatible with department goals;

(c) Determine the availability of rearing space at operating facilities or of net pens, egg boxes, portable rearing containers, incubators, and any other rearing facilities for use in cooperative projects, and allocate them to volunteer groups as fairly as possible;

(d) Make viable eggs available for replenishing fish runs, and salmon carcasses for nutrient enhancement of streams. If a regional fisheries enhancement group, lead entity, volunteer cooperative group, federally approved tribe in Washington, or a governmental hatchery in Washington, Oregon, or Idaho requests the department for viable eggs, the department must include the request within the brood stock document prepared for review by the regional offices. The eggs shall be distributed in accordance with the priority established in RCW 77.95.210 if they are available. A request for viable eggs may only be denied if the eggs would not be useful for propagation or salmon recovery purposes, as determined under RCW 77.95.210;

(e) Exempt volunteer groups from payment of fees to the department for activities related to the project;

(f) Publicize the cooperative program;

(g) Not substitute a new cooperative project for any part of the department's program unless mutually agreeable to the department and volunteer group;

(h) Not approve agreements that are incompatible with legally existing land, water, or property rights.

(2) The department may, when requested, provide to volunteer groups its available professional expertise and assist the volunteer group to evaluate its project. The department must conduct annual workshops in each administrative region of the department that has fish stocks listed as threatened or endangered under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq., in order to assist volunteer groups with egg rearing, share information on successful salmon recovery projects accomplished by volunteers within the state, and provide basic training on monitoring efforts that can be accomplished by volunteers in order to help determine if their efforts are successful. [2001 c 337 § 3; 1987 c 505 § 73; 1984 c 72 § 4. Formerly RCW 75.52.040.]

#### **77.100.060 Commission to establish rules—Subjects.**

The commission shall establish by rule:

(1) The procedure for entering a cooperative agreement and the application forms for a permit to release fish or wildlife required by \*RCW 77.12.457. The procedure shall indicate the information required from the volunteer group as well as the process of review by the department. The process of review shall include the means to coordinate with other agencies and Indian tribes when appropriate and to coordinate the review of any necessary hydraulic permit approval applications.

(2) The procedure for providing within forty-five days of receipt of a proposal a written response to the volunteer group indicating the date by which an acceptance or rejection of the proposal can be expected, the reason why the date was selected, and a written summary of the process of review. The response should also include any suggested modifications to the proposal which would increase its likelihood of approval and the date by which such modified proposal could be expected to be accepted. If the proposal is rejected, the department must provide in writing the reasons for rejection.

The volunteer group may request the director or the director's designee to review information provided in the response.

(3) The priority of the uses to which eggs, seed, juveniles, or brood stock are put. Use by cooperative projects shall be second in priority only to the needs of programs of the department or of other public agencies within the territorial boundaries of the state. Sales of eggs, seed, juveniles, or brood stock have a lower priority than use for cooperative projects. The rules must identify and implement appropriate protocols for brood stock handling, including the outplanting of adult fish, spawning, incubation, rearing, and release and establish a prioritized schedule for implementation of chapter 337, Laws of 2001, and shall include directives for allowing more hatchery salmon to spawn naturally in areas where progeny of hatchery fish have spawned, including the outplanting of adult fish, in order to increase the number of viable salmon eggs and restore healthy numbers of fish within the state.

(4) The procedure for the director to notify a volunteer group that the agreement for the project is being revoked for cause and the procedure for revocation. Revocation shall be documented in writing to the volunteer group. Cause for revocation may include: (a) The unavailability of adequate biological or financial resources; (b) the development of unacceptable biological or resource management conflicts; or (c) a violation of agreement provisions. Notice of cause to revoke for a violation of agreement provisions may specify a reasonable period of time within which the volunteer group must comply with any violated provisions of the agreement.

(5) An appropriate method of distributing among volunteer groups fish, bird, or animal food or other supplies available for the program. [2001 c 337 § 4; 2000 c 107 § 112; 1995 1st sp.s. c 2 § 42 (Referendum Bill No. 45, approved November 7, 1995); 1984 c 72 § 5. Formerly RCW 75.52.050.]

\*Reviser's note: RCW 77.12.457 was repealed by 2001 c 253 § 62.

Referral to electorate—1995 1st sp.s. c 2: See note following RCW 77.04.013.

Effective date—1995 1st sp.s. c 2: See note following RCW 43.17.020.

**77.100.070 Agreements for cooperative projects—Duration.** Agreements under this chapter may be for up to five years, with the department attempting to maximize the duration of each cooperative agreement. The duration of the agreement should reflect the financial and volunteer commitment and the stability of the volunteer group as well as the department's expectation of resource availability and project contributions to the resource. [1984 c 72 § 6. Formerly RCW 75.52.060.]

**77.100.080 Duties of volunteer group.** (1) The volunteer group shall:

(a) Provide care and diligence in conducting the cooperative project; and

(b) Maintain accurately the required records of the project on forms provided by the department.

(2) The volunteer group shall acknowledge that fish and game reared in cooperative projects are public property and must be handled and released for the benefit of all citizens of the state. The fish and game are to remain public property

until reduced to private ownership under rules of the commission. [2000 c 107 § 113; 1984 c 72 § 7. Formerly RCW 75.52.070.]

**77.100.090 Application of chapter.** This chapter applies to cooperative projects which were in existence on June 7, 1984, or which require no further funding. Implementation of this chapter for new projects requiring funding shall be to the extent that funds are available from the aquatic land enhancement account. [1984 c 72 § 8. Formerly RCW 75.52.080.]

**77.100.100 Cedar river spawning channel.** A salmon spawning channel shall be constructed on the Cedar river with the assistance and cooperation of the department. The department shall use existing personnel and the volunteer fisheries enhancement program outlined under chapter 77.100 RCW to assist in the planning, construction, and operation of the spawning channel. [2000 c 107 § 114; 1993 sp.s. c 2 § 52; 1989 c 85 § 3. Formerly RCW 75.52.100.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Project designation—1989 c 85:** "The legislature hereby designates the Cedar river sockeye salmon enhancement project as a "Washington state centennial salmon venture."" [1989 c 85 § 1.]

**Legislative finding—1989 c 85:** "The legislature recognizes that King county has a unique urban setting for a recreational fishery and that Lake Washington and the rivers flowing into it should be developed for greater salmon production. A Lake Washington fishery is accessible to fifty percent of the state's citizens by automobile in less than one hour. There has been extensive sockeye fishing success in Lake Washington, primarily from fish originating in the Cedar river. The legislature intends to enhance the Cedar river fishery by active state and local management and intends to maximize the Lake Washington sockeye salmon runs for recreational fishing for all of the citizens of the state. A sockeye enhancement program could produce two to three times the current numbers of returning adults. A sockeye enhancement project would increase the public's appreciation of our state's fisheries, would demonstrate the role of a clean environment, and would show that positive cooperation can exist between local and state government in planning and executing programs that directly serve the public. A spawning channel in the Cedar river has been identified as an excellent way to enhance the Lake Washington sockeye run. A public utility currently diverting water from the Cedar river for beneficial public use has expressed willingness to fund the planning, design, evaluation, construction, and operation of a spawning channel on the Cedar river." [1989 c 85 § 2.]

**Severability—1989 c 85:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 85 § 11.]

**77.100.110 Cedar river spawning channel—Technical committee—Policy committee.** The department shall chair a technical committee, which shall review the preparation of enhancement plans and construction designs for a Cedar river sockeye spawning channel. The technical committee shall consist of not more than eight members: One representative each from the department, national marine fisheries service, United States fish and wildlife service, and Muckleshoot Indian tribe; and four representatives from the public utility described in RCW 77.100.130. The technical committee will be guided by a policy committee, also to be chaired by the department, which shall consist of not more than six members: One representative from the department, one from the Muckleshoot Indian tribe, and one from either

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the national marine fisheries service or the United States fish and wildlife service; and three representatives from the public utility described in RCW 77.100.130. The policy committee shall oversee the operation and evaluation of the spawning channel. The policy committee will continue its oversight until the policy committee concludes that the channel is meeting the production goals specified in RCW 77.100.120. [2000 c 107 § 115; 1998 c 245 § 156; 1993 sp.s. c 2 § 53; 1989 c 85 § 4. Formerly RCW 75.52.110.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Project designation—Legislative finding—Severability—1989 c 85:** See notes following RCW 77.100.100.

**77.100.120 Cedar river spawning channel—Specifications.** The channel shall be designed to produce, at a minimum, fry comparable in quality to those produced in the Cedar river and equal in number to what could be produced naturally by the estimated two hundred sixty-two thousand adults that could have spawned upstream of the Landsburg diversion. Construction of the spawning channel shall commence no later than September 1, 1990. Initial construction size shall be adequate to produce fifty percent or more of the production goal specified in this section. [1989 c 85 § 5. Formerly RCW 75.52.120.]

**Project designation—Legislative finding—Severability—1989 c 85:** See notes following RCW 77.100.100.

**77.100.130 Cedar river spawning channel—Funding.** The legislature recognizes that, if funding for planning, design, evaluation, construction, and operating expenses is provided by a public utility that diverts water for beneficial public use, and if the performance of the spawning channel meets the production goals described in RCW 77.100.120, the spawning channel project will serve, at a minimum, as compensation for lost sockeye salmon spawning habitat upstream of the Landsburg diversion. The amount of funding to be supplied by the utility will fully fund the total cost of planning, design, evaluation, and construction of the spawning channel. [2000 c 107 § 116; 1989 c 85 § 6. Formerly RCW 75.52.130.]

**Project designation—Legislative finding—Severability—1989 c 85:** See notes following RCW 77.100.100.

**77.100.140 Cedar river spawning channel—Transfer of funds.**

**Reviser's note:** RCW 75.52.140 was amended by 2000 c 107 § 117 and recodified as RCW 77.100.140 without reference to its repeal by 2000 c 150 § 2. It has been decodified, effective July 1, 2001, for publication purposes under RCW 1.12.025.

**77.100.150 Cedar river spawning channel—Legislative declaration.** The legislature hereby declares that the construction of the Cedar river sockeye spawning channel is in the best interests of the state of Washington. [1989 c 85 § 9. Formerly RCW 75.52.150.]

**Project designation—Legislative finding—Severability—1989 c 85:** See notes following RCW 77.100.100.

**77.100.160 Cedar river spawning channel—Mitigation of water diversion projects.** Should the requirements of RCW 77.100.100 through 77.100.160 not be met, the department shall seek immediate legal clarification of the steps which must be taken to fully mitigate water diversion projects on the Cedar river. [2000 c 107 § 118; 1993 sp.s. c 2 § 54; 1989 c 85 § 10. Formerly RCW 75.52.160.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Project designation—Legislative finding—Severability—1989 c 85:** See notes following RCW 77.100.100.

**77.100.170 Fish hatcheries—Volunteer group projects.** The manager of a state fish hatchery operated by the department of fish and wildlife may allow nonprofit volunteer groups affiliated with the hatchery to undertake projects to raise donations, gifts, and grants that enhance support for the hatchery or activities in the surrounding watershed that benefit the hatchery. The manager may provide agency personnel and services, if available, to assist in the projects and may allow the volunteer groups to conduct activities on the grounds of the hatchery.

The director of the department of fish and wildlife shall encourage and facilitate arrangements between hatchery managers and nonprofit volunteer groups and may establish guidelines for such arrangements. [1995 c 224 § 1. Formerly RCW 75.08.047.]

**77.100.900 Severability—1984 c 72.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 72 § 9. Formerly RCW 75.52.900.]

## Chapter 77.105 RCW

### RECREATIONAL SALMON AND MARINE FISH ENHANCEMENT PROGRAM

#### Sections

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77.105.160	Oversight committee—Created—Duties.
77.105.900	Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100.
77.105.901	Severability—1993 sp.s. c 2.

**77.105.005 Findings.** The legislature finds that recreational fishing opportunities for salmon and marine bottomfish have been dwindling in recent years. It is important to restore diminished recreational fisheries and to enhance the salmon and marine bottomfish resource to assure sustained productivity. Investments made in recreational fishing programs will repay the people of the state many times over in increased economic activity and in an improved quality of life. [1993 sp.s. c 2 § 82. Formerly RCW 75.54.005.]

**77.105.010 Program created—Coordinator.** There is created within the department of fish and wildlife the Puget Sound recreational salmon and marine fish enhancement program. The department of fish and wildlife shall identify a coordinator for the program who shall act as spokesperson for the program and shall:

(1) Coordinate the activities of the Puget Sound recreational salmon and marine fish enhancement program, including the Lake Washington salmon fishery; and

(2) Work within and outside of the department to achieve the goals stated in this chapter, including coordinating with the Puget Sound recreational fisheries enhancement oversight committee established in RCW 77.105.160. [2003 c 173 § 1; 1998 c 245 § 157; 1993 sp.s. c 2 § 83. Formerly RCW 75.54.010.]

**77.105.020 Department responsibilities.** The department shall: Develop a short-term program of hatchery-based salmon enhancement using freshwater pond sites for the final rearing phase; solicit support from cooperative projects, regional enhancement groups, and other supporting organizations; conduct comprehensive research on resident and migratory salmon production opportunities; and conduct research on marine bottomfish production limitations and on methods for artificial propagation of marine bottomfish.

Long-term responsibilities of the department are to: Fully implement enhancement efforts for Puget Sound and Hood Canal resident salmon and marine bottomfish; identify opportunities to reestablish salmon runs into areas where they no longer exist; encourage naturally spawning salmon populations to develop to their fullest extent; and fully utilize hatchery programs to improve recreational fishing. [1993 sp.s. c 2 § 84. Formerly RCW 75.54.020.]

**77.105.030 Planning and operation of programs—Assistance from nondepartmental sources.** The department shall seek recommendations from persons who are expert on the planning and operation of programs for enhancement of recreational fisheries. The department shall fully use the expertise of the University of Washington college of fisheries and the sea grant program to develop research and enhancement programs. [1993 sp.s. c 2 § 85. Formerly RCW 75.54.030.]

**77.105.040 Delayed-release chinook salmon—Freshwater rearing.** The department shall develop new locations for the freshwater rearing of delayed-release chinook salmon. In calendar year 1994, at least one freshwater pond chinook salmon rearing site shall be developed and begin production in each of the following areas: South Puget Sound, central

Puget Sound, north Puget Sound, and Hood Canal. Natural or artificial pond sites shall be preferred to net pens due to higher survival rates experienced from pond rearing. Rigorous predatory bird control measures shall be implemented. The goal of the program is to increase the production and planting of delayed-release chinook salmon to a level of three million fish annually by the year 2000. [1993 sp.s. c 2 § 86. Formerly RCW 75.54.040.]

**77.105.050 Marine bottomfish species—Research, methods, and programs for artificial rearing.** The department shall conduct research, develop methods, and implement programs for the artificial rearing and release of marine bottomfish species. Lingcod, halibut, rockfish, and Pacific cod shall be the species of primary emphasis due to their importance in the recreational fishery. [1993 sp.s. c 2 § 87. Formerly RCW 75.54.050.]

**77.105.060 Additional research.** The department shall undertake additional research to more fully evaluate improved enhancement techniques, hooking mortality rates, methods of mass marking, improvement of catch models, and sources of marine bottomfish mortality. Research shall be designed to give the best opportunity to provide information that can be applied to real-world recreational fishing needs. [1993 sp.s. c 2 § 88. Formerly RCW 75.54.060.]

**77.105.070 Siting process for enhancement projects—Cooperation with other entities.** The department shall work with the department of ecology and local government entities to streamline the siting process for new enhancement projects. The department is encouraged to work with the legislature to develop statutory changes that enable expeditious processing and granting of permits for fish enhancement projects. [1994 c 264 § 47; 1993 sp.s. c 2 § 89. Formerly RCW 75.54.070.]

**77.105.080 Public awareness program.** The department's information and education section shall develop a public awareness program designed to educate the public on the elements of the recreational fishing program and to recruit volunteers to assist the department in implementing recreational fishing projects. Economic benefits of the program shall be emphasized. [1993 sp.s. c 2 § 90. Formerly RCW 75.54.080.]

**77.105.090 Management of predators.** The department shall increase efforts to document the effects of bird predators, harbor seals, sea lions, and predatory fish upon the salmon and marine fish resource. Every opportunity shall be explored to convince the federal government to amend the marine mammal protection act to allow for balanced management of predators, as well as to work with the United States fish and wildlife service to achieve workable control measures for predatory birds. [1993 sp.s. c 2 § 91. Formerly RCW 75.54.090.]

**77.105.100 Plans to target hatchery-produced fish—Participation by fishing interests—Feasibility of increased survival and production of chinook and coho**

**salmon.** Indian tribal fishing interests and non-Indian commercial fishing groups shall be invited to participate in development of plans for selective fisheries that target hatchery-produced fish and minimize catch of naturally spawned fish. In addition, talks shall be initiated on the feasibility of altering the rearing programs of department hatcheries to achieve higher survival and greater production of chinook and coho salmon. [1993 sp.s. c 2 § 92. Formerly RCW 75.54.100.]

**77.105.110 Coordination of sport fishing program with wild stock initiative.** The department shall coordinate the sport fishing program with the wild stock initiative to assure that the two programs are compatible and potential conflicts are avoided. [1993 sp.s. c 2 § 93. Formerly RCW 75.54.110.]

**77.105.120 Increased recreational access to salmon and marine fish resources—Plans.** The department shall develop plans for increased recreational access to salmon and marine fish resources. Proposals for new boat launching ramps and pier fishing access shall be developed. [1993 sp.s. c 2 § 94. Formerly RCW 75.54.120.]

**77.105.130 Recreational fishing projects—Contracting with entities.** The department shall contract with private consultants, aquatic farms, or construction firms, where appropriate, to achieve the highest benefit-to-cost ratio for recreational fishing projects. [1993 sp.s. c 2 § 95. Formerly RCW 75.54.130.]

**77.105.140 Saltwater, combination fishing license—Disposition of fee.** As provided in RCW 77.32.440, a portion of each saltwater and combination fishing license fee shall be deposited in the recreational fisheries enhancement account created in RCW 77.105.150. [2000 c 107 § 119; 1998 c 191 § 28; 1997 c 197 § 1; 1993 sp.s. c 2 § 97. Formerly RCW 75.54.140.]

**Effective date—1998 c 191:** See note following RCW 77.32.400.

**77.105.150 Recreational fisheries enhancement account.** The recreational fisheries enhancement account is created in the state treasury. All receipts from RCW 77.105.140 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for recreational fisheries enhancement programs identified in this chapter. Under no circumstances may moneys from the account be used to backfill shortfalls in other state funding sources. [2003 c 173 § 3; 2000 c 107 § 120; 1993 sp.s. c 2 § 98. Formerly RCW 75.54.150.]

**77.105.160 Oversight committee—Created—Duties.** (1) The Puget Sound recreational fisheries enhancement oversight committee is created. The director shall appoint at least seven members representing sport fishing organizations to the committee from a list of applicants, ensuring broad representation from the sport fishing community. Each member shall serve for a term of two years, and may be reappointed for subsequent two-year terms at the discretion of the director. Members of the committee serve without compensation.

(2) The Puget Sound recreational fisheries enhancement oversight committee has the following duties:

(a) Advise the department on all aspects of the Puget Sound recreational fisheries enhancement program;

(b) Review and provide guidance on the annual budget for the recreational fisheries enhancement account;

(c) Select a chair of the committee. It is the chair's duty to coordinate with the department on all issues related to the Puget Sound recreational fisheries enhancement program;

(d) Meet at least quarterly with the department's coordinator of the Puget Sound recreational fisheries enhancement program;

(e) Review and comment on program documents and proposed production of salmon and other species; and

(f) Address other issues related to the purposes of the Puget Sound recreational fisheries enhancement program that are of interest to recreational fishers in Puget Sound. [2003 c 173 § 2.]

**77.105.900 Effective date—1993 sp.s. c 2 §§ 7, 60, 80, and 82-100.** Sections 7, 60, 80, and 82 through 100 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 sp.s. c 2 § 105. Formerly RCW 75.54.900.]

**77.105.901 Severability—1993 sp.s. c 2.** See RCW 43.300.901.

### Chapter 77.110 RCW

#### SALMON AND STEELHEAD TROUT— MANAGEMENT OF RESOURCES

##### Sections

77.110.010	Declaration.
77.110.020	Petition to congress.
77.110.030	Management of natural resources—State policy.
77.110.040	Declaration—Denial of rights based on race, sex, origin, or cultural heritage.
77.110.900	Transmittal of act to president and congress—1985 c 1.
77.110.901	Severability—1985 c 1.

**77.110.010 Declaration.** The people of the state of Washington declare that an emergency exists in the management of salmon and steelhead trout resources such that both are in great peril. An immediate resolution of this crisis is essential to perpetuating and enhancing these resources. [1985 c 1 § 1 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.010.]

**77.110.020 Petition to congress.** The people of the state of Washington petition the United States Congress to immediately make the steelhead trout a national game fish protected under the Black Bass Act. [1985 c 1 § 2 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.020.]

**77.110.030 Management of natural resources—State policy.** The people of the state of Washington declare that conservation, enhancement, and proper utilization of the state's natural resources, including but not limited to lands, waters, timber, fish, and game are responsibilities of the state

of Washington and shall remain within the express domain of the state of Washington.

While fully respecting private property rights, all resources in the state's domain shall be managed by the state alone such that conservation, enhancement, and proper utilization are the primary considerations. No citizen shall be denied equal access to and use of any resource on the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 3 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.030.]

**77.110.040 Declaration—Denial of rights based on race, sex, origin, or cultural heritage.** The people of the state of Washington declare that under the Indians Citizens Act of 1924, all Indians became citizens of the United States and subject to the Constitution and laws of the United States and state in which they reside. The people further declare that any special off-reservation legal rights or privileges of Indians established through treaties that are denied to other citizens were terminated by that 1924 enactment, and any denial of rights to any citizen based upon race, sex, origin, cultural heritage, or by and through any treaty based upon the same is unconstitutional.

No rights, privileges, or immunities shall be denied to any citizen upon the basis of race, sex, origin, cultural heritage, or by and through any treaty based upon the same. [1985 c 1 § 4 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.040.]

**77.110.900 Transmittal of act to president and congress—1985 c 1.** The secretary of state shall transmit copies of this act to the president of the United States senate, the speaker of the United States house of representatives, and each member of congress. [1985 c 1 § 5 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.900.]

**77.110.901 Severability—1985 c 1.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 1 § 6 (Initiative Measure No. 456, approved November 6, 1984). Formerly RCW 75.56.905.]

### Chapter 77.115 RCW

#### AQUACULTURE DISEASE CONTROL

##### Sections

77.115.010	Disease inspection and control for aquatic farmers—Development of program—Elements—Rules—Violations.
77.115.020	Disease inspection and control program—User fees—Aquaculture disease control account.
77.115.030	Consultation required—Agreements for diagnostic field services authorized—Roster of biologists.
77.115.040	Registration of aquatic farmers.

**77.115.010 Disease inspection and control for aquatic farmers—Development of program—Elements—Rules—Violations.** (1) The director of agriculture and the director shall jointly develop a program of disease inspection and control for aquatic farmers as defined in RCW 15.85.020.

The program shall be administered by the department under rules established under this section. The purpose of the program is to protect the aquaculture industry and wildstock fisheries from a loss of productivity due to aquatic diseases or maladies. As used in this section "diseases" means, in addition to its ordinary meaning, infestations of parasites or pests. The disease program may include, but is not limited to, the following elements:

- (a) Disease diagnosis;
- (b) Import and transfer requirements;
- (c) Provision for certification of stocks;
- (d) Classification of diseases by severity;
- (e) Provision for treatment of selected high-risk diseases;
- (f) Provision for containment and eradication of high-risk diseases;
- (g) Provision for destruction of diseased cultured aquatic products;
- (h) Provision for quarantine of diseased cultured aquatic products;
- (i) Provision for coordination with state and federal agencies;
- (j) Provision for development of preventative or control measures;
- (k) Provision for cooperative consultation service to aquatic farmers; and

(1) Provision for disease history records.

(2) The commission shall adopt rules implementing this section. However, such rules shall have the prior approval of the director of agriculture and shall provide therein that the director of agriculture has provided such approval. The director of agriculture or the director's designee shall attend the rule-making hearings conducted under chapter 34.05 RCW and shall assist in conducting those hearings. The authorities granted the department by these rules and by RCW 77.12.047(1)(g), 77.60.060, 77.60.080, 77.65.210, \*77.115.020, 77.115.030, and 77.115.040 constitute the only authorities of the department to regulate private sector cultured aquatic products and aquatic farmers as defined in RCW 15.85.020. Except as provided in subsection (3) of this section, no action may be taken against any person to enforce these rules unless the department has first provided the person an opportunity for a hearing. In such a case, if the hearing is requested, no enforcement action may be taken before the conclusion of that hearing.

(3) The rules adopted under this section shall specify the emergency enforcement actions that may be taken by the department, and the circumstances under which they may be taken, without first providing the affected party with an opportunity for a hearing. Neither the provisions of this subsection nor the provisions of subsection (2) of this section shall preclude the department from requesting the initiation of criminal proceedings for violations of the disease inspection and control rules.

(4) A person shall not violate the rules adopted under subsection (2) or (3) of this section or violate RCW 77.115.040.

(5) In administering the program established under this section, the department shall use the services of a pathologist licensed to practice veterinary medicine.

(6) The director in administering the program shall not place constraints on or take enforcement actions in respect to

the aquaculture industry that are more rigorous than those placed on the department or other fish-rearing entities. [2000 c 107 § 122; 1998 c 190 § 110; 1993 sp.s. c 2 § 55; 1988 c 36 § 43; 1985 c 457 § 8. Formerly RCW 75.58.010.]

\*Reviser's note: RCW 75.58.020 was recodified as RCW 77.115.020 and also repealed by 2000 c 150 § 2, effective July 1, 2001.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

#### **77.115.020 Disease inspection and control program—User fees—Aquaculture disease control account.**

Reviser's note: RCW 75.58.020 was amended by 2000 c 107 § 123 and recodified as RCW 77.115.020 without reference to its repeal by 2000 c 150 § 2. It has been decodified, effective July 1, 2001, for publication purposes under RCW 1.12.025.

#### **77.115.030 Consultation required—Agreements for diagnostic field services authorized—Roster of biologists.**

(1) The director shall consult regarding the disease inspection and control program established under RCW 77.115.010 with federal agencies and Indian tribes to assure protection of state, federal, and tribal aquatic resources and to protect private sector cultured aquatic products from disease that could originate from waters or facilities managed by those agencies.

(2) With regard to the program, the director may enter into contracts or interagency agreements for diagnostic field services with government agencies and institutions of higher education and private industry.

(3) The director shall provide for the creation and distribution of a roster of biologists having a specialty in the diagnosis or treatment of diseases of fish or shellfish. The director shall adopt rules specifying the qualifications which a person must have in order to be placed on the roster. [2000 c 107 § 124; 1993 sp.s. c 2 § 57; 1988 c 36 § 44; 1985 c 457 § 10. Formerly RCW 75.58.030.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

**77.115.040 Registration of aquatic farmers.** (1) All aquatic farmers, as defined in RCW 15.85.020, shall register with the department. The director shall assign each aquatic farm a unique registration number and develop and maintain in an electronic database a registration list of all aquaculture farms. The department shall establish procedures to annually update the aquatic farmer information contained in the registration list. The department shall coordinate with the department of health using shellfish growing area certification data when updating the registration list.

(2) Registered aquaculture farms shall provide the department with the following information:

- (a) The name of the aquatic farmer;
- (b) The address of the aquatic farmer;
- (c) Contact information such as telephone, fax, web site, and e-mail address, if available;

(d) The number and location of acres under cultivation, including a map displaying the location of the cultivated acres;

(e) The name of the landowner of the property being cultivated or otherwise used in the aquatic farming operation;

(f) The private sector cultured aquatic product being propagated, farmed, or cultivated; and

(g) Statistical production data.

(3) The state veterinarian shall be provided with registration and statistical data by the department. [2007 c 216 § 6; 1993 sp.s. c 2 § 58; 1988 c 36 § 45; 1985 c 457 § 11. Formerly RCW 75.58.040.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

### Chapter 77.120 RCW

#### BALLAST WATER MANAGEMENT

##### Sections

77.120.005	Findings.
77.120.010	Definitions.
77.120.020	Application of chapter.
77.120.030	Authorized ballast water discharge—Adoption of standards by rule.
77.120.040	Reporting and sampling requirements.
77.120.050	Pilot project—Private sector ballast water treatment operation.
77.120.070	Violation of chapter—Penalties—Rules.
77.120.100	Department may assess fee for exemptions—Rules.
77.120.110	Ballast water management account.
77.120.120	Special operating authorization—Rules.
77.120.900	Severability—2000 c 108.

**77.120.005 Findings.** The legislature finds that some nonindigenous species have the potential to cause economic and environmental damage to the state and that current efforts to stop the introduction of nonindigenous species from shipping vessels do not adequately reduce the risk of new introductions into Washington waters.

The legislature recognizes the international ramifications and the rapidly changing dimensions of this issue, the lack of currently available treatment technologies, and the difficulty that any one state has in either legally or practically managing this issue. Recognizing the possible limits of state jurisdiction over international issues, the state declares its support for the international maritime organization and United States coast guard efforts, and the state intends to complement, to the extent its powers allow it, the United States coast guard's ballast water management program. [2004 c 227 § 1; 2000 c 108 § 1.]

**77.120.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Ballast tank" means any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.

(2) "Ballast water" means any water and matter taken on board a vessel to control or maintain trim, draft, stability, or stresses of the vessel, without regard to the manner in which it is carried.

(3) "Empty/refill exchange" means to pump out, until the tank is empty or as close to empty as the master or operator determines is safe, the ballast water taken on in ports, estuarine, or territorial waters, and then refilling the tank with open sea waters.

(4) "Exchange" means to replace the water in a ballast tank using either flow through exchange, empty/refill exchange, or other exchange methodology recommended or required by the United States coast guard.

(5) "Flow through exchange" means to flush out ballast water by pumping in midocean water at the bottom of the tank and continuously overflowing the tank from the top until three full volumes of water have been changed to minimize the number of original organisms remaining in the tank.

(6) "Nonindigenous species" means any species or other viable biological material that enters an ecosystem beyond its natural range.

(7) "Open sea exchange" means an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter.

(8) "Recognized marine trade association" means those trade associations in Washington state that promote improved ballast water management practices by educating their members on the provisions of this chapter, participating in regional ballast water coordination through the Pacific ballast water group, assisting the department in the collection of ballast water exchange forms, and the monitoring of ballast water. This includes members of the Puget Sound marine committee for Puget Sound and the Columbia river steamship operators association for the Columbia river.

(9) "Sediments" means any matter settled out of ballast water within a vessel.

(10) "Untreated ballast water" includes exchanged or unexchanged ballast water that has not undergone treatment.

(11) "Vessel" means a ship, boat, barge, or other floating craft of three hundred gross tons or more, United States and foreign, carrying, or capable of carrying, ballast water into the coastal waters of the state after operating outside of the coastal waters of the state, except those vessels described in RCW 77.120.020.

(12) "Voyage" means any transit by a vessel destined for any Washington port.

(13) "Waters of the state" means any surface waters, including internal waters contiguous to state shorelines within the boundaries of the state. [2007 c 350 § 8; 2000 c 108 § 2.]

**77.120.020 Application of chapter.** (1) This chapter applies to all vessels transiting into the waters of the state from a voyage, except:

(a) A vessel of the United States department of defense or United States coast guard subject to the requirements of section 1103 of the national invasive species act of 1996, or any vessel of the armed forces, as defined in 33 U.S.C. Sec. 1322(a)(14), that is subject to the uniform national discharge standards for vessels of the armed forces under 33 U.S.C. Sec. 1322(n);

(b) A vessel that discharges ballast water or sediments only at the location where the ballast water or sediments originated, if the ballast water or sediments do not mix with ballast water or sediments from areas other than open sea waters; and

(c) A vessel in innocent passage, merely traversing the territorial sea of the United States and not entering or depart-

ing a United States port, or not navigating the internal waters of the United States, and that does not discharge ballast water into the waters of the state.

(2) This chapter does not authorize the discharge of oil or noxious liquid substances in a manner prohibited by state, federal, or international laws or regulations. Ballast water containing oil, noxious liquid substances, or any other pollutant shall be discharged in accordance with the applicable requirements.

(3) The master or operator in charge of a vessel is responsible for the safety of the vessel, its crew, and its passengers. Nothing in this chapter relieves the master or operator in charge of a vessel of the responsibility for ensuring the safety and stability of the vessel or the safety of the crew and passengers. [2007 c 350 § 9; 2000 c 108 § 3.]

**77.120.030 Authorized ballast water discharge—Adoption of standards by rule.** (1) The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control does not discharge ballast water into the waters of the state except as authorized by this section.

(2) Discharge of ballast water into waters of the state is authorized only if there has been an open sea exchange, or if the vessel has treated its ballast water, to meet standards set by the department consistent with applicable state and federal laws. (3) The department, in consultation with the \*ballast water work group, or similar collaborative forum, shall adopt by rule standards for the discharge of ballast water into the waters of the state and their implementation timelines. The standards are intended to ensure that the discharge of ballast water poses minimal risk of introducing nonindigenous species. In developing these standards, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards must be compatible with standards set by the United States coast guard, the federal clean water act (33 U.S.C. Sec. 1251-1387), or the international maritime organization.

(4) The master, operator, or person in charge of a vessel is not required to conduct an open sea exchange or treatment of ballast water if the master, operator, or person in charge of a vessel determines that the operation would threaten the safety of the vessel, its crew, or its passengers, because of adverse weather, vessel design limitations, equipment failure, or any other extraordinary conditions. A master, operator, or person in charge of a vessel who relies on this exemption must file documentation defined by the department, subject to: (a) Payment of a fee not to exceed five thousand dollars; (b) discharging only the minimal amount of ballast water operationally necessary; (c) ensuring that ballast water records accurately reflect any reasons for not complying with the mandatory requirements; and (d) any other requirements identified by the department by rule as provided in subsections (3) and (6) of this section.

(5) For treatment technologies requiring shipyard modification, the department may enter into a compliance plan with the vessel owner. The compliance plan must include a timeline consistent with drydock and shipyard schedules for completion of the modification. The department shall adopt rules for compliance plans under this subsection.

(6) For an exemption claimed in subsection (4) of this section, the department shall adopt rules for defining exemption conditions, requirements, compliance plans, or alternative ballast water management strategies to meet the intent of this section.

(7) The department shall make every effort to align ballast water standards with adopted international and federal standards while ensuring that the goals of this chapter are met.

(8) The requirements of this section do not apply to a vessel discharging ballast water or sediments that originated solely within the waters of Washington state, the Columbia river system, or the internal waters of British Columbia south of latitude fifty degrees north, including the waters of the Straits of Georgia and Juan de Fuca.

(9) Open sea exchange is an exchange that occurs fifty or more nautical miles offshore. If the United States coast guard requires a vessel to conduct an exchange further offshore, then that distance is the required distance for purposes of compliance with this chapter. [2007 c 350 § 10; 2004 c 227 § 3; 2002 c 282 § 2; 2000 c 108 § 4.]

**\*Reviser's note:** The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

#### **77.120.040 Reporting and sampling requirements.**

The owner or operator in charge of any vessel covered by this chapter is required to ensure that the vessel under their ownership or control complies with the reporting and sampling requirements of this section.

(1) Vessels covered by this chapter must report ballast water management information to the department using ballast water management forms that are acceptable to the United States coast guard. The frequency, manner, and form of such reporting shall be established by the department by rule. Any vessel may rely on a recognized marine trade association to collect and forward this information to the department.

(2) In order to monitor the effectiveness of national and international efforts to prevent the introduction of nonindigenous species, all vessels covered by this chapter must submit nonindigenous species ballast water monitoring data. The monitoring, sampling, testing protocols, and methods of identifying nonindigenous species in ballast water shall be determined by the department by rule. A vessel covered by this chapter may contract with a recognized marine trade association to randomly sample vessels within that association's membership, and provide data to the department.

(3) Vessels that do not belong to a recognized marine trade association must submit individual ballast tank sample data to the department for each voyage.

(4) All data submitted to the department under subsection (2) of this section shall be consistent with sampling and testing protocols as adopted by the department by rule.

(5) The department shall adopt rules to implement this section. The rules and recommendations shall be developed in consultation with advisors from regulated industries and the potentially affected parties, including but not limited to shipping interests, ports, shellfish growers, fisheries, environmental interests, interested citizens who have knowledge of the issues, and appropriate governmental representatives including the United States coast guard. In recognition of the

need to have a coordinated response to ballast water management for the Columbia river system, the department must consider rules adopted by the state of Oregon when adopting rules under this section for ballast water management in the navigable waters of the Columbia river system.

(a) The department shall set standards for the discharge of treated ballast water into the waters of the state. The rules are intended to ensure that the discharge of treated ballast water poses minimal risk of introducing nonindigenous species. In developing this standard, the department shall consider the extent to which the requirement is technologically and practically feasible. Where practical and appropriate, the standards shall be compatible with standards set by the United States coast guard and shall be developed in consultation with federal and state agencies to ensure consistency with the federal clean water act, 33 U.S.C. Sec. 1251-1387.

(b) The department shall adopt ballast water sampling and testing protocols for monitoring the biological components of ballast water that may be discharged into the waters of the state under this chapter. Monitoring data is intended to assist the department in evaluating the risk of new, nonindigenous species introductions from the discharge of ballast water, and to evaluate the accuracy of ballast water exchange practices. The sampling and testing protocols must consist of cost-effective, scientifically verifiable methods that, to the extent practical and without compromising the purposes of this chapter, utilize easily measured indices, such as salinity, or check for species that indicate the potential presence of nonindigenous species or pathogenic species. The department shall specify appropriate quality assurance and quality control for the sampling and testing protocols. [2002 c 282 § 3; 2000 c 108 § 5.]

**77.120.050 Pilot project—Private sector ballast water treatment operation.** The shipping vessel industry, the public ports, and the department shall promote the creation of a pilot project to establish a private sector ballast water treatment operation that is capable of servicing vessels at all Washington ports. Federal and state agencies and private industries shall be invited to participate. The project will develop equipment or methods to treat ballast water and establish operational methods that do not increase the cost of ballast water treatment at smaller ports. The legislature intends that the cost of treatment required by this chapter is substantially equivalent among large and small ports in Washington. [2000 c 108 § 6.]

**77.120.070 Violation of chapter—Penalties—Rules.**

(1) The department may establish by rule schedules for any penalty allowed in this chapter. The schedules may provide for the incremental assessment of a penalty based on criteria established by rule.

(2) The director or the director's designee may impose a civil penalty or warning for a violation of the requirements of this chapter on the owner or operator in charge of a vessel who fails to comply with the requirements imposed under RCW 77.120.030 and 77.120.040. The penalty shall not exceed twenty-seven thousand five hundred dollars for each day of a continuing violation. In determining the amount of a civil penalty, the department shall set standards by rule that

consider if the violation was intentional, negligent, or without any fault, and shall consider the quality and nature of risks created by the violation. The owner or operator subject to such a penalty may contest the determination by requesting an adjudicative proceeding within twenty days. Any determination not timely contested is final and may be reduced to a judgment enforceable in any court with jurisdiction. If the department prevails using any judicial process to collect a penalty under this section, the department shall also be awarded its costs and reasonable attorneys' fees.

(3) The department, in cooperation with the United States coast guard, may enforce the requirements of this chapter. [2007 c 350 § 12; 2000 c 108 § 8.]

**77.120.100 Department may assess fee for exemptions—Rules.** The department may assess a fee for any exemptions allowed under this chapter. Such a fee may not exceed five thousand dollars. The department may establish by rule schedules for any fee allowed in this chapter. The schedules may provide for the incremental assessment of a penalty based on criteria established by rule. [2007 c 350 § 13.]

**77.120.110 Ballast water management account.** (1) The ballast water management account is created in the state treasury. All receipts from legislative appropriations, gifts, grants, donations, penalties, and fees received under this chapter must be deposited into the account.

(2) Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to carry out the purposes of this chapter or support the goals of this chapter through research and monitoring except:

(a) Expenditures may not be used for the salaries of permanent department employees; and

(b) Penalties deposited into the account may be used, in consultation with the \*ballast water work group created in section 11 of this act, only to support basic and applied research and carry out education and outreach related to the state's ballast water management. [2007 c 350 § 14.]

**\*Reviser's note:** Section 11 of this act was vetoed by the governor. The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

**77.120.120 Special operating authorization—Rules.** The department may issue a special operating authorization for passenger vessels conducting or assisting in research and testing activities to determine the presence of invasive species in ballast water collected in the waters of southeast Alaska north of latitude fifty-four degrees thirty minutes north to sixty-one degrees ten minutes north, extending to longitude one hundred forty-nine degrees thirty minutes west. Such testing and research shall be reviewed by the \*ballast water work group, who may make recommendations to the department. The department may adopt rules for defining special operating authorization conditions, requirements, limitations, and fees as necessary to implement this section, consistent with the intent of this chapter. [2007 c 350 § 15.]

**\*Reviser's note:** The ballast water work group expired June 30, 2007, pursuant to 2004 c 227 § 2.

**77.120.900 Severability—2000 c 108.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 108 § 11.]

### Chapter 77.125 RCW

## MARINE FIN FISH AQUACULTURE PROGRAMS

### Sections

- 77.125.010 Accidental Atlantic salmon release—Prevention measures.
- 77.125.020 Marine aquatic farming location—Defined.
- 77.125.030 Development of proposed rules—Elements.
- 77.125.040 Report to the legislature.

**77.125.010 Accidental Atlantic salmon release—Prevention measures.** Marine aquaculture net pen facilities in Washington state have accidentally released Atlantic salmon into Puget Sound. It is necessary to minimize escapes through the implementation of statewide prevention measures. [2001 c 86 § 1.]

**77.125.020 Marine aquatic farming location—Defined.** For the purposes of this chapter, "marine aquatic farming location" means a complete complex that may be composed of various marine enclosures, net pens, or other rearing vessels, food handling facilities, or other facilities related to the rearing of Atlantic salmon or other fin fish in marine waters. A marine aquatic farming location is distinguished from the individual facilities that collectively compose the location. [2001 c 86 § 2.]

**77.125.030 Development of proposed rules—Elements.** The director, in cooperation with the marine fin fish aquatic farmers, shall develop proposed rules for the implementation, administration, and enforcement of marine fin fish aquaculture programs. In developing such proposed rules, the director must use a negotiated rule-making process pursuant to RCW 34.05.310. The proposed rules shall be submitted to the appropriate legislative committees by January 1, 2002, to allow for legislative review of the proposed rules. The proposed rules shall include the following elements:

(1) Provisions for the prevention of escapes of cultured marine fin fish aquaculture products from enclosures, net pens, or other rearing vessels;

(2) Provisions for the development and implementation of management plans to facilitate the most rapid recapture of live marine fin fish aquaculture products that have escaped from enclosures, net pens, or other rearing vessels, and to prevent the spread or permanent escape of these products;

(3) Provisions for the development of management practices based on the latest available science, to include:

(a) Procedures for inspections of marine aquatic farming locations on a regular basis to determine conformity with law and the rules of the department relating to the operation of marine aquatic farming locations; and

(b) Operating procedures at marine aquatic farming locations to prevent the escape of marine fin fish, to include the use of net antifoulants;

(4) Provisions for the eradication of those cultured marine fin fish aquaculture products that have escaped from

enclosures, net pens, or other rearing vessels found spawning in state waters;

(5) Provisions for the determination of appropriate species, stocks, and races of marine fin fish aquaculture products allowed to be cultured at specific locations and sites;

(6) Provisions for the development of an Atlantic salmon watch program similar to the one in operation in British Columbia, Canada. The program must provide for the monitoring of escapes of Atlantic salmon from marine aquatic farming locations, monitor the occurrence of naturally produced Atlantic salmon, determine the impact of Atlantic salmon on naturally produced and cultured fin fish stocks, provide a focal point for consolidation of scientific information, and provide a forum for interaction and education of the public; and

(7) Provisions for the development of an education program to assist marine aquatic farmers so that they operate in an environmentally sound manner. [2001 c 86 § 3.]

**77.125.040 Report to the legislature.** Rules to implement this chapter shall be adopted no sooner than thirty days following the end of the 2002 regular legislative session. The director shall provide a written report to the appropriate legislative committees by January 1, 2003, on the progress of the program. [2001 c 86 § 4.]



# Title 78

## MINES, MINERALS, AND PETROLEUM

### Chapters

- 78.04 Mining corporations.**
- 78.06 Mining claims—Survey reports.**
- 78.08 Location of mining claims.**
- 78.12 Abandoned shafts and excavations.**
- 78.16 Mineral and petroleum leases on county lands.**
- 78.22 Extinguishment of unused mineral rights.**
- 78.44 Surface mining.**
- 78.52 Oil and gas conservation.**
- 78.56 Metals mining and milling operations.**
- 78.60 Geothermal resources.**

*Appropriation of water for industrial purposes: RCW 90.16.020.*

*Assay—Altering or making false sample or certificate: RCW 9.45.210, 9.45.220.*

*Boilers and unfired pressure vessels: Chapter 70.79 RCW.*

*Bureau of statistics: Chapter 43.07 RCW.*

*Department of natural resources: Chapter 43.30 RCW.*

*Department of community, trade, and economic development: Chapter 43.330 RCW.*

*Explosives: Chapter 70.74 RCW.*

*Franchises on county roads and bridges: Chapter 36.55 RCW.*

*Geological survey: RCW 43.27A.130, chapter 43.92 RCW.*

*Geology supervisor: RCW 43.30.600 and 43.27A.130.*

*Industrial safety and health: Chapter 49.17 RCW.*

*Labor liens on franchises, earnings, and property of certain companies: Chapter 60.32 RCW.*

*Measurement of oil, gas, coal products, fraud, penalty: RCW 9.45.122 through 9.45.126.*

*Operating engine or boiler without spark arrester: RCW 9.40.040.*

*Pipelines, hazardous liquid and gas: Chapter 81.88 RCW.*

*Private ways of necessity: Chapter 8.24 RCW.*

*Protection of employees: State Constitution Art. 2 § 35.*

#### Public lands

*applications for federal certification that lands are nonmineral: RCW 79.02.110.*

*relinquishment to United States in certain cases of reserved mineral rights: RCW 79.11.220.*

*sales and leases, reservation in contract: RCW 79.11.210.*

*Public utilities, gas, electrical and water companies: Chapter 80.28 RCW.*

*Supervisor of industrial safety and health: RCW 43.22.040.*

*Underground storage of natural gas: Chapter 80.40 RCW.*

*Use of waters for irrigation, mining, manufacturing, deemed a public use: State Constitution Art. 21.*

### Chapter 78.04 RCW

#### MINING CORPORATIONS

#### Sections

- 78.04.010 Right of eminent domain.
- 78.04.015 Right of entry.
- 78.04.020 Manner of exercising right of eminent domain.
- 78.04.030 No stock subscription necessary.
- 78.04.040 Right of stockholder to enter and examine property.
- 78.04.050 Penalty for violations under RCW 78.04.040.

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**78.04.010 Right of eminent domain.** The right of eminent domain is hereby extended to all corporations incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works. [1897 c 60 § 1; RRS § 8608. FORMER PART OF SECTION: 1897 c 60 § 2; RRS § 8609 now codified as RCW 78.04.015.]

*Water rights—Appropriation for industrial (mining) purposes: RCW 90.16.020 and 90.16.030.*

**78.04.015 Right of entry.** Every corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, and doing business in this state, for the purpose of acquiring, owning or operating mines, mills or reduction works, or mining or milling gold and silver or other minerals, which may desire to erect and operate surface tramways or elevated cable tramways for the purpose of carrying, conveying or transporting the products of such mines, mills or reduction works, shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1897 c 60 § 2; RRS § 8609. Formerly RCW 87.04.010, part.]

**78.04.020 Manner of exercising right of eminent domain.** Every such corporation shall have the right to appropriate real estate or other property for right-of-way in the same manner and under the same procedure as now is or may be hereafter provided by the law in the case of other corporations authorized by the laws of this state to exercise the right of eminent domain. [1897 c 60 § 3; RRS § 8610.]

*Eminent domain by corporations: Chapter 8.20 RCW.*

**78.04.030 No stock subscription necessary.** In incorporations already formed, or which may hereafter be formed under \*this chapter, where the amount of the capital stock of such corporation consists of the aggregate valuation of the whole number of feet, shares, or interest in any mining claim in this state, for the working and development of which such corporation shall be or have been formed, no actual subscription to the capital stock of such corporation shall be necessary; but each owner in said mining claim shall be deemed to have subscribed such an amount to the capital stock of such corporation as under its bylaws will represent the value of so much of his interest in said mining claim, the legal title to which he may by deed, deed of trust or other instrument vest, or have vested in such corporation for mining purposes; such

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subscription to be deemed to have been made on the execution and delivery to such corporation of such deed, deed of trust, or other instrument; nor shall the validity of any assessment levied by the board of trustees of such corporation be affected by the reason of the fact that the full amount of the capital stock of such corporation, as mentioned in its certificate of incorporation, shall not have been subscribed as provided in this section: PROVIDED, That the greater portion of said amount of capital stock shall have been so subscribed: AND, PROVIDED FURTHER, That this section shall not be so construed as to prohibit the stockholders of any corporation formed, or which may be formed, for mining purposes as provided in this section, from regulating the mode of making subscriptions to its capital stock and calling in the same by bylaws or express contract. [Code 1881 § 2446; 1873 p 407 § 26; 1869 p 339 § 28; 1866 p 65 § 28; RRS § 8611.]

\*Reviser's note: The two remaining sections of "this chapter" (Code 1881 c CLXXXV) are codified in RCW 78.04.030 above and RCW 90.16.010.

**78.04.040 Right of stockholder to enter and examine property.** Any owner of stock to the amount of one thousand shares, in any corporation doing business under the laws of the state of Washington for the purposes of mining, shall, at all hours of business or labor on or about the premises or property of such corporation, have the right to enter upon such property and examine the same, either on the surface or underground. And it is hereby made the duty of any and all officers, managers, agents, superintendents, or persons in charge, to allow any such stockholder to enter upon and examine any of the property of such corporation at any time during the hours of business or labor; and the presentation of certificates of stock in the corporation of the amount of one thousand shares, to the officer or person in charge, shall be prima facie evidence of ownership and right to enter upon or into, and make examinations of the property of the corporation. [1901 c 120 § 1; RRS § 8612.]

**78.04.050 Penalty for violations under RCW 78.04.040.** Any violation of any of the provisions of RCW 78.04.040 by any officer or agent of such corporation shall constitute a misdemeanor, and upon conviction thereof every such officer or agent shall be fined in a sum not greater than two hundred dollars for each offense. [1901 c 120 § 2; RRS § 8613.]

### Chapter 78.06 RCW

#### MINING CLAIMS—SURVEY REPORTS

##### Sections

78.06.010	Definitions.
78.06.020	Duplicate survey reports to be filed with county auditor—Contents.
78.06.030	Auditor to forward survey reports to department of natural resources.

*Holding claim by geological, etc., survey—Reports: RCW 78.08.072.*

**78.06.010 Definitions.** Words or terms used herein have the following meanings:

(1) "Geological surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.

principles and techniques of the science of geology as they relate to the search for and discovery of mineral deposits.

(2) "Geochemical surveys" means surveys on the ground for mineral deposits by the proper application of the principles and techniques of the science of chemistry as they relate to the search for and discovery of mineral deposits.

(3) "Geophysical surveys" means surveys on the ground for mineral deposits through the employment of generally recognized equipment and methods for measuring physical differences between rock types or discontinuities in geological formations. [1959 c 119 § 1.]

**78.06.020 Duplicate survey reports to be filed with county auditor—Contents.** All reports of geological, geophysical, or geochemical surveys on mining claims which may be filed with the auditor of any county in this state pursuant to United States Public Law 85-876 or amendments or revisions thereto shall be so filed in duplicate, and shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1959 c 119 § 2.]

**78.06.030 Auditor to forward survey reports to department of natural resources.** All county auditors receiving for filing duplicate copies of geological, geochemical, and geophysical survey reports on mining claims shall forward, monthly, one copy of each report received to the department of natural resources. [1988 c 127 § 31; 1959 c 119 § 3.]

### Chapter 78.08 RCW

#### LOCATION OF MINING CLAIMS

##### Sections

	1887 ACT
78.08.005	Prior claims, how governed.
78.08.020	Extent of lode claims.
78.08.030	Rights of locators.
78.08.040	Recording instruments affecting claim.
	1899 AND LATER ACTS
78.08.050	Location notices—Contents—Recording.
78.08.060	Staking of claim—Requisites—Right of person diligently engaged in search.
78.08.070	Cut, excavation, tunnel or test hole in lieu of discovery shaft.
78.08.072	Holding claim by geological, etc., survey—Report of survey.
78.08.075	"Lode" defined.
78.08.080	Amended certificate of location.
78.08.081	Assessment work, affidavit of work performed or affidavit of fees paid.
78.08.082	Affidavit is prima facie evidence.
78.08.090	Relocating abandoned claim.
78.08.100	Location of placer claims.
78.08.110	Affidavit as proof.
78.08.115	Application of RCW 78.08.050 through 78.08.115.

## 1887 ACT

**78.08.005 Prior claims, how governed.** All mining claims upon veins or lodes of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits heretofore located, shall be governed as to length along the vein or lode by the customs, regulations and laws in force at the date of such location. [1887 c 87 § 1; RRS § 8615.]

*For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336. See also, act of congress, May 10, 1872.*

**78.08.020 Extent of lode claims.** A mining claim located upon any vein or lode of quartz or other rock in place, bearing gold, silver or other valuable mineral deposits, after the approval of \*this act by the governor, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining claim shall be made until the discovery of the vein or lode within the limits of the claims located. No claims shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claims be limited by any mining regulation to less than fifty feet of surface on each side of the middle of such vein or lode at the surface, excepting where adverse rights, existing at the date of the approval of this act, shall make such limitation necessary. The end lines of each claim shall be parallel to each other. [1887 c 87 § 2; RRS § 8616.]

\*Reviser's note: "this act" [1887 c 87], is codified in RCW 78.08.005 through 78.08.040; "date of the approval of this act" was February 2, 1888.

**78.08.030 Rights of locators.** The locators of all mining locations heretofore made or hereafter made under the provisions of RCW 78.08.005 through 78.08.040, on any mineral vein, lode or ledge on the public domain, and their heirs and assigns so long as they comply with the laws of the United States and the state and local laws relating thereto, shall have the exclusive right to the possession and enjoyment of all surface included within the lines of their location, and of all veins, lodes and ledges throughout their entire depth, and the top or apex of which lies within the surface lines of such location, extending downward vertically, although such veins, lodes or ledges may so far depart from the perpendicular in their course downward as to extend outside of the vertical side line of said surface location. [1887 c 87 § 3; RRS § 8617.]

**78.08.040 Recording instruments affecting claim.** All location notices, bonds, assignments and transfers of mining claims shall be recorded in the office of the county auditor of the county where the same is situated within thirty days after the execution thereof. [1979 ex.s. c 30 § 15; 1887 c 87 § 7; RRS § 8621.]

## 1899 AND LATER ACTS

**78.08.050 Location notices—Contents—Recording.** The discoverer of a lode shall within ninety days from the date of discovery, record in the office of the auditor of the county in which such lode is found, a notice containing the name or names of the locators, the date of the location, the

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number of feet in length claimed on each side of the discovery, the general course of the lode and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. [1899 c 45 § 1; RRS § 8622.]

*For earlier acts on this subject, see: 1867 pp 146-147, 1869 pp 386-388, 1873 pp 444-446, 1875 pp 126-127, 1877 pp 335-336, 1887 c 87; see also, act of congress, May 10, 1872.*

**78.08.060 Staking of claim—Requisites—Right of person diligently engaged in search.** (1) Before filing such notice for record, the discoverer shall locate his or her claim by posting at the discovery at the time of discovery a notice containing the name of the lode, the name of the locator or locators, and the date of discovery, and marking the surface boundaries of the claim by placing substantial posts or stone monuments bearing the name of the lode and date of location; one post or monument must appear at each corner of such claim; such posts or monuments must be not less than three feet high; if posts are used they shall be not less than four inches in diameter and shall be set in the ground in a substantial manner. If any such claim be located on ground that is covered wholly or in part with brush or trees, such brush shall be cut and trees be marked or blazed along the lines of such claim to indicate the location of such lines.

(2) Prior to valid discovery the actual possession and right of possession of one diligently engaged in the search for minerals shall be exclusive as regards prospecting during continuance of such possession and diligent search. As used in this section, "diligently engaged" shall mean performing not less than one hundred dollars worth of annual assessment work on or for the benefit of the claim or paying any fee or fees in lieu of assessment work in such year or years it is required under federal law, or any larger amount that may be designated now or later by the federal government for annual assessment work. [1995 c 114 § 1; 1965 c 151 § 1; 1963 c 64 § 1; 1949 c 12 § 1; 1899 c 45 § 2; RRS § 8623.]

**78.08.070 Cut, excavation, tunnel or test hole in lieu of discovery shaft.** Any open cut, excavation or tunnel which cuts or exposes a lode and from which a total of two hundred cubic feet of material has been removed or in lieu thereof a test hole drilled on the lode to a minimum depth of twenty feet from the collar, shall hold the lode the same as if a discovery shaft were sunk thereon, and shall be equivalent thereto. [1955 c 357 § 1; 1899 c 45 § 3; RRS § 8624.]

**78.08.072 Holding claim by geological, etc., survey—Report of survey.** Any geological, geochemical, or geophysical survey which reasonably involves a direct expenditure on or for the benefit of each claim of not less than the one hundred dollars worth of annual assessment work required under federal statute or regulations shall hold such claim for not more than two consecutive years or more than a total of five years: PROVIDED, That a written report of such survey shall be filed with the county auditor at the time annual assessment work is recorded as required under federal statute, and said written report shall set forth fully:

(1) The location of the survey performed in relation to the point of discovery or location notice and boundaries of the claim.

(2) The nature, extent, and cost of the survey.

(3) The date the survey was commenced and the date completed.

(4) The basic findings therefrom.

(5) The name, address, and professional background of the person or persons performing or conducting the survey. [1965 c 151 § 2; 1963 c 64 § 2; 1959 c 114 § 1.]

*Reports of geological, etc., surveys: Chapter 78.06 RCW.*

**78.08.075 "Lode" defined.** The term "lode" as used in RCW 78.08.050 through 78.08.115 shall be construed to mean ledge, vein or deposit. [1983 c 3 § 197; 1899 c 45 § 4; RRS § 8625. Formerly RCW 78.08.010.]

**78.08.080 Amended certificate of location.** If at any time the locator of any quartz or lode mining claim heretofore or hereafter located, or his assigns, shall learn that his original certificate was defective or that the requirements of the law had not been complied with before filing, or shall be desirous of changing his surface boundaries or of taking in any additional ground which is subject to location, or in any case the original certificate was made prior to the \*passage of this law, and he shall be desirous of securing the benefits of RCW 78.08.050 through 78.08.115, such locator or his assigns may file an amended certificate of location, subject to the provisions of RCW 78.08.050 through 78.08.115, regarding the making of new locations. [1983 c 3 § 198; 1899 c 45 § 5; RRS § 8626.]

\*Reviser's note: "passage of this law": 1899 c 45 (H.B. 272) passed the house, February 27, 1899; passed the senate, March 7, 1899, and was approved by the governor March 8, 1899.

**78.08.081 Assessment work, affidavit of work performed or affidavit of fees paid.** Within thirty days after the expiration of the period of time fixed for the performance of annual labor or the making of improvements upon any quartz or lode mining claim or premises, the person in whose behalf such work or improvement was made or some person for him or her knowing the facts, shall make and record in the office of the county auditor of the county wherein such claims are situate either an affidavit or oath of labor performed on such claim, or affidavit or oath of fee or fees paid to the federal government in lieu of the annual labor requirement. Such affidavit shall state the exact amount of fee or fees paid, or the kind of labor, including the number of feet of shaft, tunnel or open cut made on such claim, or any other kind of improvements allowed by law made thereon. When both fee and labor requirements have been waived by the federal government, such affidavit will contain a statement to that effect and the state shall not require labor to be performed. Such affidavit shall contain the section, township and range in which such lode is located if the location be in a surveyed area. [1995 c 114 § 2; 1979 ex.s. c 30 § 16; 1955 c 357 § 3; 1899 c 45 § 6; RRS § 8627.]

**78.08.082 Affidavit is prima facie evidence.** Such affidavit when so recorded shall be prima facie evidence of the performance of such labor or the making of such improvements, and such original affidavit after it has been recorded, or a certified copy of record of same, shall be received as evi-

dence accordingly by all the courts of this state. [1899 c 45 § 7; RRS § 8628.]

**78.08.090 Relocating abandoned claim.** The relocation of a forfeited or abandoned quartz or lode claim shall only be made by sinking a new discovery shaft, or in lieu thereof performing at least an equal amount of development work within the borders of the claim, and fixing new boundaries in the same manner and to the same extent as is required in making a new location, or the locator may sink the original discovery shaft ten feet deeper than it was at the date of commencement of such relocation, and shall erect new, or make the old monuments the same as originally required; in either case a new location monument shall be erected. [1949 c 12 § 2; 1899 c 45 § 8; RRS § 8629.]

**78.08.100 Location of placer claims.** The discoverer of placers or other forms of deposits subject to location and appropriation under mining laws applicable to placers shall locate his claim in the following manner:

First. He must immediately post in a conspicuous place at the point of discovery thereon, a notice or certificate of location thereof, containing (1) the name of the claim; (2) the name of the locator or locators; (3) the date of discovery and posting of the notice hereinbefore provided for, which shall be considered as the date of the location; (4) a description of the claim by reference to legal subdivisions of sections, if the location is made in conformity with the public surveys, otherwise, a description with reference to some natural object or permanent monuments as will identify the claim; and where such claim is located by legal subdivisions of the public surveys, such location shall, notwithstanding that fact, be marked by the locator upon the ground the same as other locations.

Second. Within thirty days from the date of such discovery he must record such notice or certificate of location in the office of the auditor of the county in which such discovery is made, and so distinctly mark his location on the ground that its boundaries may be readily traced.

Third. Within sixty days from the date of discovery, the discoverer shall perform labor upon such location or claim in developing the same to an amount which shall be equivalent in the aggregate to at least ten dollars worth of such labor for each twenty acres, or fractional part thereof, contained in such location or claim: PROVIDED, HOWEVER, That nothing in this subdivision shall be held to apply to lands located under the laws of the United States as placer claims for the purpose of the development of petroleum and natural gas and other natural oil products.

Fourth. Such locator shall, upon the performance of such labor, file with the auditor of the county an affidavit showing such performance and generally the nature and kind of work so done. [1901 c 137 § 1; 1899 c 45 § 10; RRS § 8631.]

**78.08.110 Affidavit as proof.** The affidavit provided for in the last section, and the aforesaid placer notice or certificate of location when filed for record, shall be prima facie evidence of the facts therein recited. A copy of such certificate, notice or affidavit certified by the county auditor shall be admitted in evidence in all actions or proceeding with the

same effect as the original and the provisions of RCW 78.08.081 and 78.08.082 shall apply to placer claims as well as lode claims. [1899 c 45 § 11; RRS § 8632.]

**78.08.115 Application of RCW 78.08.050 through 78.08.115.** All locations of quartz or placer formations or deposits hereafter made shall conform to the requirements of RCW 78.08.050 through 78.08.115 insofar as the same are respectively applicable thereto. [1983 c 3 § 199; 1899 c 45 § 12; RRS § 8633.]

## Chapter 78.12 RCW

### ABANDONED SHAFTS AND EXCAVATIONS

#### Sections

78.12.010	Shafts, excavations to be fenced.
78.12.020	Complaint—Contents.
78.12.030	Order to serve notice.
78.12.040	Notice—Contents—Civil and criminal penalties.
78.12.050	Suit in name of state—Disposition of proceeds.
78.12.060	Procedure when shaft unclaimed.
78.12.061	Safety cage in mining shaft—Regulations.
78.12.070	Damage actions preserved.

**78.12.010 Shafts, excavations to be fenced.** Any person or persons, company, or corporation who shall hereafter dig, sink or excavate, or cause the same to be done, or being the owner or owners, or in the possession, under any lease or contract, of any shaft, excavation or hole, whether used for mining or otherwise, or whether dug, sunk or excavated for the purpose of mining, to obtain water, or for any other purpose, within this state, shall, during the time they may be employed in digging, sinking or excavating, or after they have ceased work upon or abandoned the same, erect, or cause to be erected, good and substantial fences or other safeguards, and keep the same in good repair around such works or shafts sufficient to securely guard against danger to persons and animals from falling into such shafts or excavations. [1890 p 121 § 1; RRS § 8857.]

**78.12.020 Complaint—Contents.** Three persons being residents of the county, and knowing or having reason to believe that the provisions of RCW 78.12.010 are being or have been violated within such county, may file a notice with any district or municipal court therein, which notice shall be in writing, and shall state—First, the location, as near as may be, of the hole, excavation or shaft. Second, that the same is dangerous to persons or animals, and has been left or is being worked contrary to the provisions of this chapter. Third, the name of the person or persons, company or corporation who is or are the owners of the same, if known, or if unknown, the persons who were known to be employed therein. Fourth, if abandoned and no claimant; and Fifth, the estimated cost of fencing or otherwise securing the same against any avoidable accidents. [1987 c 202 § 231; 1987 c 3 § 19; 1890 p 121 § 2; RRS § 8858.]

**Severability—1987 c 3:** See note following RCW 3.70.010.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**78.12.030 Order to serve notice.** Upon the filing of the notice, as provided in RCW 78.12.020, the district or municipal court shall issue an order, directed to the sheriff of the

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county or to any constable or city marshal therein, directing such officer to serve a notice in manner and form as is prescribed by law for service of summons upon any person or persons or the authorized agent or agents of any company or corporation named in the notice on file, as provided in RCW 78.12.020. [1984 c 258 § 139; 1890 p 121 § 3; RRS 8859.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Application—1984 c 258 §§ 101-139:** See note following RCW 3.50.005.

**78.12.040 Notice—Contents—Civil and criminal penalties.** The notice thus served shall require the said persons to appear before the judge issuing the same, at a time to be stated therein, not more than ten nor less than three days from the service of said notice, and show to the satisfaction of the court that the provisions of this chapter have been complied with; or if said person or persons fail to appear, judgment will be entered against said person or persons for double the amount stated in the notice on file; and all proceedings had therein shall be as prescribed by law in civil cases; and such persons, in addition to any judgment that may be rendered against them, shall be liable and subject to a fine not exceeding the sum of one hundred dollars for each and every violation of the provisions of this chapter, which judgments and fines shall be adjudged and collected as provided for by law. [1987 c 202 § 232; 1890 p 122 § 4; RRS § 8860.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**78.12.050 Suit in name of state—Disposition of proceeds.** Suits commenced under the provisions of this chapter shall be in the name of the state of Washington, and all judgments and fines collected shall be paid into the county treasury for county purposes: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 233; 1969 ex.s. c 199 § 34; 1890 p 122 § 5; RRS § 8861.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

*Disposition of costs, fines, fees, penalties, and forfeitures: RCW 10.82.070.*

**78.12.060 Procedure when shaft unclaimed.** If the notice filed with the district or municipal court, as aforesaid, shall state that the excavation, shaft or hole has been abandoned, and no person claims the ownership thereof, the court shall notify the county legislative authority of the location of the same, and they shall, as soon as possible thereafter, cause the same to be so fenced, or otherwise guarded, as to prevent accidents to persons or animals; and all expenses thus incurred shall be paid as other county expenses: PROVIDED, That nothing herein contained shall be so construed as to compel the county commissioners to fill up, fence or otherwise guard any shaft, excavation or hole, unless in their discretion, the same may be considered dangerous to persons or animals. [1987 c 202 § 234; 1987 c 3 § 20; 1890 p 122 § 6; RRS § 8862.]

**Severability—1987 c 3:** See note following RCW 3.70.010.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**78.12.061 Safety cage in mining shaft—Regulations.**

(1) It shall be unlawful for any person or persons, company or companies, corporation or corporations, to sink or work through any vertical shaft at a greater depth than one hundred and fifty feet, unless the shaft shall be provided with an iron-bonneted safety cage, to be used in the lowering and hoisting of the employees of such person or persons, company or companies, corporation or corporations. The safety apparatus, whether consisting of eccentrics, springs or other device, shall be securely fastened to the cage, and shall be of sufficient strength to hold the cage loaded at any depth to which the shaft may be sunk, provided the cable shall break. The iron bonnet shall be made of boiler sheet iron of a good quality, of at least three-sixteenths of an inch in thickness, and shall cover the top of the cage in such manner as to afford the greatest protection to life and limb from any matter falling down the shaft.

(2) Any person or persons, company or companies, or corporation or corporations, who shall neglect, fail, or refuse to comply with this section is guilty of a misdemeanor and shall be fined not less than five hundred dollars nor more than one thousand dollars. [2003 c 53 § 377; 1890 p 123 § 7; RRS § 8863. Formerly RCW 78.36.850, part.]

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

**78.12.070 Damage actions preserved.** Nothing contained in this chapter shall be so construed as to prevent recovery being had in a suit for damages for injuries sustained by the party so injured, or his heirs or administrator or administratrix, or anyone else now competent to sue in an action of such character. [1890 p 123 § 9; RRS § 8865.]

**Chapter 78.16 RCW****MINERAL AND PETROLEUM LEASES  
ON COUNTY LANDS**

## Sections

78.16.010	Leases authorized.
78.16.020	Order for lease—Terms—Option to purchase.
78.16.030	Sale and conveyance.
78.16.040	Option to surrender lands.
78.16.050	Disposition of royalties and rentals.
78.16.060	Surface rights.
78.16.070	Damages to owner.

**78.16.010 Leases authorized.** Whenever it shall appear to the board of county commissioners of any county in this state that it is for the best interests of said county and the taxing districts and the people thereof, that any mining claims, reserved mineral rights, or any other county owned or tax acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of exploration, development, and removal of any minerals, oil, gas and other petroleum products therefrom, said board of county commissioners is hereby authorized to enter into written leases, under the terms of which any county owned lands or county owned mineral rights, or reserved mineral rights, are leased for the aforementioned purpose, with or without an option to purchase. Any such lease shall be upon terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and as in this chapter pro-

vided, and may be for such primary term as said board may determine and as long thereafter as minerals, including oil, and/or gas, may be produced therefrom. [1945 c 93 § 1; 1907 c 38 § 1; Rem. Supp. 1945 § 11312.]

**Construction—1945 c 93:** "Chapter 38, Laws of 1907, is amended by adding a new section to be designated as section 8, to read as follows:

Section 8. Nothing herein contained is intended to or shall be construed as affecting any existing rights granted under chapter 38, Laws of 1907." [1945 c 93 § 6.]

**78.16.020 Order for lease—Terms—Option to purchase.** When said commissioners, in their discretion, decide to lease said claims or properties as provided in RCW 78.16.010, they shall enter an order to that effect upon their records and shall fix the duration and terms and conditions of said lease, and in case an option to purchase is given shall fix the purchase price, which shall not be less than the total amount of the taxes, interest and penalties due at the time the property was acquired by the county, and may provide that any royalties paid shall apply and be credited on the purchase price, and said lease or lease and option shall be signed and executed on behalf of said county by said commissioners, or a majority of them. [1907 c 38 § 2; RRS § 11313.]

**78.16.030 Sale and conveyance.** Upon payment of the full purchase price, in cases where an option to purchase is given, a conveyance shall be executed to the purchaser by the chairman of the board of county commissioners. Such conveyance shall refer to the order of the board authorizing such leasing with the option to purchase, and shall be deemed to convey all the estate, right, title and interest of the county in and to the property sold; and such conveyance, when executed, shall be conclusive evidence of the regularity and validity of all proceedings hereunder. [1907 c 38 § 3; RRS § 11314.]

**78.16.040 Option to surrender lands.** The lessee under any such petroleum lease shall have the option of surrendering any of the lands included in said lease at any time, and shall thereby be relieved of all liability with respect to such lands except the payment of accrued royalties as provided in said lease. Upon such surrender, the lessee shall have the right for a period of one hundred twenty days following the date of such surrender, to remove all improvements placed by him on the lands which have been surrendered. [1945 c 93 § 2; Rem. Supp. 1945 § 11314-1.]

**78.16.050 Disposition of royalties and rentals.** Any royalties or rentals received by the said county under any lease entered into under the provisions of this chapter, shall be divided among the various taxing districts entitled thereto, in the same proportion and manner as the purchase money for said lands would have been divided in the event the said properties had been sold. [1945 c 93 § 3; Rem. Supp. 1945 § 11314-2.]

**78.16.060 Surface rights.** Nothing in this chapter contained shall be construed as giving the county commissioners the right to lease the surface rights of tax acquired property, except that the lease of any property as in this chapter provided shall give the lessee the right to use such portions of the

surface on said land as may be necessary or desirable to it in its business. [1945 c 93 § 4; Rem. Supp. 1945 § 11314-3.]

**78.16.070 Damages to owner.** In the event said lease shall be for reserved mineral rights on lands previously sold by said county with mineral rights reserved, as provided in RCW 36.34.010, said lease shall contain a provision that no rights shall be exercised under said lease by the lessee, his or her heirs, executors, administrators, successors, or assigns, until provision has been made by the lessee, his or her heirs, executors, administrators, successors, or assigns to pay to the owner of the land upon which the rights reserved to the county are sought to be exercised, full payment for all damages to said owner by reason of entering upon said land; said rights to be determined as provided for in RCW 36.34.010: PROVIDED, HOWEVER, That in the event of litigation to determine such damage, the primary term of such lease shall be extended for a period equal to the time required for such litigation, but not to exceed three years. [2000 c 11 § 20; 1945 c 93 § 5; Rem. Supp. 1945 § 11314-4.]

**Chapter 78.22 RCW**

**EXTINGUISHMENT OF UNUSED MINERAL RIGHTS**

Sections

78.22.010	Extinguishment of unused mineral rights authorized.
78.22.020	"Mineral interest" defined.
78.22.030	Acts constituting use of mineral interest.
78.22.040	Statement of claim—Contents—Fees—Filing.
78.22.050	Extinguishment of mineral interest—Procedure.
78.22.060	Presumption of extinguishment—Conditions—Statement of claim—Filing, recording, indexing.
78.22.070	Statement of claim—Notice and affidavit of publication—Auditor's duties.
78.22.080	Exemptions from claim of abandonment and extinguishment.
78.22.090	Waiver prohibited.

**78.22.010 Extinguishment of unused mineral rights authorized.** Any mineral interest, if unused for a period of twenty years, may be extinguished by the surface owner as set forth in RCW 78.22.050 and 78.22.060. [1984 c 252 § 1.]

**78.22.020 "Mineral interest" defined.** A mineral interest means the interest which is created by an instrument transferring, either by grant, assignment, or reservation, or otherwise an interest, of any kind, in any subsurface mineral. [1984 c 252 § 2.]

**78.22.030 Acts constituting use of mineral interest.** A mineral interest is used if:

- (1) Any minerals produced have been in connection with the mineral interest;
- (2) Operations for injection, withdrawal, storage or disposal of water, gas, or other fluid substances have been conducted in connection with the mineral interest;
- (3) Rents or royalties have been paid for the purpose of delaying or enjoying the use or exercise of the mineral interest;
- (4) The use or the exercise of the mineral interest has been carried out on any tract with which the mineral interest may be unitized or pooled for production purposes;

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(5) In the case of coal or other solid minerals, minerals have been produced from a common vein or seam;

(6) Taxes have been paid on such mineral interest;

(7) Any use pursuant to or authorized by the instrument creating such mineral interest has been taken;

(8) A sale, lease, mortgage, or other transfer of the mineral interest has been recorded in the county auditor's office in the county in which the land affected by the mineral interest is located prior to the end of the twenty-year period set forth in RCW 78.22.010 or within two years after June 7, 1984, whichever is later; or

(9) A statement of claim has been filed by the owner of the mineral interest in the manner set forth in RCW 78.22.040 or 78.22.060. [1984 c 252 § 3.]

**78.22.040 Statement of claim—Contents—Fees—Filing.** The statement of claim referred to in RCW 78.22.030(9) shall be filed by the current owner of the mineral interest prior to the end of the twenty-year period set forth in RCW 78.22.010 or within two years after June 7, 1984, whichever is later. The statement of claim shall contain the name and address of the current owner of such interest, and the name of the original holder of the mineral interest substantially as that name is shown on the instrument that originally created the mineral interest and shall be accompanied by payment of the fees provided in RCW 36.18.010.

The statement of claim shall be filed in the county auditor's office in the county in which such land affected by the mineral interest is located. [1984 c 252 § 4.]

**78.22.050 Extinguishment of mineral interest—Procedure.** (1) After the later of the expiration of the twenty-year period set forth in RCW 78.22.010 or two years after June 7, 1984, the surface owner may extinguish the mineral interest held by another person and acquire ownership of that interest by providing sixty days notice of intention to file a claim of abandonment and extinguishment of the mineral interest upon the current mineral interest owner. Notice shall be served by personal service or by mailing the notice by registered mail to the last known address of the current mineral interest owner. The county treasurer shall supply the name and address of the current mineral interest owner as they appear on the county property tax records to the surface owner without charge. If the current mineral interest owner is unknown to the county treasurer, and the current mineral interest owner cannot be determined after due diligence, the surface owner may serve the notice upon the current mineral interest owner by publishing the notice at least once each week for three consecutive weeks in a newspaper of general circulation published in the county in which the property interest is located, and if there is no newspaper of general circulation in the county, then in a newspaper of general circulation published in an adjoining county, and if there is no such newspaper in an adjoining county, then in a newspaper of general circulation published at the capital of the state.

(2) The notice of intention to file a claim of abandonment and extinguishment shall contain:

- (a) The name and address, if known, of the holder of the mineral interest, as shown of record;

(b) A reference to the instrument originally creating the mineral interest, including where it is recorded;

(c) A description of the lands affected by the mineral interest;

(d) The name and address of the person giving notice;

(e) The date of the first publication of the notice if notice is by publication; and

(f) A statement that a claim of abandonment and extinguishment of the mineral interest will be filed upon the expiration of a period of sixty days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner, unless the current mineral interest owner files a statement of claim of mineral interest in the form prescribed in RCW 78.22.040.

(3) A copy of the notice of intention to file a claim of abandonment and extinguishment and an affidavit of publication shall be submitted to the county auditor within fifteen days after the date of the last publication or the date service was perfected by personal service or registered mail on the current mineral interest owner.

(4) The affidavit of publication shall contain either:

(a) A statement that a copy of the notice has been personally served upon or mailed to the owner of the current mineral interest and the address to which it was mailed; or

(b) If a copy of the notice was not mailed, a detailed description, including dates, of the efforts made to determine with due diligence the address of the current owner of the mineral interest. [1984 c 252 § 5.]

**78.22.060 Presumption of extinguishment—Conditions—Statement of claim—Filing, recording, indexing.** Upon payment of fees provided in RCW 36.18.010, and if the surface owner files the claim of abandonment and extinguishment, together with a copy of the notice and the affidavit of publication, as required in RCW 78.22.050, in the county auditor's office for the county where such interest is located then the mineral interest shall be conclusively presumed to be extinguished.

If a statement of claim of mineral interest is filed by the current mineral interest owner within the sixty-day period provided in RCW 78.22.050, together with payment of fees provided in RCW 36.18.010, the county auditor shall record, index, and make special notation in the index of the filing. [1984 c 252 § 6.]

**78.22.070 Statement of claim—Notice and affidavit of publication—Auditor's duties.** Upon receipt, the county auditor shall record a statement of claim or a notice and affidavit of publication in the dormant mineral interest index. When possible, the auditor shall also indicate by marginal notation on the instrument originally creating the mineral interest the recording of the statement of claim or notice and affidavit of publication. The county auditor shall record a statement of claim by cross-referencing in the dormant mineral interest index the name of the current owner of the mineral interest and the name of the original holder of the mineral interest as set out in the statement of claim. [1984 c 252 § 7.]

**78.22.080 Exemptions from claim of abandonment and extinguishment.** Mineral interests retained or owned by

any public entity or mineral interests resulting from land exchanges between public and private owners shall not be subject to a claim of abandonment and extinguishment. [1984 c 252 § 8.]

**78.22.090 Waiver prohibited.** The provisions of this chapter may not be waived at any time prior to the expiration of the twenty-year period under RCW 78.22.010. [1984 c 252 § 9.]

## Chapter 78.44 RCW SURFACE MINING

### Sections

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78.44.380	Stop work orders.
78.44.390	Cancellation of a reclamation permit.
78.44.910	Previously mined land.
78.44.920	Effective date—1970 ex.s. c 64.
78.44.930	Severability—1970 ex.s. c 64.

**78.44.010 Legislative finding.** The legislature recognizes that the extraction of minerals by surface mining is an essential activity making an important contribution to the economic well-being of the state and nation. It is not possible to extract minerals without producing some environmental impacts. At the same time, comprehensive regulation of mining and thorough reclamation of mined lands is necessary to prevent or mitigate conditions that would be detrimental to the environment and to protect the general welfare, health, safety, and property rights of the citizens of the state. Surface mining takes place in diverse areas where the geologic, topographic, climatic, biologic, and social conditions are significantly different, and reclamation specifications must vary accordingly. Therefore, the legislature finds that a balance between appropriate environmental regulation and the production and conservation of minerals is in the best interests of the citizens of the state. [1993 c 518 § 2; 1970 ex.s. c 64 § 2.]

**Captions—1993 c 518:** "Captions used in this act do not constitute any part of the law." [1993 c 518 § 41.]

**Severability—1993 c 518:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 518 § 43.]

**Effective date—1993 c 518:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 518 § 44.]

**78.44.011 Intent.** The legislature recognizes that the extraction of minerals through surface mining has historically included regulatory involvement by both state and local governments.

It is the intent of the legislature to clarify that surface mining is an appropriate land use, subject to reclamation authority exercised by the department of natural resources and land use and operation regulatory authority by counties, cities, and towns. [1993 c 518 § 1.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.020 Purposes.** The purposes of this chapter are to:

(1) Provide that the usefulness, productivity, and scenic values of all lands and waters involved in surface mining within the state will receive the greatest practical degree of protection and reclamation at the earliest opportunity following completion of surface mining;

(2) Provide for the greatest practical degree of statewide consistency in the regulation of surface mines;

(3) Apportion regulatory authority between state and local governments in order to minimize redundant regulation of mining; and

(4) Ensure that reclamation is consistent with local land use plans. [2000 c 11 § 21; 1993 c 518 § 3; 1970 ex.s. c 64 § 3.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.031 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(2008 Ed.)

(1) "Approved subsequent use" means the post surface-mining land use contained in an approved reclamation plan and approved by the local land use authority.

(2) "Completion of surface mining" means the cessation of mining and directly related activities in any segment of a surface mine that occurs when essentially all minerals that can be taken under the terms of the reclamation permit have been depleted except minerals required to accomplish reclamation according to the approved reclamation plan.

(3) "Department" means the department of natural resources.

(4) "Determination" means any action by the department including permit issuance, reporting, reclamation plan approval or modification, permit transfers, orders, fines, or refusal to issue permits.

(5) "Disturbed area" means any place where activities clearly in preparation for, or during, surface mining have physically disrupted, covered, compacted, moved, or otherwise altered the characteristics of soil, bedrock, vegetation, or topography that existed prior to such activity. Disturbed areas may include but are not limited to: Working faces, water bodies created by mine-related excavation, pit floors, the land beneath processing plant and stock pile sites, spoil pile sites, and equipment staging areas. Disturbed areas shall also include aboveground waste rock sites and tailing facilities, and other surface manifestations of underground mines.

Disturbed areas do not include:

(a) Surface mine access roads unless these have characteristics of topography, drainage, slope stability, or ownership that, in the opinion of the department, make reclamation necessary;

(b) Lands that have been reclaimed to all standards outlined in this chapter, rules of the department, any applicable SEPA document, and the approved reclamation plan; and

(c) Subsurface aspects of underground mines, such as portals, tunnels, shafts, pillars, and stopes.

(6) "Miner" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, including every public or governmental agency engaged in surface mining.

(7) "Minerals" means clay, coal, gravel, industrial minerals, metallic substances, peat, sand, stone, topsoil, and any other similar solid material or substance to be excavated from natural deposits on or in the earth for commercial, industrial, or construction use.

(8) "Operations" means all mine-related activities, exclusive of reclamation, that include, but are not limited to activities that affect noise generation, air quality, surface and ground water quality, quantity, and flow, glare, pollution, traffic safety, ground vibrations, and/or significant or substantial impacts commonly regulated under provisions of land use or other permits of local government and local ordinances, or other state laws.

Operations specifically include:

(a) The mining or extraction of rock, stone, gravel, sand, earth, and other minerals;

(b) Blasting, equipment maintenance, sorting, crushing, and loading;

(c) On-site mineral processing including asphalt or concrete batching, concrete recycling, and other aggregate recycling;

(d) Transporting minerals to and from the mine, on site road maintenance, road maintenance for roads used extensively for surface mining activities, traffic safety, and traffic control.

(9) "Overburden" means the earth, rock, soil, and topsoil that lie above mineral deposits.

(10) "Permit holder" means any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including every public or governmental agency engaged in surface mining and/or the operation of surface mines, whether individually, jointly, or through subsidiaries, agents, employees, operators, or contractors who holds a state reclamation permit.

(11) "Reclamation" means rehabilitation for the appropriate future use of disturbed areas resulting from surface mining including areas under associated mineral processing equipment, areas under stockpiled materials, and above-ground waste rock and tailing facilities, and all other surface disturbances associated with underground mines. Although both the need for and the practicability of reclamation will control the type and degree of reclamation in any specific surface mine, the basic objective shall be to reestablish on a perpetual basis the vegetative cover, soil stability, and water conditions appropriate to the approved subsequent use of the surface mine and to prevent or mitigate future environmental degradation.

(12) "Reclamation setbacks" include those lands along the margins of surface mines wherein minerals and overburden shall be preserved in sufficient volumes to accomplish reclamation according to the approved plan and the minimum reclamation standards. Maintenance of reclamation setbacks may not preclude other mine-related activities within the reclamation setback.

(13) "Recycling" means the reuse of minerals or rock products.

(14) "Screening" consists of vegetation, berms or other topography, fencing, and/or other screens that may be required to mitigate impacts of surface mining on adjacent properties and/or the environment.

(15) "Segment" means any portion of the surface mine that, in the opinion of the department:

(a) Has characteristics of topography, drainage, slope stability, ownership, mining development, or mineral distribution, that make reclamation necessary;

(b) Is not in use as part of surface mining and/or related activities; and

(c) Is larger than seven acres and has more than five hundred linear feet of working face except as provided in a segmental reclamation agreement approved by the department.

(16) "SEPA" means the state environmental policy act, chapter 43.21C RCW and rules adopted thereunder.

(17)(a) "Surface mine" means any area or areas in close proximity to each other, as determined by the department, where extraction of minerals results in:

(i) More than three acres of disturbed area;

(ii) Surface mined slopes greater than thirty feet high and steeper than 1.0 foot horizontal to 1.0 foot vertical; or

(iii) More than one acre of disturbed area within an eight acre area, when the disturbed area results from mineral prospecting or exploration activities.

(b) Surface mines include areas where mineral extraction from the surface or subsurface occurs by the auger method or by reworking mine refuse or tailings, when the disturbed area exceeds the size or height thresholds listed in (a) of this subsection.

(c) Surface mining occurs when operations have created or are intended to create a surface mine as defined by this subsection.

(d) Surface mining shall exclude excavations or grading used:

(i) Primarily for on-site construction, on-site road maintenance, or on-site landfill construction;

(ii) For the purpose of public safety or restoring the land following a natural disaster;

(iii) For the purpose of removing stockpiles;

(iv) For forest or farm road construction or maintenance on site or on contiguous lands;

(v) Primarily for public works projects if the mines are owned or primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area; and

(vi) For sand authorized by RCW 79A.05.630.

(18) "Topsoil" means the naturally occurring upper part of a soil profile, including the soil horizon that is rich in humus and capable of supporting vegetation together with other sediments within four vertical feet of the ground surface. [2000 c 11 § 22; 1999 c 252 § 1; 1997 c 142 § 1; 1993 c 518 § 4.]

**Severability—1999 c 252:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 252 § 3.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.040 Administration of chapter—Rule-making authority.** The department of natural resources is charged with the administration of reclamation under this chapter. In order to implement and enforce this chapter, the department, under the administrative procedure act (chapter 34.05 RCW), may from time to time adopt those rules necessary to carry out the purposes of this chapter. [1993 c 518 § 6; 1984 c 215 § 2; 1970 ex.s. c 64 § 5.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.045 Surface mining reclamation account.** (1) The surface mining reclamation account is created in the state treasury. Annual mining fees, funds received by the department from state, local, or federal agencies for research purposes, as well as other mine-related funds and fines received by the department shall be deposited into this account. Except as otherwise provided in this section, the surface mine [mining] reclamation account may be used by the department only to:

(a) Administer its regulatory program pursuant to this chapter;

(b) Undertake research relating to surface mine regulation, reclamation of surface mine lands, and related issues; and

(c) Cover costs arising from appeals from determinations made under this chapter.

(2) At the end of each fiscal biennium, any money collected from fees charged under RCW 78.44.085 that was not used for the administration and enforcement of surface mining regulation under this chapter must be used by the department for surveying and mapping sand and gravel sites in the state.

(3) Fines, interest, and other penalties collected by the department under the provisions of this chapter shall be used to reclaim surface mines abandoned prior to 1971. [2006 c 341 § 2; 1993 c 518 § 10.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.050 Exclusive authority to regulate reclamation—Department may delegate enforcement authority to counties, cities, towns—Other laws not affected.** The department shall have the exclusive authority to regulate surface mine reclamation. No county, city, or town may require for its review or approval a separate reclamation plan or application. The department may, however, delegate some or all of its enforcement authority by contractual agreement to a county, city, or town that employs personnel who are, in the opinion of the department, qualified to enforce plans approved by the department. All counties, cities, or towns shall have the authority to zone surface mines and adopt ordinances regulating operations as provided in this chapter, except that county, city, or town operations ordinances may be preempted by the department during the emergencies outlined in RCW 78.44.200 and related rules.

This chapter shall not alter or preempt any provisions of the state water allocation and use laws (chapters 90.03 and 90.44 RCW), the state water pollution control laws (chapter 90.48 RCW), the state fish and wildlife laws (Title 77 RCW), state noise laws or air quality laws (Title 70 RCW), shoreline management (chapter 90.58 RCW), the state environmental policy act (chapter 43.21C RCW), state growth management (chapter 36.70A RCW), state drinking water laws (chapters 43.20 and 70.119A RCW), or any other state statutes. [2003 c 39 § 39; 1997 c 185 § 1; 1993 c 518 § 7; 1970 ex.s. c 64 § 6.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.055 Surface mining of coal—Preemption of chapter by federal laws, programs.** In the event state law is preempted under federal surface mining laws relating to surface mining of coal or the department of natural resources determines that a federal program and its rules and regulations relating to the surface mining of coal are as stringent and effective as the provisions of this chapter, the provisions of this chapter shall not apply to such surface mining for which federal permits are issued until such preemption ceases or the department determines such chapter should apply. [1984 c 215 § 8. Formerly RCW 78.44.175.]

**78.44.060 Investigations, research, etc.—Dissemination of information.** The department shall have the authority to conduct, authorize, and/or participate in investigations, research, experiments, and demonstrations, and to collect and disseminate information relating to surface mining and recla-

mation of surface mined lands. [1993 c 518 § 8; 1970 ex.s. c 64 § 7.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.070 Cooperation with other agencies—Receipt and expenditure of funds.** The department may cooperate with other governmental and private agencies and agencies of the federal government, and may reasonably reimburse them for any services the department requests that they provide. The department may also receive any federal funds, state funds and any other funds and expend them for reclamation of land affected by surface mining and for purposes enumerated in RCW 78.44.060. [1993 c 518 § 9; 1970 ex.s. c 64 § 8.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.081 Reclamation permits required—Applications.** After July 1, 1993, no miner or permit holder may engage in surface mining without having first obtained a reclamation permit from the department. Operating permits issued by the department between January 1, 1971, and June 30, 1993, shall be considered reclamation permits. A separate permit shall be required for each noncontiguous surface mine. The reclamation permit shall consist of the permit forms and any exhibits attached thereto. The permit holder shall comply with the provisions of the reclamation permit unless waived and explained in writing by the department.

Prior to receiving a reclamation permit, an applicant must submit an application on forms provided by the department that shall contain the following information and shall be considered part of the reclamation permit:

- (1) Name and address of the legal landowner, or purchaser of the land under a real estate contract;
- (2) The name of the applicant and, if the applicants are corporations or other business entities, the names and addresses of their principal officers and resident agent for service of process;
- (3) A reasonably accurate description of the minerals to be surface mined;
- (4) Type of surface mining to be performed;
- (5) Estimated starting date, date of completion, and date of completed reclamation of surface mining;
- (6) Size and legal description of the permit area and maximum lateral and vertical extent of the disturbed area;
- (7) Expected area to be disturbed by surface mining during (a) the next twelve months, and (b) the following twenty-four months;
- (8) Any applicable SEPA documents; and
- (9) Other pertinent data as required by the department.

The reclamation permit shall be granted for the period required to deplete essentially all minerals identified in the reclamation permit on the land covered by the reclamation plan. The reclamation permit shall be valid until the reclamation is complete unless the permit is canceled by the department. [1997 c 192 § 1; 1993 c 518 § 11.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.083 Reclamation permit—Refusal to issue.**

The department shall refuse to issue a reclamation permit if it is determined during the SEPA process that the impacts of a proposed surface mine cannot be adequately mitigated.

The department or county, city, or town may refuse to issue any other permit at any other location to any miner or permit holder who fails to rectify deficiencies set forth in an order of the department within the requisite time schedule. However, the department or county, city, or town shall issue all appropriate permits when all deficiencies are corrected at each surface mining site. [1993 c 518 § 33.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.085 Application fee—Annual permit fee—Confidential records—Appeals—Collection of fees.**

(1) An applicant for an expansion of a permitted surface mine, a new reclamation permit under RCW 78.44.081, or for combining existing public or private reclamation permits, shall pay a nonrefundable application fee to the department before being granted the requested permit or permit expansion. The amount of the application fee shall be two thousand five hundred dollars.

(2) Permit holders submitting a revision to an application for an existing reclamation plan that is not an expansion shall pay a nonrefundable reclamation plan revision fee of one thousand dollars.

(3) After June 30, 2006, each public or private permit holder shall pay an annual permit fee in an amount pursuant to this section. The annual permit fee shall be payable to the department prior to the reclamation permit being issued and on the anniversary of the permit date each year thereafter.

(4)(a) Except as otherwise provided in this subsection, each public or private permit holder must pay an annual fee under this section based on the categories of aggregate or mineral mined or extracted during the previous twelve months, as follows:

(i) Zero to fifty thousand tons: A fee of one thousand two hundred fifty dollars;

(ii) More than fifty thousand tons to three hundred fifty thousand tons: A fee of two thousand five hundred dollars;

(iii) More than three hundred fifty thousand tons: A fee of three thousand five hundred dollars.

(b) Annual fees paid by a county for mines used exclusively for public works projects and having less than seven acres of disturbed area per mine shall not exceed one thousand dollars.

(c) Annual fees are waived for all mines used primarily for public works projects if the mines are owned and primarily operated by counties with 1993 populations of less than twenty thousand persons, and if each mine has less than seven acres of disturbed area.

(5) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department are to be held as confidential and not released as part of a public records request under chapter 42.56 RCW.

(6) Appeals from any determination of the department shall not stay the requirement to pay any annual permit fee. Failure to pay the annual fees may constitute grounds for an

order to suspend surface mining, pay fines, or cancel the reclamation permit as provided in this chapter.

(7) All fees collected by the department shall be deposited into the surface mining reclamation account created in RCW 78.44.045.

(8) If the department delegates enforcement responsibilities to a county, city, or town, the department may allocate funds collected under this section to the county, city, or town.

(9) Within sixty days after receipt of an application for a new or expanded permit, the department shall advise applicants of any information necessary to successfully complete the application.

(10) In addition to other enforcement authority, the department may refer matters to a collection agency licensed under chapter 19.16 RCW when permit fees or fines are past due. The collection agency may impose its own fees for collecting delinquent permit fees or fines. [2006 c 341 § 1; 2001 1st sp.s. c 5 § 1; 1997 c 413 § 1; 1996 c 70 § 1; 1993 c 518 § 14.]

**Effective date—2001 1st sp.s. c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 5 § 3.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.087 Performance security required—Department authority.**

(1) The department should ensure that a sufficient performance security is available to reclaim each surface mine permitted under this chapter. To ensure sufficient funds are available:

(a) The department shall not issue a reclamation permit, except to public or governmental agencies, until the applicant has either deposited with the department an acceptable performance security on forms prescribed by the department that is deemed adequate by the department to cover reclamation costs or has complied with the blanket performance security option in RCW 78.44.350. A public or governmental agency shall not be required to post performance security.

(b) No person may create a disturbed area that meets or exceeds the minimum threshold for a reclamation permit without first submitting an adequate and acceptable performance security to the department and complying with all requirements of this chapter.

(2) The department may refuse to accept any performance security that the department, for any reason, deems to be inadequate to cover reclamation costs or is not in a form that is acceptable to the department.

(3) Acceptable forms of performance security are:

(a) Bank letters of credit acceptable to the department or irrevocable bank letters of credit from a bank or financial institution or organization authorized to transact business in the United States;

(b) A cash deposit;

(c) Other forms of performance securities acceptable to the department as determined by rule;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank on an assignment form prescribed by the department;

(f) Approved participants in a state security pool if one is established; or

(g) A corporate surety bond executed in favor of the department by a corporation authorized to do business in the state of Washington under Title 48 RCW and authorized by the department.

(4) The performance security shall be conditioned upon the faithful performance of the requirements set forth in this chapter, the rules adopted under it, and the reclamation permit.

(5)(a) The department must determine the amount of the performance security as prescribed by this subsection.

(b) The department may determine the amount of the performance security based on the estimated cost of: (i) Completing reclamation according to the requirements of this chapter; or (ii) the reclamation permit for the area to be surface mined during the upcoming thirty-six months and any previously disturbed areas that have not been reclaimed.

(c) The department may determine the amount of the performance security based on an engineering cost estimate for reclamation that is provided by the permit holder. The engineering cost estimate must be prepared using engineering principles and methods that are acceptable to the department. If the department does not approve the engineering cost estimate, the department shall determine the amount of the performance security using a standardized performance security formula developed by the department by rule.

(6) The department may recalculate a surface mine's performance security based on subsection (5) of this section. When the department recalculates a performance security, the new calculation will not be prejudiced by the existence of any previous calculation. A new performance security must be submitted to the department within thirty days of the department's written request.

(7) Liability under the performance security and the permit holder's obligation to maintain the calculated performance security amount shall be maintained until the surface mine is reclaimed, unless released as hereinafter provided. Partial drawings will proportionately reduce the value of a performance security but will not extinguish the remaining value. Liability under the performance security may be released only when the surface mine is reclaimed as evidenced by the department in writing or after the department receives and approves a substitute performance security. The department will notify the permit holder, and surety if applicable, when reclamation is accepted by the department as complete or upon the department's acceptance of an alternate security. The liability of the surety shall not exceed the amount of security required by this section and the department's reasonable legal fees to recover the security.

(8) Any interest or appreciation on the performance security shall be held by the department until the surface mine is reclaimed. The department may collect and use appreciation or interest accrued on a performance security to the same extent as for the underlying performance security. If the permit holder meets its obligations under this chapter, rules adopted under this chapter, and its approved reclamation permit and plan by completing reclamation, the department will return any unused performance security and accrued interest or appreciation.

(9) No other state agency or local government other than the department shall require performance security for the purposes of surface mine reclamation. However, nothing in this

section prohibits a state agency or local government from requiring a performance security when the state agency or local government is acting in its capacity as a landowner and contracting for extraction-related activities on state or local government property.

(10) The department may enter into written agreements with federal agencies in order to avoid redundant bonding of any surface mine that is located on both federal and nonfederal lands in Washington state. [2006 c 341 § 3; 1997 c 186 § 1; 1995 c 223 § 3; 1994 c 232 § 23; 1993 c 518 § 15.]

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31:** See RCW 78.56.901.

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

#### **78.44.091 Reclamation plans—Approval process.**

An applicant shall provide a reclamation plan and copies acceptable to the department prior to obtaining a reclamation permit. The department shall have the sole authority to approve reclamation plans. Reclamation plans or modified reclamation plans submitted to the department after June 30, 1993, shall meet or exceed the minimum reclamation standards set forth in this chapter and by the department in rule. Each applicant shall also supply copies of the proposed plans and final reclamation plan approved by the department to the county, city, or town in which the mine will be located. The department shall solicit comment from local government prior to approving a reclamation plan. The reclamation plan shall include:

(1) A written narrative describing the proposed mining and reclamation scheme with:

(a) A statement of a proposed subsequent use of the land after reclamation that is consistent with the local land use designation. Approval of the reclamation plan shall not vest the proposed subsequent use of the land;

(b) If the permit holder is not the sole landowner, a copy of the conveyance or a written statement that expressly grants or reserves the right to extract minerals by surface mining methods;

(c) A simple and accurate legal description of the permit area and disturbed areas;

(d) The maximum depth of mining;

(e) A reasonably accurate description of the minerals to be mined;

(f) A description of the method of mining;

(g) A description of the sequence of mining that will provide, within limits of normal procedures of the industry, for completion of surface mining and associated disturbance on each portion of the permit area so that reclamation can be initiated at the earliest possible time on each segment of the mine;

(h) A schedule for progressive reclamation of each segment of the mine;

(i) Where mining on floodplains or in river or stream channels is contemplated, a thoroughly documented hydrogeologic evaluation that will outline measures that would protect against or would mitigate avulsion and erosion as determined by the department;

(j) Where mining is contemplated within critical aquifer recharge areas, special protection areas as defined by chapter

90.48 RCW and implementing rules, public water supply watersheds, sole source aquifers, wellhead protection areas, and designated aquifer protection areas as set forth in chapter 36.36 RCW, a thoroughly documented hydrogeologic analysis of the reclamation plan may be required; and

(k) Additional information as required by the department including but not limited to: The positions of reclamation setbacks and screening, conservation of topsoil, interim reclamation, revegetation, postmining erosion control, drainage control, slope stability, disposal of mine wastes, control of fill material, development of wetlands, ponds, lakes, and impoundments, and rehabilitation of topography.

(2) Maps of the surface mine showing:

(a) All applicable data required in the narrative portion of the reclamation plan;

(b) Existing topographic contours;

(c) Contours depicting specifications for surface gradient restoration appropriate to the proposed subsequent use of the land and meeting the minimum reclamation standards;

(d) Locations and names of all roads, railroads, and utility lines on or adjacent to the area;

(e) Locations and types of proposed access roads to be built in conjunction with the surface mining;

(f) Detailed and accurate boundaries of the permit area, screening, reclamation setbacks, and maximum extent of the disturbed area; and

(g) Estimated depth to groundwater and the locations of surface water bodies and wetlands both prior to and after mining.

(3) At least two cross sections of the mine including all applicable data required in the narrative and map portions of the reclamation plan.

(4) Evidence that the proposed surface mine has been approved under local zoning and land use regulations.

(5) Written approval of the reclamation plan by the landowner for mines permitted after June 30, 1993.

(6) Other supporting data and documents regarding the surface mine as reasonably required by the department.

If the department refuses to approve a reclamation plan in the form submitted by an applicant or permit holder, it shall notify the applicant or permit holder stating the reasons for its determination and describe such additional requirements to the applicant or permit holder's reclamation plan as are necessary for the approval of the plan by the department. If the department refuses to approve a complete reclamation plan within one hundred twenty days, the miner or permit holder may appeal this determination under the provisions of this chapter.

Only insignificant deviations may occur from the approved reclamation plan without prior written approval by the department for the proposed change. [1997 c 192 § 2; 1993 c 518 § 12.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

#### **78.44.101 Joint reclamation plans may be required.**

Where two or more surface mines join along a common boundary, the department may require submission of a joint reclamation plan in order to provide for optimum reclamation or to avoid waste of mineral resources. Such joint reclamation plans may be in the form of a single collaborative plan

submitted by all affected permit holders or as individual reclamation plans in which the schedule of reclamation, finished contours, and revegetation match reclamation plans of adjacent permit holders. [1993 c 518 § 13.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.111 Segmental reclamation—Primary objective.** The permit holder shall reclaim each segment of the mine within two years of completion of surface mining on that segment except as provided in a segmental reclamation agreement approved in writing by the department. The primary objective of a segmental reclamation agreement should be to enhance final reclamation. [1993 c 518 § 5.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.121 Reclamation setbacks—Exemption.** Reclamation setbacks shall be as follows unless waived by the department:

(1) The reclamation setback for unconsolidated deposits within mines permitted after June 30, 1993, shall be equal to the maximum anticipated height of the adjacent working face or as determined by the department. Setbacks and buffers may be destroyed as part of final reclamation of each segment if approved by the department.

(2) The minimum reclamation setback for consolidated materials within mines permitted after June 30, 1993, shall be thirty feet or as determined by the department.

(3) An exemption from this section may be granted by the department following a written request. The department may consider submission of a plan for backfilling acceptable to the department, a geotechnical slope-stability study, proof of a dedicated source of fill materials, written approval of contiguous landowners, and other information before granting an exemption. [1993 c 518 § 18.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.131 Reclamation specifics—Basic objective—Modifications for metals mining and milling operations—Timeline.** The need for, and the practicability of, reclamation shall control the type and degree of reclamation in any specific instance. However, the basic objective of reclamation is to reestablish on a continuing basis the vegetative cover, slope stability, water conditions, and safety conditions suitable to the proposed subsequent use consistent with local land use plans for the surface mine site.

Each permit holder shall comply with the minimum reclamation standards in effect on the date the permit was issued and any additional reclamation standards set forth in the approved reclamation plan. The department may modify, on a site specific basis, the minimum reclamation standards for metals mining and milling operations regulated under chapter 232, Laws of 1994 in order to achieve the reclamation and closure objectives of that chapter. The basic objective of reclamation for these operations is the reestablishment on a continuing basis of vegetative cover, slope stability, water conditions, and safety conditions.

Reclamation activities, particularly those relating to control of erosion and mitigation of impacts of mining to adja-

cent areas, shall, to the extent feasible, be conducted simultaneously with surface mining, and in any case shall be initiated at the earliest possible time after completion of surface mining on any segment of the permit area.

All reclamation activities shall be completed not more than two years after completion or abandonment of surface mining on each segment of the area for which a reclamation permit is in force.

The department may by contract delegate enforcement of provisions of reclamation plans to counties, cities, and towns. A county, city, or town performing enforcement functions may not impose any additional fees on permit holders. [1994 c 232 § 24; 1993 c 518 § 20.]

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 1-5, 9-17, and 23-31:** See RCW 78.56.901.

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.141 Reclamation—Minimum standards—Waiver.** Reclamation of surface mines permitted after June 30, 1993, and reclamation of surface mine segments addressed by reclamation plans modified after June 30, 1994, shall meet the following minimum standards except as waived in writing by the department.

(1) Prior to surface mining, permit holders shall carefully stockpile all topsoil on the site for use in reclamation, or immediately move topsoil to reclaim adjacent segments, except when the approved subsequent use does not require replacing the topsoil. Topsoil needed for reclamation shall not be sold as a mineral nor mixed with sterile soils. Stockpiled materials used as screening shall not be used for reclamation until such time as the appropriate county or municipal government has given its approval.

(2) The department may require that clearly visible, permanent monuments delineating the permit boundaries and maximum extent of the disturbed area be set at appropriate places around the mine site. The permit holder shall maintain the monuments until termination of the reclamation permit.

(3) All minimum reclamation standards may be waived in writing by the department in order to accommodate unique and beneficial reclamation schemes such as parks, swimming facilities, buildings, and wildlife reserves. Such waivers shall be granted only after written approval by the department of a reclamation plan describing the variances to the minimum reclamation standards, receipt of documentation of SEPA compliance, and written approvals from the landowner and by the local land use authority.

(4) All surface-mined slopes shall be reclaimed to the following minimum standards:

(a) In surface mines in soil, sand, gravel, and other unconsolidated materials, all reclaimed slopes shall:

- (i) Have varied steepness;
- (ii) Have a sinuous appearance in both profile and plan view;
- (iii) Have no large rectilinear topographic elements;
- (iv) Generally have slopes of between 2.0 and 3.0 feet horizontal to 1.0 foot vertical or flatter except in limited areas where steeper slopes are necessary in order to create sinuous topography and to control drainage;

(v) Not exceed 1.5 feet horizontal to 1.0 foot vertical except as necessary to blend with adjacent natural slopes;

(vi) Be compacted if significant backfilling is required to produce the final reclaimed slopes and if the department determines that compaction is necessary.

(b) Slopes in consolidated materials shall have no prescribed slope angle or height, but where a severely hazardous condition is created by mining and that is not indigenous to the immediate area, the slopes shall not exceed 2.0 feet horizontal to 1.0 foot vertical. Steeper slopes shall be acceptable in areas where evidence is submitted that demonstrates that the geologic or topographic characteristics of the site preclude reclamation of slopes to such angle or height or that such slopes constitute an acceptable subsequent use under local land use regulations.

(c) Surface mines in which the seasonal or permanent water tables have been penetrated, thereby creating swamps, ponds, or lakes useful for recreational, wildlife habitat, water quality control, or other beneficial wetland purposes shall be reclaimed in the following manner:

(i) For slopes that are below the permanent water table in soil, sand, gravel, and other unconsolidated materials, the slope angle shall be no steeper than 1.5 feet horizontal to 1.0 foot vertical;

(ii) Generally, solid rock banks shall be shaped so that a person can escape from the water, however steeper slopes and lack of water egress shall be acceptable in rural, forest, or mountainous areas or where evidence is provided that such slopes would constitute an acceptable subsequent use under local land use regulations;

(iii) Both standpipes and armored spillways or other measures to prevent undesirable overflow or seepage shall be provided to stabilize all such water bodies within the disturbed area; and

(iv) Where lakes, ponds, or swamps are created, the permit holder shall provide measures to establish a beneficial wetland by developing natural wildlife habitat and incorporating such measures as irregular shoreline configurations, sinuous bathymetry and shorelines, varied water depths, peninsulas, islands, and subaqueous areas less than 1.5 foot deep during summer low-water levels. Clay-bearing material placed below water level may be required to avoid creating sterile wetlands.

(d) Final topography shall generally comprise sinuous contours, chutes and buttresses, spurs, and rolling mounds and hills, all of which shall blend with adjacent topography to a reasonable extent. Straight planar slopes and right angles should be avoided.

(e) The floors of mines shall generally grade gently into postmining drainages to preclude sheet-wash erosion during intense precipitation, except where backgrading is appropriate for drainage control, to establish wetlands, or to trap sediment.

(f) Topsoil shall be restored as necessary to promote effective revegetation and to stabilize slopes and mine floors. Where limited topsoil is available, topsoil shall be placed and revegetated in such a way as to ensure that little topsoil is lost to erosion.

(g) Where surface mining has exposed natural materials that may create polluting conditions, including but not limited to acid-forming coals and metalliferous rock or soil, such

conditions shall be addressed according to a method approved by the department. The final ground surface shall be graded so that surface water drains away from these materials.

(h) All grading and backfilling shall be made with non-noxious, noncombustible, and relatively incompactible solids unless the permit holder provides:

(i) Written approval from all appropriate solid waste regulatory agencies; and

(ii) Any and all revisions to such written approval during the entire time the reclamation permit is in force.

(i) Final reclaimed slopes should be left roughly graded, preserving equipment tracks, depressions, and small mounds to trap clay-bearing soil and promote natural revegetation. Where reasonable, final equipment tracks should be oriented in order to trap soil and seeds and to inhibit erosion.

(j) Pit floors should be bulldozed or ripped to foster revegetation.

(5) Drainages shall be graded and contain adequate energy dissipation devices so that essentially natural conditions of water velocity, volume, and turbidity are reestablished within six months of reclamation of each segment of the mine. Ditches and other artificial drainages shall be constructed on each reclaimed segment to control surface water, erosion, and siltation and to direct runoff to a safe outlet. Diversion ditches including but not limited to channels, flumes, tightlines and retention ponds shall be capable of carrying the peak flow at the mine site that has the probable recurrence frequency of once in twenty-five years as determined from data for the twenty-five year, twenty-four hour precipitation event published by the national oceanic and atmospheric administration. The grade of such ditches and channels shall be constructed to limit erosion and siltation. Natural and other drainage channels shall be kept free of equipment, wastes, stockpiles, and overburden.

(6) Impoundment of water shall be an acceptable reclamation technique provided that approvals of other agencies with jurisdiction are obtained and:

(a) Proper measures are taken to prevent undesirable seepage that could cause flooding outside the permitted area or adversely affect the stability of impoundment dikes or adjacent slopes;

(b) Both standpipes and armored spillways or other measures necessary to control overflow are provided.

(7) Revegetation shall be required as appropriate to stabilize slopes, generate new topsoil, reduce erosion and turbidity, mask rectilinear contours, and restore the scenic value of the land to the extent feasible as appropriate to the approved subsequent use. Although the scope of and necessity for revegetation will vary according to the geography, precipitation, and approved subsequent use of the site, the objective of segmental revegetation is to reestablish self-sustaining vegetation and conditions of slope stability, surface water quality, and appearance before release of the reclamation permit. Revegetation shall normally meet the following standards:

(a) Revegetation shall commence during the first proper growing season following restoration of slopes on each segment unless the department has granted the permit holder a written time extension.

(b) In eastern Washington, the permit holder may not be able to achieve continuous ground cover owing to arid conditions or sparse topsoil. However, revegetation shall be as continuous as reasonably possible as determined by the department.

(c) Revegetation generally shall include but not be limited to diverse evergreen and deciduous trees, shrubs, grasses, and deep-rooted ground cover.

(i) For western Washington, nitrogen-fixing species including but not limited to alder, white clover, and lupine should be included in dry areas. In wet areas, tubers, sedges, wetland grasses, willow, cottonwood, cedar, and alder are appropriate.

(ii) In eastern Washington, lupine, white clover, Russian olive, black locust, junipers, and pines are among appropriate plants. In wet areas, cottonwood, tubers, and sedges are appropriate.

(d) The requirements for revegetation may be reduced or waived by the department where erosion will not be a problem in rural areas where precipitation exceeds thirty inches per annum, or where revegetation is inappropriate for the approved subsequent use of the surface mine.

(e) In areas where revegetation is critical and conditions are harsh, the department may require irrigation, fertilization, and importation of clay or humus-bearing soils to establish effective vegetation.

(f) The department may refuse to release a reclamation permit or performance security until it deems that effective revegetation has commenced. [1993 c 518 § 21.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.151 Reclamation plans—Modification, when required—SEPA.** (1) The permit holder may modify the reclamation plan at any time during the term of the permit provided that the modified reclamation plan meets the protections, mitigations, and reclamation goals of RCW 78.44.091, 78.44.131, and 78.44.141.

(2) The department may require a permit holder to modify the reclamation plan if the department determines:

(a) That the previously approved reclamation plan has not been modified during the past ten years; or

(b) That the permit holder has violated or is not substantially following the previously approved reclamation plan.

(3) Modified reclamation plans shall be reviewed by the department as lead agency under SEPA. Such SEPA analyses shall consider only those impacts relating directly to the proposed modifications. Copies of proposed and approved modifications shall be sent to the appropriate county, city, or town. [1997 c 192 § 3; 1993 c 518 § 23.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.161 Reclamation compliance—Inspection of disturbed area—Special inspection requirements for metals mining and milling operations.** The department may order at any time an inspection of the disturbed area to determine if the miner or permit holder has complied with the reclamation permit, rules, and this chapter.

The department shall have special inspection requirements for metals mining and milling operations regulated

under chapter 232, Laws of 1994. The department shall inspect these mining operations at least quarterly, unless prevented by inclement weather conditions, in order to ensure that the permit holder is in compliance with the reclamation permit, rules, and this chapter. The department shall conduct additional inspections as needed during the construction phase of these mining operations in order to ensure compliance with the reclamation permit, rules, and this chapter. [1994 c 232 § 22; 1993 c 518 § 25.]

**Severability—1994 c 232:** See RCW 78.56.900.

**Effective date—1994 c 232 §§ 6-8 and 18-22:** See RCW 78.56.902.

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.171 Reclamation—Transfer of permits.** Reclamation permits shall be transferred to a subsequent permit holder and the department shall release the former permit holder from the duties imposed by this chapter if:

(1) Both permit holders comply with all rules of the department addressing requirements for transferring a permit; and

(2) Unless waived by the department, the mine and all others operated by both the former and subsequent permit holders and their principal officers or owners are in compliance with this chapter and rules. [1993 c 518 § 22.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.181 Reclamation—Report by permit holder on anniversary date.** On the anniversary date of the reclamation permit and each year thereafter until reclamation is completed and approved, the permit holder shall file a report of activities completed during the preceding year. The report shall be on a form prescribed by the department. [1993 c 518 § 24.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.190 Deficiencies—Order to rectify—Time extension.** (1) The department may issue an order to rectify deficiencies to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current and valid reclamation permit or reclamation plan.

(2) The order shall describe the deficiencies and shall initially require the order recipient to correct all deficiencies by a date that is no later than sixty days after the department's issuance of the order. The department may extend the period to correct deficiencies for delays clearly beyond the order recipient's control, but only when the person is, in the opinion of the department, making every reasonable effort to comply. This order becomes final and effective after being upheld upon completion of all administrative and judicial review proceedings or following notice and a failure to timely request a hearing. [2007 c 192 § 2; 1993 c 518 § 26.]

(2008 Ed.)

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.200 Immediate danger—Emergency notice and order to rectify deficiencies—Emergency order to suspend surface mining.** When the department finds that a permit holder is conducting surface mining in any manner not authorized by:

- (1) This chapter;
- (2) The rules adopted by the department;
- (3) The approved reclamation plan; or
- (4) The reclamation permit;

and that activity has created a situation involving an immediate danger to the public health, safety, welfare, or environment requiring immediate action, the department may issue an emergency notice and order to rectify deficiencies, and/or an emergency order to suspend surface mining. These orders shall be effective when entered. The department may take such action as is necessary to prevent or avoid the danger to the public health, safety, welfare, or environment that justifies use of emergency adjudication. The department shall give such notice as is practicable to the permit holder or miner who is required to comply with the order. The order shall comply with the requirements of the administrative procedure act.

Regulations of surface mining operations administered by other state and local agencies shall be preempted by this section to the extent that the time schedule and procedures necessary to rectify the emergency situation, as determined by the department, conflict with such local regulation. [1993 c 518 § 27.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.210 Suspension of a reclamation permit.** The department, through the state geologist or assistant state geologist, may suspend a reclamation permit whenever a permit holder or surface mine is out of compliance with a final department order. The suspension order must be served on the permit holder by certified mail with return receipt requested or by personal service. The order must specify the final order alleged to be violated, the facts upon which the conclusion of violation is based, and the conclusions of law. This order becomes final and effective after being upheld upon completion of all administrative review proceedings or following notice and a failure to timely request a hearing. No surface mining or reclamation may occur while a permit is suspended unless under the express written authority of the department. [2007 c 192 § 5; 1993 c 518 § 28.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.220 Declaration of abandonment—Reclamation—Subsequent miner.** The department may issue a declaration of abandonment when it determines that all surface mining has ceased for a period of one hundred eighty consecutive days not set forth in the permit holder's reclamation plan or when, by reason of inspection of the permit area, or by any other means, the department determines that the mine has in fact been abandoned by the permit holder except that abandonment shall not include normal interruptions of surface

mining resulting from labor disputes, economic conditions associated with lack of smelting capacity or availability of appropriate transportation, war, social unrest, demand for minerals, maintenance and repairs, and acts of God.

Following a declaration of abandonment, the department shall require the permit holder to complete reclamation in accordance with this chapter. If the permit holder fails to do so, the department shall proceed to do the necessary reclamation work pursuant to RCW 78.44.240.

If another miner applies for a permit on a site that has been declared abandoned, the department may, in its discretion, cancel the reclamation permit of the permit holder and issue a new reclamation permit to the applicant. The department shall not issue a new permit unless it determines that such issuance will be an effective means of assuring that the site will ultimately be reclaimed. The applicant must agree to assume the reclamation responsibilities left unfinished by the first miner, in addition to meeting all requirements for issuance of a new permit. [1993 c 518 § 29.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.230 Abandonment—Cancellation of the reclamation permit.** When the department determines that a surface mine has been abandoned, it may cancel the reclamation permit. The permit holder shall be informed of such actions by a department notification of illegal abandonment and cancellation of the reclamation permit. [1993 c 518 § 30.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.240 Reclamation by the department—Order to submit performance security—Cost recovery.** The department may, with the staff, equipment, and material under its control, or by contract with others, reclaim the disturbed areas when it finds that reclamation has not occurred in any segment of a surface mine within two years of completion of mining or of declaration of abandonment and the permit holder is not actively pursuing reclamation.

If the department intends to undertake the reclamation, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.44.087. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security with reclamation of the site according to the approved reclamation plan or according to a plan developed by the department that meets the minimum reclamation standards.

The department shall keep a record of all expenses incurred in carrying out any reclamation project or activity authorized under this section, including:

- (1) Reclamation;
- (2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and

(3) Administrative and legal expenses related to reclamation of the surface mine.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1993 c 518 § 31.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.250 Fines—Civil penalties—Damage recovery.** Each order of the department may impose a fine or fines in the event that a miner or permit holder fails to obey the order of the department. When a miner or permit holder fails to comply with an order of the department, the miner or permit holder shall be subject to a civil penalty in an amount not more than ten thousand dollars for each violation plus interest based upon a schedule of fines set forth by the department in rule. Procedures for imposing a penalty and setting the amount of the penalty shall be as provided in RCW 90.48.144. Each day on which a miner or permit holder continues to disobey any order of the department shall constitute a separate violation. If the penalty and interest is not paid to the department after it becomes due and payable, the attorney general, upon the request of the department, may bring an action in the name of the state of Washington to recover the penalty, interest, mitigation for environmental damages, and associated legal fees. Decisions of the department are subject to review by the pollution control hearings board.

All fines, interest, penalties, and other damage recovery costs from mines regulated by the department shall be credited to the surface mining reclamation account. [1993 c 518 § 32.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.260 Operating without permit—Penalty.** Any miner or permit holder conducting surface mining within the state of Washington without a valid reclamation permit shall be guilty of a gross misdemeanor. Surface mining outside of the permitted area shall constitute illegal mining without a valid reclamation permit. Each day of mining without a valid reclamation permit shall constitute a separate offense. [1993 c 518 § 34; 1970 ex.s. c 64 § 16. Formerly RCW 78.44.150.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.270 Appeals—Standing.** Appeals from department determinations under this chapter shall be made as follows:

Appeals from department determinations made under this chapter shall be made under the provisions of the Administrative Procedure Act (chapter 34.05 RCW), and shall be considered an adjudicative proceeding within the meaning of the Administrative Procedure Act, chapter 34.05 RCW. Only a person aggrieved within the meaning of RCW 34.05.530 has standing and can file an appeal. [1993 c 518 § 35; 1989 c 175 § 166; 1970 ex.s. c 64 § 18. Formerly RCW 78.44.170.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**78.44.280 Underground operation—Surface disturbances subject to chapter.** Surface disturbances caused by an underground metals mining and milling operation are subject to the requirements of this chapter if the operation is proposed after June 30, 1999. An operation is proposed when an agency is presented with an application for an operation or expansion of an existing operation having a probable significant adverse environmental impact under chapter 43.21C RCW. The department of ecology shall retain authority for reclamation of surface disturbances caused by an underground operation operating at any time prior to June 30, 1999, unless the operator requests that authority for reclamation of surface disturbances caused by such operation be transferred to the department under the requirements of this chapter. [1999 c 252 § 2.]

**Severability—1999 c 252:** See note following RCW 78.44.031.

**78.44.300 Reclamation awards—Recognition of excellence.** The department shall create reclamation awards in recognition of excellence in reclamation or reclamation research. Such awards shall be presented to individuals, miners, operators, companies, or government agencies performing exemplary surface mining reclamation in the state of Washington. The department shall designate a percent of the state annual fees as funding of the awards. [1993 c 518 § 37.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.310 Reclamation consulting—No cost service.** The department shall establish a no-cost consulting service within the department to assist miners, permit holders, local government, and the public in technical matters related to mine regulation, mine operations, and reclamation. The department shall prepare concise, printed information for the public explaining surface mining activities, timelines for permits and reviews, laws, and the role of governmental agencies involved in surface mining, including how to contact all regulators. The department shall not be held liable for any negligent advice. [1997 c 184 § 1; 1993 c 518 § 38.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.320 Definitions applicable to RCW 78.44.330.** The definitions in this section apply throughout RCW 78.44.330 unless the context clearly requires otherwise.

(1) "Bedrock sluice" means a wood or metal flume or trough that is permanently attached to the bedrock of the creek and is equipped with transverse riffles across the bottom of the unit and used to recover heavy mineral sands.

(2) "Dredge" means a subsurface hose from one and one-half to ten inches in diameter that is powered by an engine and is used to draw up auriferous material that is then separated in the sluice portion of the unit.

(3) "Flume" means a trough used to convey water.

(4) "Mining claim" means a portion of the public lands claimed for the valuable minerals occurring in those lands and for which the mineral rights are obtained under federal

law or a right that is recognized by the United States bureau of land management and given an identification number.

(5) "Quartz mill" means a facility for processing ores or gravel.

(6) "Rocker box" means a unit constructed of a short trough attached to curved supports that allow the unit to be rocked from side to side.

(7) "Sluice box" means a portable unit constructed of a wood or metal flume or trough equipped with transverse riffles across the bottom of the unit and that is used to recover heavy mineral sands. [2003 c 335 § 1.]

**78.44.330 Mineral trespass—Penalty.** (1) A person commits the crime of mineral trespass if the person intentionally and without the permission of the claim holder or person conducting the mining operation:

(a) Interferes with a lawful mining operation or stops, or causes to be stopped, a lawful mining operation;

(b) Enters a mining claim posted as required in chapter 78.08 RCW and disturbs, removes, or attempts to remove any mineral from the claim site;

(c) Tampers with or disturbs a flume, rocker box, bedrock sluice, sluice box, dredge, quartz mill, or other mining equipment at a posted mining claim; or

(d) Defaces a location stake, side post, corner post, landmark, monument, or posted written notice within a posted mining claim.

(2) Mineral trespass is a class C felony. [2003 c 335 § 2.]

**78.44.340 Mineral trespass—Limitation on application.** (1) RCW 78.44.330 does not apply to conduct that would otherwise constitute an offense when it is required or authorized by law or judicial decree or is performed by a public servant in the reasonable exercise of official powers, duties, or functions.

(2) As used in subsection (1) of this section, "laws or judicial decrees" includes but is not limited to:

(a) Laws defining duties and functions of public servants;

(b) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions; and

(c) Judgments and orders of courts. [2003 c 335 § 3.]

**78.44.350 Blanket performance security.** (1) A permit holder, in lieu of an individual performance security for each mining site, may file a blanket performance security with the department for their group of permits.

(2) The department may reduce the required performance security calculated from its standard method prescribed in RCW 78.44.087, to an amount not to exceed the sum of reclamation security calculated by the department for the two surface mines with the largest performance security obligations, for nonmetal and nonfuel surface mines that meet the following conditions:

(a) The permit holder has had a valid reclamation permit for more than ten years and can demonstrate exemplary mining and reclamation practices that have been accepted by the department;

(b) The landowner agrees to allow the permit holder to hold a blanket security. The department must include, on forms to be signed by the landowner, notice of the risk of a lien on the landowner's lands; and

(c) The permit holder can demonstrate substantial financial ability to perform the reclamation in the approved reclamation plan and permit.

(3) Permit holders are not eligible for blanket securities if they are in violation of a final order of the department.

(4) The department must consider the compliance history and the state of the existing surface mines of the permit holder before approving any blanket performance security.

(5) Lands covered by a blanket performance security are subject to a lien placed by the department in the event of abandonment.

(6) In lieu of the performance security required of the permit holder, the department may accept a similar security from the landowner, equal to the estimated cost of reclamation as determined by the department. [2006 c 341 § 4.]

**78.44.360 Performance security insufficient to cover cost of reclamation—Lien established in favor of department.** (1) To the extent a performance security is insufficient to cover the cost of reclamation performed by the department, a lien shall be established in favor of the department upon all of the permit holder's real and personal property.

(2) The lien attaches upon the filing of a notice of claim of lien with the county clerk of the county in which the property is located. The notice of lien claim must contain a true statement of the demand, the insufficiency of the performance security to compensate the department, and the failure of the permit holder to perform the reclamation required.

(3) The lien becomes effective when filed.

(4) The lien created by this section may be foreclosed by a suit in the superior court in the manner provided by law for the foreclosure of other liens on real or personal property. [2006 c 341 § 5.]

**78.44.370 Notice of correction.** (1) The department may issue a notice of correction to the following: (a) Any permit holder, miner, or other person who authorizes, directs, violates, or who directly benefits by contracting with or employing another to violate this chapter, the rules adopted by the department, a reclamation permit, or a reclamation plan; or (b) a permit holder whose surface mine is out of compliance with the provisions of this chapter, the rules adopted by the department, or the permit holder's current or valid reclamation permit or reclamation plan. The department's authority to issue or its issuance of a notice of correction does not limit the department's authority to pursue enforcement actions, except as stated in other laws.

(2) The notice of correction must describe the items that need correction and must provide a reasonable time for the recipient to make corrections. The notice of correction must identify when, where, and to whom a request to extend the time to achieve compliance may be filed. The department may grant an extension when there is good cause for the request. This notice of correction is not an enforcement action and is not subject to administrative or judicial appeal. [2007 c 192 § 1.]

**78.44.380 Stop work orders.** (1) The department may issue an order to stop all surface mining to any permit holder, miner, or other person who authorizes, directs, or conducts such activities without a valid surface mine reclamation permit. This order is effective upon issuance unless otherwise stated in the order. Administrative appeal of the order to stop work does not stay the stop work requirement. The department shall notify the local jurisdiction of record when a stop work order has been issued for operating without a valid reclamation permit.

(2) The department may issue an order to stop surface mining occurring outside of any permit area to a permit holder that does not have a legal right to occupy the affected area. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(3) Where a permit holder is conducting surface mining activities outside of its permit boundary, but within land that it has the right to occupy, the department may issue an order to stop surface mining or mining-related activities occurring outside of the authorized area after the permit holder fails to comply with a notice of correction. The notice of correction must specify the corrections necessary as per the violation and provide a reasonable time to do so. This order is effective upon issuance unless otherwise stated in the order. An administrative appeal of the order to stop work does not stay the stop work requirement.

(4) Stop work orders must be in writing, delivered by United States certified mail with return receipt requested, facsimile, or by hand to the permit holder of record. The order must state the facts supporting the violation, the law being violated, and the specific activities being stopped. Stop work orders must be signed by the state geologist or an assistant state geologist. The department shall proceed as quickly as feasible to complete any requested adjudicative proceedings unless the parties stipulate to an appeal timeline or the department's stop work order states that it is not effective until after the administrative review process. If the recipient appeals the order, the recipient may file a motion for stay with the presiding officer, which will be reviewed under preliminary injunction standards. [2007 c 192 § 3.]

**78.44.390 Cancellation of a reclamation permit.** (1) In addition to the department's other authority to cancel a reclamation permit, a permit holder may seek cancellation of its reclamation permit in favor of a local development or construction permit. A permit holder may request cancellation of its reclamation permit and release of its performance security when:

(a) The permit holder has received an approved development or construction permit covering all of the existing permit area from a local jurisdiction;

(b) The local jurisdiction and the landowner agree with the permit holder's request to cancel the reclamation permit and to release the performance security; and

(c) The local jurisdiction provides assurance in writing that the construction or development permit is being actively implemented by the permit holder.

(2) The department is not responsible for overseeing a site's development or reclamation when a reclamation permit is cancelled under this section. [2007 c 192 § 4.]

**78.44.910 Previously mined land.** Miners and permit holders shall not be required to reclaim any segment where all surface mining was completed prior to January 1, 1971. However, the department shall make an effort to reclaim previously abandoned or completed surface mining segments. [1993 c 518 § 36; 1970 ex.s. c 64 § 22.]

**Captions—Severability—Effective date—1993 c 518:** See notes following RCW 78.44.010.

**78.44.920 Effective date—1970 ex.s. c 64.** This act shall become effective January 1, 1971. [1970 ex.s. c 64 § 23.]

**78.44.930 Severability—1970 ex.s. c 64.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected. [1970 ex.s. c 64 § 24.]

### Chapter 78.52 RCW

## OIL AND GAS CONSERVATION

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*Interstate oil compact commission, governor may join: RCW 43.06.015.*

*Oil or natural gas exploration in marine waters: RCW 90.58.550.*

**78.52.001 Declaration of purpose.** It is hereby declared to be in the public interest to foster, encourage, and promote the exploration, development, production, and utilization of oil and gas in the state in such manner as will prevent waste; to authorize and to provide for the operation and development of oil and gas properties in such manner as to assure that the maximum economic recovery of oil and gas may be obtained and the rights of owners thereof fully protected; to conduct such oil and gas operations in a manner that will maintain a safe and healthful environment for the people of Washington and protect the state's natural resources; and to encourage, authorize, and provide for cycling, recycling, pressure maintenance and secondary recovery operations in order that the maximum economic recovery of oil and gas may be obtained to the end that landowners, royalty owners, producers, and the general public may realize and enjoy the greatest possible benefits from these vital resources. [1983 c 253 § 1; 1951 c 146 § 1.]

**78.52.010 Definitions.** For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Certificate of clearance" means a permit prescribed by the department for the transportation or the delivery of oil, gas, or product.

(2) "Department" means the department of natural resources.

(3) "Development unit" means the maximum area of a pool which may be drained efficiently and economically by one well.

(4) "Division order" means an instrument showing percentage of royalty or rental divisions among royalty owners.

(5) "Fair and reasonable share of the production" means, as to each separately-owned tract or combination of tracts, that part of the authorized production from a pool that is substantially in the proportion that the amount of recoverable oil

or gas under the development unit of that separately-owned tract or tracts bears to the recoverable oil or gas or both in the total of the development units in the pool.

(6) "Field" means the general area which is underlaid by at least one pool and includes the underground reservoir or reservoirs containing oil or gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(7) "Gas" means all natural gas, all gaseous substances, and all other fluid or gaseous hydrocarbons not defined as oil in subsection (12) of this section, including but not limited to wet gas, dry gas, residue gas, condensate, and distillate, as those terms are generally understood in the petroleum industry.

(8) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well within the state in violation of this chapter or any rule or order of the department.

(9) "Illegal product" means any product derived in whole or part from illegal oil or illegal gas.

(10) "Interested person" means a person with an ownership, basic royalty, or leasehold interest in oil or gas within an existing or proposed development unit or unitized pool.

(11) "Lessee" means the lessee under an oil and gas lease, or the owner of any land or mineral rights who has the right to conduct or carry on any oil and gas development, exploration and operation thereon, or any person so operating for himself, herself, or others.

(12) "Oil" means crude petroleum, oil, and all hydrocarbons, regardless of gravity, that are in the liquid phase in the original reservoir conditions and are produced and recovered at the wellhead in liquid form.

(13) "Operator" means the person who operates a well or unit or who has been designated or accepted by the owners to operate the well or unit, and who is responsible for compliance with the department's rules and policies.

(14) "Owner" means the person who has the right to develop, operate, drill into, and produce from a pool and to appropriate the oil or gas that he or she produces therefrom, either for that person or for that person and others.

(15) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or representative of any kind and includes any governmental or political subdivision or any agency thereof.

(16) "Pool" means an underground reservoir containing a common accumulation of oil or gas, or both. Each zone of a structure which is completely separated from any other zone in the same structure such that the accumulations of oil or gas are not common with each other is considered a separate pool and is covered by the term "pool" as used in this chapter.

(17) "Pooling" means the integration or combination of two or more tracts into an area sufficient to constitute a development unit of the size for one well as prescribed by the department.

(18) "Product" means any commodity made from oil or gas.

(19) "Protect correlative rights" means that the action or regulation by the department should afford a reasonable opportunity to each person entitled thereto to recover or

receive without causing waste his or her fair and reasonable share of the oil and gas in this tract or tracts or its equivalent.

(20) "Royalty" means a right to or interest in oil or gas or the value from or attributable to production, other than the right or interest of a lessee, owner, or operator, as defined herein. Royalty includes, but is not limited to the basic royalty in a lease, overriding royalty, and production payments. Any such interest may be referred to in this chapter as "royalty" or "royalty interest." As used in this chapter "basic royalty" means the royalty reserved in a lease. "Royalty owner" means a person who owns a royalty interest.

(21) "Supervisor" means the state oil and gas supervisor.

(22) "Unitization" means the operation of all or part of a field or reservoir as a single entity for operating purposes.

(23) "Waste" in addition to its ordinary meaning, means and includes:

(a) "Physical waste" as that term is generally understood in the petroleum industry;

(b) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner which results or is probable to result in reducing the quantity of oil or gas to be recovered from any pool in this state under operations conducted in accordance with prudent and proper practices or that causes or tends to cause unnecessary wells to be drilled;

(c) The inefficient above-ground storage of oil, and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of oil or gas;

(d) The production of oil or gas in such manner as to cause unnecessary water channeling, or coning;

(e) The operation of an oil well with an inefficient gas-oil ratio;

(f) The drowning with water of any pool or part thereof capable of producing oil or gas, except insofar as and to the extent authorized by the department;

(g) Underground waste;

(h) The creation of unnecessary fire hazards;

(i) The escape into the open air, from a well producing oil or gas, of gas in excess of the amount which is reasonably necessary in the efficient development or production of the well;

(j) The use of gas for the manufacture of carbon black, except as provided in RCW 78.52.140;

(k) Production of oil and gas in excess of the reasonable market demand;

(l) The flaring of gas from gas wells except that which is necessary for the drilling, completing, or testing of the well; and

(m) The unreasonable damage to natural resources including but not limited to the destruction of the surface, soils, wildlife, fish, or aquatic life from or by oil and gas operations. [1994 sp.s. c 9 § 809; 1983 c 253 § 2; 1951 c 146 § 3.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.025 Hearings and meetings of department.** The department shall hold hearings or meetings at such times and

places as may be found by the department to be necessary to carry out its duties. The department may establish its own rules for the conduct of public hearings or meetings consistent with other applicable law. [1994 sp.s. c 9 § 810; 1983 c 253 § 3; 1951 c 146 § 5. Formerly RCW 78.52.060.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.030 Employment of personnel.** The department shall employ all personnel necessary to carry out the provisions of this chapter. [1994 sp.s. c 9 § 811; 1951 c 146 § 6.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.031 Conduct of hearings—Evidence.** The department may subpoena witnesses, administer oaths, and require the production of records, books, and documents for examination at any hearing or investigation conducted by it. No person shall be excused from attending and testifying, or from producing books, papers, and records before the department or a court, or from obedience to the subpoena of the department or a court, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture: PROVIDED, That nothing herein contained shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry not pertinent to some question lawfully before the department or court for determination. No person shall be subjected to criminal prosecution or to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which, in spite of his or her objection, he or she may be required to testify or produce evidence, documentary or otherwise before the department or court, or in obedience to its subpoena: PROVIDED, HOWEVER, That no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. [1994 sp.s. c 9 § 812; 1983 c 253 § 5; 1951 c 146 § 7. Formerly RCW 78.52.080.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.032 Hearing examiners.** In addition to the powers and authority, either express or implied, granted to the department by virtue of the laws of this state, the department may, in prescribing its rules of order or procedure in connection with hearings or other proceedings before the department, provide for the appointment of one or more examiners to conduct a hearing or hearings with respect to any matter properly coming before the department and to make reports and recommendations to the department with respect thereto. Any employee of the department or any other person designated by the commissioner of public lands, or the supervisor when this power is so delegated, may serve as an examiner. The department shall adopt rules governing hearings to be conducted before examiners. [1994 sp.s. c 9 § 813; 1983 c 253 § 10.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

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**78.52.033 Failure of witness to attend or testify—Contempt.** In case of failure or refusal on the part of any person to comply with a subpoena issued by the department or in case of the refusal of any witness to testify as to any matter regarding which the witness may be interrogated, any superior court in the state, upon the application of the department, may compel the person to comply with such subpoena, and to attend before the department and produce such records, books, and documents for examination, and to give his or her testimony and shall have the power to punish for contempt as in the case of disobedience to a like subpoena issued by the court, or for refusal to testify therein. [1994 sp.s. c 9 § 814; 1951 c 146 § 8. Formerly RCW 78.52.090.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.035 Attorney for department.** The attorney general shall be the attorney for the department, but in cases of emergency, the department may call upon the prosecuting attorney of the county where the action is to be brought, or defended, to represent the department until such time as the attorney general may take charge of the litigation. [1994 sp.s. c 9 § 815; 1951 c 146 § 9. Formerly RCW 78.52.110.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.037 State oil and gas supervisor—Deputy supervisors—Employment of personnel.** The department shall designate a state oil and gas supervisor who shall be charged with duties as may be delegated by the department. The department may designate one or more deputy supervisors and employ all personnel necessary including the appointment of examiners as provided in RCW 78.52.032 to carry out this chapter and the rules and orders of the department. [1994 sp.s. c 9 § 816; 1983 c 253 § 4.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.040 Duty and powers of department—In general.** The department shall administer and enforce the provisions of this chapter by the adoption of policies, and all rules, regulations, and orders promulgated hereunder, and the department has jurisdiction, power, and authority, over all persons and property, public and private, necessary to enforce effectively such duty. [1994 sp.s. c 9 § 817; 1983 c 253 § 6; 1951 c 146 § 10.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.045 Committee to participate in and administer federal Safe Drinking Water Act in conjunction with the departments of ecology, natural resources, and social and health services.** See RCW 43.21A.445.

**78.52.050 Rules, regulations, and orders—Time and place of hearing—Notices.** The department may make such reasonable rules, regulations, and orders as may be necessary from time to time for the proper administration and enforcement of this chapter. Unless otherwise required by law or by this chapter or by rules of procedure made under this chapter, the department may make such rules, regulations, and orders,

after notice, as the basis therefor. The notice may be given by publication in some newspaper of general circulation in the state in a manner and form which may be prescribed by the department by general rule. The public hearing shall be at the time and in the manner and at the place prescribed by the department, and any person having any interest in the subject matter of the hearing shall be entitled to be heard. In addition, written notice shall be mailed to all interested persons who have requested, in writing, notice of department hearings, rulings, policies, and orders. The department shall establish and maintain a mailing list for this purpose. Substantial compliance with these mailing requirements is deemed compliance with this section. [1994 sp.s. c 9 § 818; 1983 c 253 § 7; 1951 c 146 § 11.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.070 Hearing upon petition—Time for action.**

Any interested person shall have the right to have the department call a hearing for the purpose of taking action with respect to any matter within the jurisdiction of the department by filing a verified written petition therefor, which shall state in substance the matter and reasons for and nature of the action requested. Upon receipt of any such request the department, if in its judgment a hearing is warranted and justifiable, shall promptly call a hearing thereon, and after such hearing, and with all convenient speed, and in any event within twenty days after the conclusion of such hearing, shall take such action with regard to the subject matter thereof as it may deem appropriate. [1994 sp.s. c 9 § 819; 1951 c 146 § 12.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.100 Records—Copies as evidence—Copies to be furnished.** All rules, regulations, policies, and orders of the department, all petitions, copies of all notices and actions with affidavits of posting, mailing, or publications pertaining thereto, all findings of fact, and transcripts of all hearings shall be in writing and shall be entered in full by the department in the permanent official records of the office of the commissioner of public lands and shall be open for inspection at all times during reasonable office hours. A copy of any rule, regulation, policy, order, or other official records of the department, certified by the commissioner of public lands, shall be received in evidence in all courts of this state with the same effect as the original. The department is hereby required to furnish to any person upon request, copies of all rules, regulations, policies, orders, and amendments thereof. [1994 sp.s. c 9 § 820; 1983 c 253 § 8; 1951 c 146 § 13.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.120 Drilling permit required—Notice.** Any person desiring or proposing to drill any well in search of oil or gas, before commencing the drilling of any such well, shall apply to the department upon such form as the department may prescribe, and shall pay to the state treasurer a fee of the following amounts for each application:

(1) For each well the estimated depth of which is three thousand five hundred feet or less, two hundred fifty dollars;

(2) From three thousand five hundred one feet to seven thousand feet, five hundred dollars;

(3) From seven thousand one feet to twelve thousand feet, seven hundred fifty dollars; and

(4) From twelve thousand one feet and deeper, one thousand dollars.

In addition, as pertains to the tract upon which the well is proposed to be located, the applicant must notify the surface landowner, the landowner's tenant, and other surface users in the manner provided by regulations of the department that a drilling permit has been applied for by furnishing each such surface landowner, tenant, and other users with a copy of the application concurrent with the filing of the application. Within fifteen days of receipt of the application, each such surface landowner, the landowner's tenant, and other surface users have the right to inform the department of objections or comments as to the proposed use of the surface by the applicant, and the department shall consider the objections or comments.

The drilling of any well is prohibited until a permit is given and such fee has been paid as provided in this section. The department may prescribe that the said form indicate the exact location of such well, the name and address of the owner, operator, contractor, driller, and any other person responsible for the conduct of drilling operations, the proposed depth of the well, the elevation of the well above sea level, and such other relevant and reasonable information as the department may deem necessary or convenient to effectuate the purposes of this chapter.

The department shall issue a permit if it finds that the proposed drilling will be consistent with this chapter, the rules and orders adopted under it, and is not detrimental to the public interest. The department shall impose conditions and restrictions as necessary to protect the public interest and to ensure compliance with this chapter, and the rules and orders adopted by the department. A person shall not apply to drill a well in search of oil or gas unless that person holds an ownership or contractual right to locate and operate the drilling operations upon the proposed drilling site. A person shall not be issued a permit unless that person prima facie holds an ownership or contractual right to drill to the proposed depth, or proposed horizon. Proof of prima facie ownership shall be presented to the department. [1994 sp.s. c 9 § 821; 1983 c 253 § 11; 1951 c 146 § 14.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.125 Environmental impact statement required when drilling affects surface waters of the state—Drilling may be denied, when.**

Any person desiring or proposing to drill any well in search of oil or gas, when such drilling would be conducted through or under any surface waters of the state, shall prepare and submit an environmental impact statement upon such form as the department of ecology shall prescribe at least one hundred and twenty days prior to commencing the drilling of any such well. Within ninety days after receipt of such environmental statement the department of ecology shall prepare and submit to the department of natural resources a report examining the potential environmental impact of the proposed well and recommendations for department action thereon. If after consideration of the report the

department determines that the proposed well is likely to have a substantial environmental impact the drilling permit for such well may be denied.

The department shall require sufficient safeguards to minimize the hazards of pollution of all surface and ground waters of the state. If safeguards acceptable to the department cannot be provided the drilling permit shall be denied. [1994 sp.s. c 9 § 822; 1971 ex.s. c 180 § 8.]

**Reviser's note:** The definitions of RCW 90.56.010 apply to this section. Funds for the purposes of carrying out this section are provided from the coastal protection fund, RCW 90.48.390 and 90.48.400. The authority and enforcement of rules pertaining to this section are covered in RCW 90.56.050 and 90.56.900.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Severability—Short title—Construction—1971 ex.s. c 180:** See RCW 90.48.903, 90.48.906, and 90.56.900.

**78.52.130 Waste prohibited.** Waste of oil and gas, as defined in this chapter, is prohibited. [1951 c 146 § 15.]

**78.52.140 Carbon black and carbon products—Permit required.** The use of gas from a well producing gas only, or from a well which is primarily a gas well, for the manufacture of carbon black or similar products predominantly carbon, is declared to constitute waste prima facie, and such gas well shall not be used for any such purpose unless it is clearly shown, at a public hearing to be held by the department, on application of the person desiring to use such gas, that waste would not take place by the use of such gas for the purpose or purposes applied for, and that gas which would otherwise be lost is not available for such purpose or purposes, and that the gas to be used cannot be used for a more beneficial purpose, such as for light or fuel purposes, except at prohibitive cost, and that it would be in the public interest to grant such permit. If the department finds that the applicant has clearly shown a right to use such gas for the purpose or purposes applied for, it shall issue a permit upon such terms and conditions as may be found necessary in order to permit the use of the gas, and at the same time require compliance with the intent of this section. [1994 sp.s. c 9 § 823; 1951 c 146 § 16.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.150 Investigations authorized.** The department shall make such investigations as it may deem proper to determine whether waste exists or is imminent or whether other facts exist which justify action by the department. [1994 sp.s. c 9 § 824; 1951 c 146 § 17.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.155 Investigations—Powers and duties.** (1) The department shall make investigations as necessary to carry out this chapter.

(2) The department shall require:

(a) Identification of ownership of oil or gas wells, producing leases, tanks, plants, structures, and facilities for the transportation or refining of oil or gas;

(b) The making and filing of well logs, core samples, directional surveys, and reports on well locations, drilling, and production;

(c) The testing of oil and gas wells;

(d) The drilling, casing, operating, and plugging of wells in such a manner as to prevent the escape of oil or gas out of the casings, or out of one pool into another, the intrusion of water into an oil or gas pool, and the pollution of freshwater supplies by oil, gas, or saltwater and to prevent blowouts, cavings, see pages, and fires;

(e) The furnishing of adequate security acceptable to the department, conditioned on the performance of the duty to plug each dry or abandoned well, the duty to reclaim and clean-up well drilling sites, the duty to repair wells causing waste, the duty to comply with all applicable laws and rules adopted by the department, orders of the department, all permit conditions, and this chapter;

(f) The operation of wells with efficient gas-oil and water-oil ratios and may fix these ratios and limit production from wells with inefficient gas-oil or water-oil ratios;

(g) The production of oil and gas from wells be accurately measured by means and upon standards prescribed by the department, and that every person who produces, sells, purchases, acquires, stores, transports, treats, or processes oil or gas in this state keeps and maintains for a period of five years within this state complete and accurate records thereof, which records shall be available for examination by the department or its agents at all reasonable times, and that every person file with the department such reports as it may prescribe with respect to the oil or gas; and

(h) Compliance with all applicable laws and rules of this state.

(3) The department shall regulate:

(a) The drilling, producing, locating, spacing, and plugging of wells and all other operations for the production of oil or gas;

(b) The physical, mechanical, and chemical treatment of wells, and the perforation of wells;

(c) Operations to increase ultimate recovery such as cycling of gas, the maintenance of pressure, and the introduction of gas, water, or other substances into producing formations;

(d) Disposal of saltwater and oil field brines;

(e) The storage, processing, and treatment of natural gas and oil produced within this state; and

(f) Reclamation and clean-up of all well sites and any areas directly affected by the drilling, production, operation, and plugging of oil and gas wells.

(4) The department may limit and prorate oil and gas produced in this state and may restrict future production of oil and gas from any pool in such amounts as will offset and compensate for any production determined by the department to be in excess of or in violation of "oil allowable" or "gas allowable."

(5) The department shall classify wells as oil or gas wells for purposes material to the interpretation or enforcement of this chapter.

(6) The department shall regulate oil and gas exploration and drilling activities so as to prevent or remedy unreasonable or excessive waste or surface destruction. [1994 sp.s. c 9 § 825; 1983 c 253 § 9.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.200 Development units authorized for known pools.** When necessary to prevent waste, to avoid the drilling of unnecessary wells, or to protect correlative rights including those of royalty owners, the department, upon its own motion or upon application of interested persons, shall establish development units covering any known pool. Development units shall be of uniform size and shape for the entire pool unless the department finds that it must make an exception due to geologic, geographic, or other factors. When necessary, the department may divide any pool into zones and establish development units for each zone, which units may differ in size and shape from those established in any other zone. [1994 sp.s. c 9 § 826; 1983 c 253 § 12; 1951 c 146 § 22.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.205 Development units to be prescribed for pool after discovery—Temporary development units.** Within sixty days after the discovery of oil or gas in a pool not then covered by an order of the department, a hearing shall be held and the department shall issue an order prescribing development units for the pool. If sufficient geological or other scientific data from drilling operations or other evidence is not available to determine the maximum area that can be efficiently and economically drained by one well, the department may establish temporary development units to ensure the orderly development of the pool pending availability of the necessary data. A temporary order shall continue in force for a period of not more than twenty-four months at the expiration of which time, or upon the petition of an affected person, the department shall require the presentation of such geological, scientific, drilling, or other evidence as will enable it to determine the proper development units in the pool. During the interim period between the discovery and the issuance of the temporary order, permits shall not be issued for the drilling of direct offsets to a discovery well. [1994 sp.s. c 9 § 827; 1983 c 253 § 13.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.210 Development units—Size and shape.** (1) The size and the shape of any development units shall be such as will result in the efficient and economical development of the pool as a whole, and the size shall not be smaller than the maximum area that can be efficiently and economically drained by one well as determined by competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence. The department shall fix a development unit of not more than one hundred sixty acres for any pool deemed by the department to be an oil reservoir, or of six hundred forty acres for any pool deemed by the department to be a gas reservoir, plus a ten percent tolerance in either case to allow for irregular sections. The department may, at its discretion, after notice and hearing, establish development units for oil and gas in variance of these limitations when competent geological, geophysical, engineering, drilling, or other scientific testimony, data, and evidence is

presented and upon a finding that one well can efficiently and economically drain a larger or smaller area and is justified because of technical, economic, environmental, or safety considerations.

(2) The department may establish development units of different sizes or shapes for different parts of a pool or may grant exceptions to the size or shapes of any development unit or units. Where development units of different sizes or shapes exist in a pool, the department shall, if necessary, make such adjustments to the allowable production from the well or wells drilled thereon so that each operator in each development unit will have a reasonable opportunity to produce or receive his or her just and equitable share of the production. [1994 sp.s. c 9 § 828; 1983 c 253 § 14; 1951 c 146 § 23.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.220 Development units—Location of well.** An order establishing development units for a pool shall specify the size and shape of each area and the location of the permitted well thereon in accordance with a reasonable uniform spacing plan. Upon application and after notice and a hearing, if the department finds that a well drilled at the prescribed location would not produce in paying quantities, or that surface conditions would substantially add to the burden or hazard of drilling such well, the department may enter an order permitting the well to be drilled pursuant to permit at a location other than that prescribed by such development order; however, the department shall include in the order suitable provisions to prevent the production from the development unit of more than its just and equitable share of the oil and gas in the pool. [1994 sp.s. c 9 § 829; 1983 c 253 § 15; 1951 c 146 § 24.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.230 Development units—Order must cover entire pool—Modifications.** An order establishing development units for a pool shall cover all lands determined or believed to be underlaid by such pool, and may be modified by the department from time to time to include additional areas determined to be underlaid by such pool. When the department determines that it is necessary for the prevention of waste, or to avoid the drilling of unnecessary wells, or to protect correlative rights, an order establishing development units in a pool may be modified by the department to increase or decrease the size of development units in the pool or to permit the drilling of additional wells on a reasonably uniform plan in the pool. [1994 sp.s. c 9 § 830; 1983 c 253 § 16; 1951 c 146 § 25.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.240 Development units—Pooling of interests.** When two or more separately-owned tracts are embraced within a development unit, or when there are separately owned interests in all or a part of the development unit, then the owners and lessees thereof may pool their interests for the development and operation of the development unit. In the absence of this voluntary pooling, the department, upon the

application of any interested person, shall enter an order pooling all interests, including royalty interests, in the development unit for the development and operation thereof. Each such pooling order shall be made after notice and hearing. The applicant or applicants shall have the burden of proving that all reasonable efforts have been made to obtain the consent of, or to reach agreement with, other owners. [1994 sp.s. c 9 § 831; 1983 c 253 § 17; 1951 c 146 § 26.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.245 Pooling order—Allocation of production.**

A pooling order shall be upon terms and conditions that are fair and reasonable and that afford to each owner and royalty owner his or her fair and reasonable share of production. Production shall be allocated as follows:

(1) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the surface acres in each tract bear to the number of surface acres included in the entire unit.

(2) Notwithstanding subsection (1) of this section, if the department finds that allocation on a surface acreage basis does not allocate to each tract its fair share, the department shall allocate the production so that each tract will receive its fair share. [1994 sp.s. c 9 § 832; 1983 c 253 § 18.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.250 Pooled interests in well in development unit—Allocation of costs—Rights of owners.** (1) Each such pooling order shall make provision for the drilling and operation of a well on the development unit, and for the payment of the reasonable actual cost thereof by the owners of interests required to pay such costs in the development unit, plus a reasonable charge for supervision and storage facilities. Costs associated with production from the pooled unit shall be allocated in the same manner as is production in RCW 78.52.245. In the event of any dispute as to such costs the department shall determine the proper costs.

(2) As to each owner who fails or refuses to agree to bear his or her proportionate share of the costs of the drilling and operation of the well, the order shall provide for reimbursement of those persons paying for the drilling and operation of the well of the nonconsenting owner's share of the costs from, and only from, production from the unit representing that person's interest, excluding royalty or other interests not obligated to pay any part of the cost thereof. The department may provide that the consenting owners shall own and be entitled to receive all production from the well after payment of the royalty as provided in the lease, if any, applicable to each tract or interest, and obligations payable from production, until the consenting owners have been paid the amount due under the terms of the pooling order or order settling any dispute.

The order shall determine the interest of each owner in the unit and shall provide that each consenting owner is entitled to receive, subject to royalty or similar obligations, the share of the production of the well applicable to the owner's interest in the unit, and, unless the owner has agreed other-

wise, his or her proportionate part of the nonconsenting owner's share of the production until costs are recovered as provided in this subsection. Each nonconsenting owner is entitled to receive, subject to royalty or similar obligations, the share of production from the well applicable to the owner's interest in the unit after the consenting owners have recovered from the nonconsenting owner's share of production the following:

(a) In respect to every such well, one hundred percent of the nonconsenting owner's share of the cost of surface equipment beyond the wellhead connections, including but not limited to, stock tanks, separators, treaters, pumping equipment, and piping, plus one hundred percent of the nonconsenting owner's share of the cost of operation of the well, commencing with first production and continuing until the consenting owners have recovered these costs, with the intent that the nonconsenting owner's share of these costs and equipment will be that interest which would have been chargeable to the nonconsenting owner had he or she initially agreed to pay his or her share of the costs of the well from the beginning of the operation;

(b) One hundred fifty percent of that portion of the costs and expenses of staking the location, well site preparation, rights-of-way, rigging-up, drilling, reworking, deepening or plugging back, testing, and completing, after deducting any cash contributions received by the consenting owners, and also one hundred fifty percent of that portion of the cost of equipment in the well, up to and including the wellhead connections; and

(c) If there is a dispute regarding the costs, the department shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

(3) The operator of a well under a pooling order in which there are nonconsenting owners shall furnish the nonconsenting owners with monthly statements of all costs incurred, together with the quantity of oil or gas produced, and the amount of proceeds realized from the sale of this production during the preceding month. If and when the consenting owners recover from a nonconsenting owner's relinquished interest the amounts provided for in subsection (2) of this section, the relinquished interest of the nonconsenting owner shall automatically revert to him or her, and the nonconsenting owner shall own the same interest in the well and the production from it and be liable for the further costs of the operation as if he or she had participated in the initial drilling and operation.

(4) A nonconsenting owner of a tract in a development unit which is not subject to any lease or other contract for the development thereof for oil and gas shall elect within fifteen days of the issuance of the pooling order or such further time as the department shall, in the order, allow:

(a) To be treated as a nonconsenting owner as provided in subsections (2) and (3) of this section and is deemed to have a basic landowners' royalty of one-eighth, or twelve and one-half percent, of the production allocated to the tract, unless a higher basic royalty has been established in the development unit. If a higher royalty has been established, then the nonconsenting owner of a nonleased tract shall receive the higher basic royalty. This presumed royalty shall exist only during the time that costs and expenses are being

recovered under subsection (2) of this section, and is intended to assure that the owner of a nonleased tract receive a basic royalty free of all costs at all times. Notwithstanding anything herein to the contrary, the owner shall at all times retain his or her entire ownership of the property, including the right to execute an oil and gas lease on any terms negotiated, and be entitled to all production subject to subsection (2) of this section; or

(b) To grant a lease to the operator at the current fair market value for that interest for comparable leases or interests at the time of the commencement of drilling; or

(c) To pay his or her pro rata share of the costs of the well or wells in the development unit and receive his or her pro rata share of production, if any.

A nonconsenting owner who does not make an election as provided in this subsection is deemed to have elected to be treated under (a) of this subsection. [1994 sp.s. c 9 § 833; 1983 c 253 § 19; 1951 c 146 § 27.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.253 Pooling agreement, offer to pool, pooling order—Fairness to nonconsenting, unleased owners.** A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable as applied to nonconsenting, unleased owners only, if it provides for an operating agreement containing any of the following provisions:

(1) Preferential right of the operator to purchase mineral interests in the unit;

(2) A call on or option to purchase production from the unit;

(3) Operating charges that include any part of district or central office expense other than reasonable overhead charges; or

(4) Prohibition against nonoperators questioning the operation of the unit. [1983 c 253 § 20.]

**78.52.255 Operations on development unit deemed operations on each tract—Production allocated to tract deemed produced from each tract—Shut-in well considered on each tract—Lease on part of tract excluded from unit.** (1) Operations incident to the drilling of a well upon any portion of a development unit covered by a pooling order shall be deemed, for all purposes, the conduct of such operations upon each separately-owned tract in the development unit by the several owners thereof. That portion of the production allocated to each separately-owned tract included in a development unit covered by a pooling order shall, when produced, be deemed for all purposes, including the payment of royalty, to have been produced from each separately-owned tract by a well drilled thereon. If an oil or gas well on a pooled unit is shut-in, it shall be considered that the shut-in well is on each separately-owned tract in the pooled unit.

(2) If only part of the tract is included in the unit, operations on, production from, or a shut-in well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the lease. [1983 c 253 § 21.]

**78.52.257 Dissolution of pooling order—Interests covered by terminated lease—Modification or termination of pooling order—Extension of dissolution of pooling order.** (1) An order pooling a development unit shall automatically dissolve:

(a) One year after its effective date if there has been no production of commercial quantities or drilling operations on lands within the unit;

(b) Six months after completion of a dry hole on the unit; or

(c) Six months after cessation of production of commercial quantities from the unit, unless, prior to the expiration of such six-month period, the operator shall, in good faith, commence drilling or reworking operations in an effort to restore production.

(2) Upon the termination of a lease pooled by order of the department under authority granted in this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

(3) Any party to a pooling order is entitled, after due notice to all parties, to a hearing to modify or terminate a previously entered pooling order upon presenting new evidence showing that the previous determination of reservoir conclusions are substantially incorrect.

(4) The department, after notice and hearing, may grant additional time, for good cause shown, before a pooling order is automatically dissolved as provided in subsection (1) of this section. In no case may such an extension be longer than six months. [1994 sp.s. c 9 § 834; 1983 c 253 § 22.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.260 "Wildcat" or "exploratory" well data confidential.** Whenever the department requires the making and filing of well logs, directional surveys, or reports on the drilling of, subsurface conditions found in, or reports with respect to the substance produced, or capable of being produced from, a "wildcat" or "exploratory" well, as those terms are used in the petroleum industry, such logs, surveys, reports, or information shall be kept confidential by the department for a period of one year, if at the time of filing such logs, surveys, reports, or other information, the owner, lessee, or operator of such well requests that such information be kept confidential: PROVIDED, HOWEVER, That the department may divulge or use such information in a public hearing or suit when it is necessary for the enforcement of the provisions of this chapter or any rule, regulation, or order made hereunder. [1994 sp.s. c 9 § 835; 1951 c 146 § 28.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.270 Limitation of production to "oil allowable"—Proration.** Whenever the total amount of oil which all of the pools in this state can currently produce in accordance with good operating practices, exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the oil which may be currently produced in this state to an amount, designated the "oil allowable." The department shall then prorate this "oil allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be pre-

vented. In determining the "oil allowable," and in prorating such "oil allowable" among the pools in the state, the department shall take into account the producing conditions and other relevant facts with respect to such pools, including the separate needs for oil and gas, and separate needs for oil of particular kinds or qualities, and shall formulate rules setting forth standards or a program for the determination of the "oil allowable," and shall prorate the "oil allowable" in accordance with such standards or program, and where conditions in one pool or area are substantially similar to those in another pool or area, then the same standards or program shall be applied to such pools or areas so that as far as practicable a uniform program will be followed: PROVIDED, HOWEVER, That if the amount prorated to a pool as its share of the "oil allowable" is in excess of the amount which the pool can efficiently produce currently, then the department shall prorate to such pool the maximum amount which can be efficiently produced currently without waste. [1994 sp.s. c 9 § 836; 1951 c 146 § 29.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.280 Determining market demand—No undue discrimination in proration of "allowable."** The department shall not be required to determine the reasonable market demand applicable to any single pool of oil except in relation to all pools producing oil of similar kind and quality and in relation to the reasonable market demand. The department shall prorate the "allowable" in such manner as will prevent undue discrimination against any pool or area in favor of another or others resulting from selective buying or nomination by purchasers. [1994 sp.s. c 9 § 837; 1951 c 146 § 30.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.290 Limitation of production to "gas allowable"—Proration.** Whenever the total amount of gas which all of the pools in this state can currently produce in accordance with good operating practice exceeds the amount reasonably required to meet the reasonable market demand, the department shall limit the gas which may be currently produced to an amount, designated as the "gas allowable," which will not exceed the reasonable market demand for gas. The department shall then prorate the "gas allowable" among the pools on a reasonable basis, avoiding undue discrimination among the pools, and so that waste will be prevented, giving due consideration to location of pipe lines, cost of interconnecting such pipe lines, and other pertinent factors, and insofar as applicable, the provisions of RCW 78.52.270 shall be followed in determining the "gas allowable" and in prorating such "gas allowable" among the pools therein: PROVIDED, HOWEVER, That in determining the reasonable market demand for gas as between pools, the department shall give due regard to the fact that gas produced from oil pools is to be regulated in a manner which will protect the reasonable use of gas energy for oil production and promote the most or maximum efficient recovery of oil from such pools. [1994 sp.s. c 9 § 838; 1951 c 146 § 31.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

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**78.52.300 Limitation of gas production from one pool.** Whenever the total amount of gas which may be currently produced from all of the pools in this state has not been limited as hereinabove provided, and the available production from any one pool containing gas only is in excess of the reasonable market demand or available transportation facilities for gas from such pool, the department shall limit the production of gas from such pool to that amount which does not exceed the reasonable market demand or transportation facilities for gas from such pool. [1994 sp.s. c 9 § 839; 1951 c 146 § 32.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.310 Proration of allowable production in pool—Publication of orders—Emergency orders.** Whenever the department limits the total amount of oil or gas which may be produced from any pool to an amount less than that which the pool could produce if no restrictions were imposed (whether incidental to, or without, a limitation of the total amount of oil which may be produced in the state) the department shall prorate the allowable production for the pool among the producers in the pool on a reasonable basis, so that each producer will have opportunity to produce or receive his or her just and equitable share, subject to the reasonable necessities for the prevention of waste, giving where reasonable, under the circumstances, to each pool with small wells of settled production, allowable production which prevents the premature abandonment of wells in the pool.

All orders establishing the "oil allowable" and "gas allowable" for this state, and all orders prorating such allowables as herein provided, and any changes thereof, for any month or period shall be issued by the department on or before the fifteenth day of the month preceding the month for which such orders are to be effective, and such orders shall be immediately published in some newspaper of general circulation printed in Olympia, Washington. No orders establishing such allowables, or prorating such allowables, or any changes thereof, shall be issued without first having a hearing, after notice, as provided in this chapter: PROVIDED, HOWEVER, When in the judgment of the department, an emergency requiring immediate action is found to exist, the department may issue an emergency order under this section which shall have the same effect and validity as if a hearing with respect to the same had been held after due notice. The emergency order permitted by this section shall remain in force no longer than thirty days, and in any event it shall expire when the order made after due notice and hearing with respect to the subject matter of the emergency order becomes effective. [1994 sp.s. c 9 § 840; 1951 c 146 § 33.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.320 Compliance with limitation or proration required.** Whenever the production of oil or gas in this state or any pool therein is limited and the "oil allowable" or "gas allowable" is established and prorated by the department as provided in RCW 78.52.310, no person shall thereafter produce from any well, pool, lease, or property more than the production which is prorated thereto. [1994 sp.s. c 9 § 841; 1951 c 146 § 34.]

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**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.330 Unit operation of separately owned tracts.**

To assist in the development of oil and gas in this state and to further the purposes of this chapter, the persons owning interests in separate tracts of land, may validly agree to integrate their interests and manage, operate, and develop their land as a unit, subject to the approval of the department. [1994 sp.s. c 9 § 842; 1951 c 146 § 35.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.335 Unit operation of pools.** (1) The department shall upon the application of any interested person, or upon its own motion, hold a hearing to consider the need for the operation as a unit of one or more pools or parts of them in a field.

(2) The department may enter an order providing for the unit operations if it finds that:

(a) The unit operations are necessary for secondary recovery or enhanced recovery purposes. For purposes of this chapter secondary or enhanced recovery means that oil or gas or both are recovered by any method, artificial flowing or pumping, that may be employed to produce oil or gas, or both, through the joint use of two or more wells with an application of energy extrinsic to the pool or pools. This includes pressuring, cycling, pressure maintenance, or injections into the pool or pools of a substance or form of energy: PRO-VIDED, That this does not include the injection in a well of a substance or form of energy for the sole purpose of (i) aiding in the lifting of fluids in the well, or (ii) stimulation of the reservoir at or near the well by mechanical, chemical, thermal, or explosive means;

(b) The unit operations will protect correlative rights;

(c) The operations will increase the ultimate recovery of oil or gas, or will prevent waste, or will prevent the drilling of unnecessary wells; and

(d) The value of the estimated additional recovery of oil and/or gas exceeds the estimated additional cost incident to conducting these operations.

(3) The department may also enter an order providing for unit operations, after notice and hearing, only if the department finds that there is clear and convincing evidence that all of the following conditions are met:

(a) In the absence of unitization, the ultimate recovery of oil or gas, or both, will be substantially decreased because normal production techniques and methods are not feasible and will not result in the maximum efficient and economic recovery of oil or gas, or both;

(b) The unit operations will protect correlative rights;

(c) The unit operations will prevent waste, or will prevent the drilling of unnecessary wells;

(d) There has been a discovery of a commercial oil or gas field; and

(e) There has been sufficient exploration, drilling activity, and development to properly define the one or more pools or parts of them in a field proposed to be unitized.

(4) Notwithstanding any of the above, nothing in this chapter may be construed to prevent the voluntary agreement of all interested persons to any plan of unit operations. The

department shall approve operations upon making a finding consistent with subsection (2) (b) and (c) of this section.

(5) The order shall be upon terms and conditions that are fair and reasonable and shall prescribe a plan for unit operations that includes:

(a) A description of the pool or pools or parts thereof to be so operated, termed the unitized area;

(b) A statement of the nature of the operations contemplated;

(c) An allocation of production and costs to the separately-owned tracts in the unitized area. The allocation shall be in accord with the agreement, if any, of the interested parties. If there is no agreement, production shall be allocated in a manner calculated to ensure that each owner's correlative rights are protected, and each separately-owned tract or combination of tracts receives its fair and reasonable share of production. Costs shall be allocated on a fair and reasonable basis;

(d) A provision, if necessary, prescribing fair, reasonable, and equitable terms and conditions as to time and rate of interest for carrying or otherwise financing any person who is unable to promptly meet his or her financial obligations in connection with the unit, such carrying and interest charges to be paid as provided by the department from the person's prorated share of production;

(e) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the owner's interest;

(f) The time when the unit operations shall commence, the timetable for development, and the manner and circumstances under which the unit operations shall terminate; and

(g) Additional provisions which are found to be appropriate for carrying out the unit operations and for the protection of correlative rights.

(6) No order of the department providing for unit operations may become effective until:

(a) The plan for unit operations approved by the department has been approved in writing by those persons who, under the department's order, will be required to pay at least seventy-five percent of the costs of unit operations;

(b) The plan has been approved in writing by those persons such as royalty owners, overriding royalty owners, and production payment owners, who own at least seventy-five percent of the production or proceeds thereof that will be credited to interests that are free of costs; and

(c) The department has made a finding, either in the order providing for unit operations or in a supplemental order, that the plan for unit operations has been so approved. If the plan for unit operations has not been so approved at the time the order providing for unit operations is made, the department shall upon application and notice hold such supplemental hearings as may be required to determine if and when the plan for unit operations has been so approved. If the persons owning required percentages of interest in the unitized area do not approve the plan for unit operations within a period of six months from the date on which the order providing for unit operations is made, or within such additional period or periods of time as the department prescribes, the order will become unenforceable and shall be vacated by the department.

(7) An order providing for unit operations may be amended by an order made by the department in the same manner and subject to the same conditions as an original order, except as provided in subsection (8) of this section, providing for unit operations, but (a) if such an amendment affects only the rights and interests of the owners, the approval of the amendment by those persons who own interests that are free of costs is not required, and (b) no such amending order may change the percentage for the allocation of oil and gas as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning oil and gas rights in the tract, and no such order may change the percentage for the allocation of cost as established for any separately-owned tract or combination of tracts by the original order, except with the consent of all persons owning an interest in the tract or combination of tracts. An amendment that provides for the expansion of the unit area shall comply with subsection (8) of this section.

(8) The department, by order, may provide for the unit operation of a reservoir or reservoirs or parts thereof that include a unitized area established by a previous order of the department. The order, in providing for the allocation of unit production, shall first treat the unitized area previously established as a single tract and the portion of the new unit production allocated thereto shall then be allocated among the separately-owned tracts included in the previously established unit area in the same proportions as those specified in the previous order.

(9) After the date designated by the department the unit plan shall be effective, oil and gas leases within the unit area, or other contracts pertaining to the development thereof, shall be changed only to the extent necessary to meet the requirements of the unit plan, and otherwise shall remain in full force. Operations carried on under and in accordance with the unit plan shall be regarded and considered as fulfillment of and compliance with all of the provisions, covenants, and conditions, expressed or implied, of the several oil and gas leases upon lands within the unit area, or other contracts pertaining to the development thereof, insofar as the leases or other contracts may relate to the pool or field subject to the unit plan. The amount of production apportioned and allocated under the unit plan to each separately-owned tract within the unit area, and only that amount, regardless of the location of the well within the unit area from which it may be produced, and regardless of whether it is more or less than the amount of production from the well, if any, on each separately-owned tract, shall for all purposes be regarded as production from the separately-owned tract. Lessees shall not be obligated to pay royalties or make other payments, required by the oil and gas leases or other contracts affecting each such separately-owned tract, on production in excess of that amount apportioned and allocated to the separately-owned tract under the unit plan.

(10) The portion of the unit production allocated to any tract and the proceeds from its sale are the property and income of the several persons to whom, or to whose credit, the portion and proceeds are allocated or payable under the order providing for unit operations.

(11) No division order or other contract relating to the sale, purchase, or production from a separately-owned tract

or combination of tracts may be terminated by the order providing for unit operations but shall remain in force and shall apply to oil and gas allocated to the tract until terminated by an amended division order or contract in accordance with the order.

(12) Except to the extent that parties affected so agree, an order providing for unit operations shall not be construed to result in a transfer of all or any part of the title of any person to the oil and gas rights in any tract in the unit area. All property, whether real or personal, that may be acquired in the conduct of unit operations hereunder shall be acquired for the account of the owners within the unit area, and shall be the property of those owners in the proportion that the expenses of unit operations are charged.

(13) After the date designated by the order of the department that a unit plan shall become effective, the designation of one or more unit operators shall be by vote of the lessees of land in the unit area, in a manner to be provided in the unit plan, and any operations in conflict with such unit plan shall be unlawful and are prohibited.

(14) A certified copy of any order of the department entered under this section is entitled to be recorded in the auditor's office in the county or counties wherein all or any portion of the unit area is located and, if recorded, constitute notice thereof to all persons. A copy of this order shall be mailed by certified mail to all interested persons.

(15) No order for unitization may be construed to allow the drilling of a well on a tract within the unit which is not leased or under contract for oil and gas exploration or production. [1994 sp.s. c 9 § 843; 1983 c 253 § 23.]

**Severability—Headings and captions not law—Effective date—**1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

**78.52.345 Ratable purchase of oil from owners or operators of pool required.** Each person now or hereafter purchasing or taking for transportation oil from any owner or producer shall purchase or take ratably without discrimination in favor of any owner or operator over any other owner or producer in the same pool offering to sell his or her oil produced therefrom to that person. If the person purchasing or taking for transportation oil does not have need for all such oil lawfully produced within a pool, or if for any reason is unable to purchase all of the oil, then it shall purchase from each operator in a pool ratably, taking and purchasing the same quantity of oil from each well to the extent that each well is capable of producing its ratable portion without waste. Nothing in this section may be construed to require any owner or operator to sell his or her product to only one purchaser or to require more than one pipeline connection for each producing well. If any such purchaser or person taking oil for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of his or her own production, or production in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner. [1983 c 253 § 24.]

**78.52.355 Ratable purchase of gas from owners or operators of pool required.** Each person now or hereafter purchasing or taking for transportation gas produced from gas wells or from oil wells from any owner or operator shall

purchase or take ratably without discrimination in favor of any owner or operator, over any other owner or operator in a pool. The person shall not discriminate in the quantities purchased, the basis of measurement, or the gas transportation facilities afforded for gas of like quantity, quality, and pressure available from such wells. For the purpose of this section and RCW 78.52.345, reasonable differences in quantity taken or facilities afforded do not constitute unreasonable discrimination if the differences bear a fair relationship to differences in quality, quantity, or pressure of the gas available or the acreage attributable to the well, market requirements, or to the relative lengths of time during which the gas will be available to the purchaser. If the purchaser or person taking gas for transportation is likewise an operator or owner, the purchaser or person is prohibited from discriminating in favor of quantities taken or facilities in which he or she may be interested, and his or her own production shall be treated as that of any other operator or owner producing from gas wells in the same pool. [1983 c 253 § 25.]

**78.52.365 Enforcement of RCW 78.52.345 and 78.52.355.** The department may administer and enforce RCW 78.52.345 and 78.52.355 in accordance with the procedures in this chapter for its enforcement and with the rules and orders of the department. [1994 sp.s. c 9 § 844; 1983 c 253 § 26.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.450 Participation of public lands in unit plan.** The commissioner of public lands, or other officer or board having the control and management of state land, and the proper board or officer of any political, municipal, or other subdivision or agency of the state having control and management of public lands, may, on behalf of the state or of such political, municipal, or other subdivision or agency thereof, with respect to land and oil and gas rights subject to the control and management of such respective body, board or officer, consent to and participate in any unit plan. [1951 c 146 § 48.]

**78.52.460 Unit plan not deemed monopolistic.** No plan for the operation of a field or pool of oil or gas as a unit, either whole or in part, created or approved by the department under this chapter may be held to violate any of the statutes of this state prohibiting monopolies or acts, arrangements, agreements, contracts, combinations, or conspiracies in restraint of trade or commerce. [1994 sp.s. c 9 § 845; 1951 c 146 § 49.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.463 Suspension of operations for violation—Notice—Order—Hearing—Stay of order.** (1) Any operation or activity that is in violation of applicable laws, rules, orders, or permit conditions is subject to suspension by order of the department. The order may suspend the operations authorized in the permit in whole or in part. The order may be issued only after the department has first notified the operator or owner of the violations and the operator or owner has failed to comply with the directions contained in the notifica-

tion within ten days of service of the notice: PROVIDED, That the department may issue the suspension order immediately without notice if the violations are or may cause substantial harm to adjacent property, persons, or public resources, or has or may result in the pollution of waters in violation of any state or federal law or rule. A suspension shall remain in effect until the violations are corrected or other directives are complied with unless declared invalid by the department after hearing or an appeal. The suspension order and notification, where applicable, shall specify the violations and the actions required to be undertaken to be in compliance with such laws, rules, orders, or permit conditions. The order and notification may also require remedial actions to be undertaken to restore, prevent, or correct activities or conditions which have resulted from the violations. The order and notification may be directed to the operator or owner or both.

(2) The suspension order constitutes a final and binding order unless the owner or operator to whom the order is directed requests a hearing before the department within fifteen days after service of the order. Such a request shall not in itself stay or suspend the order and the operator or owner shall comply with the order immediately upon service. The department may stay or suspend in whole or in part the suspension order pending a hearing if so requested. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. [1994 sp.s. c 9 § 846; 1989 c 175 § 167; 1983 c 253 § 29.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**78.52.467 Illegal oil, gas, or product—Sale, purchase, etc., prohibited—Seizure and sale—Deposit of proceeds.**

(1) The sale, purchase, acquisition, transportation, refining, processing, or handling of illegal oil, gas, or product is prohibited. However, no penalty by way of fine may be imposed upon a person who sells, purchases, acquires, transports, refines, processes, or handles illegal oil, gas, or product unless (a) the person knows, or is put on notice of, facts indicating that illegal oil, illegal gas, or illegal product is involved, or (b) the person fails to obtain a certificate of clearance with respect to the oil, gas, or product if prescribed by rule or order of the department, or fails to follow any other method prescribed by an order of the department for the identification of the oil, gas, or product.

(2) Illegal oil, illegal gas, and illegal product are declared to be contraband and are subject to seizure and sale as provided in this section. Seizure and sale shall be in addition to all other remedies and penalties provided in this chapter for violations relating to illegal oil, illegal gas, or illegal product. If the department believes that any oil, gas, or product is illegal, the department acting through the attorney general, shall bring a civil action in rem in the superior court of the county in which the oil, gas, or product is found, to seize and sell the same, or the department may include such an action in rem in any suit brought for an injunction or penalty involving illegal oil, illegal gas, or illegal product. A person claiming an interest in oil, gas, or product affected by an action in rem has the right to intervene as an interested party.

(3) Actions for the seizure and sale of illegal oil, illegal gas, or illegal product shall be strictly in rem and shall proceed in the name of the state as plaintiff against the oil, gas, or product as defendant. No bond or similar undertaking may be required of the plaintiff. Upon the filing of the petition for seizure and sale, the clerk of the court shall issue a summons, with a copy of the petition attached thereto, directed to the sheriff of the county or to another officer or person whom the court may designate, for service upon all persons having or claiming any interest in the oil, gas, or product described in the petition. The summons shall command these persons to appear and answer within twenty days after the issuance and service of the summons. These persons need not be named or otherwise identified in the summons, and the summons shall be served by posting a copy of the summons, with a copy of the petition attached, on any public bulletin board or at the courthouse of a county where the oil, gas, or product involved is located, and by posting another copy at or near the place where the oil, gas, or product is located. The posting constitutes notice of the action to all persons having or claiming any interest in the oil, gas, or product described in the petition. In addition, if the court, on a properly verified petition, or affidavit or affidavits, or oral testimony, finds that grounds for seizure and for sale exist, the court shall issue an immediate order of seizure, describing the oil, gas, or product to be seized, and directing the sheriff of the county to take the oil, gas, or product into the sheriff's actual or constructive custody and to hold the same subject to further orders of the court. The court, in the order of seizure, may direct the sheriff to deliver the oil, gas, or product seized by him or her under the order to a court-appointed agent. The agent shall give bond in an amount and with such surety as the court may direct, conditioned upon compliance with the orders of the court concerning the custody and disposition of the oil, gas, or product.

(4) Any person having an interest in oil, gas, or product described in order of seizure and contesting the right of the state to seize and sell the oil, gas, or product may obtain its release prior to sale upon furnishing to the sheriff a bond approved by the court. The bond shall be in an amount equal to one hundred fifty percent of the market value of the oil, gas, or product to be released and shall be conditioned upon either redelivery to the sheriff of the released commodity or payment to the sheriff of its market value, if and when ordered by the court, and upon full compliance with further orders of the court.

(5) If the court, after a hearing upon a petition for the seizure and sale of oil, gas, or product, finds that the oil, gas, or product is contraband, the court shall order its sale by the sheriff in the same manner and upon the same notice of sale as provided by law for the sale of personal property on execution of judgment entered in a civil action, except that the court may order that the oil, gas, or product be sold in specified lots or portions and at specified intervals. Upon sale, title to the oil, gas, or product sold shall vest in the purchaser free of all claims, and it shall be legal oil, legal gas, or legal product in the hands of the purchaser.

(6) All proceeds, less costs of suit and expenses of sale, which are derived from the sale of illegal oil, illegal gas, or illegal product, and all amounts paid as penalties provided for by this chapter, shall be paid into the state treasury for the use

of the department in defraying its expenses in the same manner as other funds provided by law for the use of the department. [1994 sp.s. c 9 § 847; 1983 c 253 § 30.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.470 Objections to order—Hearing required—Modification of order.** Any person adversely affected by any order of the department may, within thirty days from the effective date of such order, apply for a hearing with respect to any matter determined therein. No cause for action arising out of any order of the department accrues in any court to any person unless the person makes application for a hearing as provided in this section. Such application shall set forth specifically the ground on which the applicant considers the order to be unlawful or unreasonable. No party shall, in any court, urge or rely upon any ground not set forth in said application. An order made in conformity to a decision resulting from a hearing which abrogates, changes, or modifies the original order shall have the same force and effect as an original. Such hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act, and shall be conducted in accordance with its provisions. [1994 sp.s. c 9 § 848; 1989 c 175 § 168; 1983 c 253 § 27; 1951 c 146 § 50.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**78.52.480 Appeal from order or decision—Rights of department.** In proceedings for review of an order or decision of the department, the department shall be a party to the proceedings and shall have all rights and privileges granted by this chapter to any other party to such proceedings. [1994 sp.s. c 9 § 849; 1983 c 253 § 28; 1951 c 146 § 51.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.490 Appeal—How taken.** Within thirty days after the application for a hearing is denied, or if the application is granted, then within thirty days after the rendition of the decision on the hearing, the applicant may apply to the superior court, at the petitioner's option, for (a) Thurston county, (b) the county of petitioner's residence or place of business, or (c) in any county where the property or property rights owned by the petitioner is located for a review of such rule, regulation, order, or decision. The application for review shall be filed in the office of the clerk of the superior court of Thurston county and shall specifically state the grounds for review upon which the applicant relies and shall designate the rule, regulation, order, or decision sought to be reviewed. The applicant shall immediately serve a certified copy of said application upon the commissioner of public lands who shall immediately notify all parties who appeared in the proceedings before the department that such application for review has been filed. In the event the court determines the review is solely for the purpose of determining the validity of a rule or regulation of general applicability the court shall transfer venue to Thurston county for a review of such rule or regulation in the manner provided for in RCW

34.05.570. [1994 sp.s. c 9 § 850; 1983 c 253 § 32; 1951 c 146 § 52.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.530 Violations—Injunctions.** Whenever it shall appear that any person is violating any provisions of this chapter, or any rule, regulation, or order made by the department under this chapter, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the superior court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may without bond obtain injunctions prohibitory and mandatory, including temporary restraining orders and preliminary injunctions, as the facts may warrant. [1994 sp.s. c 9 § 851; 1951 c 146 § 56.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.540 Violations—Injunctions by private party.** If the department fails to bring suit within thirty days to enjoin any apparent violation of this chapter, or of any rule, regulation, or order made by the department under this chapter, then any person or party in interest adversely affected by such violation, who has requested the department in writing to sue, may, to prevent any or further violation, bring suit for that purpose in the superior court of any county where the department could have instituted such suit. If, in such suit, the court should hold that injunctive relief should be granted, then the state shall be made a party and shall be substituted for the person who brought the suit, and the injunction shall be issued as if the state had at all times been the complainant. [1994 sp.s. c 9 § 852; 1951 c 146 § 57.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**78.52.550 Violations—Penalty.** Every person who shall violate or knowingly aid and abet the violation of this chapter or any valid orders, rules and regulations issued thereunder, or who fails to perform any act which is herein made his duty to perform, shall be guilty of a gross misdemeanor. [1951 c 146 § 58.]

**78.52.900 Short title.** This chapter shall be known as the "Oil and Gas Conservation Act." [1951 c 146 § 2.]

**78.52.910 Construction—1951 c 146.** It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for, or intended to be provided for by this chapter. [1951 c 146 § 59.]

**78.52.920 Severability—1951 c 146.** If any part or parts of this chapter, or the application thereof to any person or circumstances be held to be unconstitutional, such invalidity shall not affect the validity of the remaining portions of

this chapter, or the application thereof to other persons or circumstances. The legislature hereby declares that it would have passed the remaining parts of this chapter if it had known that said invalid part or parts thereof would be declared unconstitutional. [1951 c 146 § 60.]

**78.52.921 Severability—1983 c 253.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 253 § 34.]

## Chapter 78.56 RCW

### METALS MINING AND MILLING OPERATIONS

#### Sections

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78.56.900	Severability—1994 c 232.
78.56.901	Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29.
78.56.902	Effective date—1994 c 232 §§ 6-8 and 18-22.

**78.56.010 Intent.** It is in the best interests of the citizens of the state of Washington to insure the highest degree of environmental protection while allowing the proper development and use of its natural resources, including its mineral resources. Metals mining can have significant positive and adverse impacts on the state and on local communities. The purpose of this chapter is to assure that metals mineral mining or milling operations are designed, constructed, and operated in a manner that promotes both economic opportunities and environmental and public health safeguards for the citizens of the state. It is the intent of the legislature to create a regulatory framework which yields, to the greatest extent possible, a metals mining industry that is compatible with these policies. [1994 c 232 § 1.]

**78.56.020 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Metals mining and milling operation" means a mining operation extracting from the earth precious or base metal ore and processing the ore by treatment or concentration in a milling facility. It also refers to an expansion of an existing operation or any new metals mining operation if the expansion or new mining operation is likely to result in a significant, adverse environmental impact pursuant to the provisions of chapter 43.21C RCW. The extraction of dolomite, sand, gravel, aggregate, limestone, magnesite, silica rock, and zeolite or other nonmetallic minerals; and placer mining; and the smelting of aluminum are not metals mining and milling operations regulated under this chapter.

(2) "Milling" means the process of grinding or crushing ore and extracting the base or precious metal by chemical solution, electro winning, or flotation processes.

(3) "Heap leach extraction process" means the process of extracting base or precious metal ore by percolating solutions through ore in an open system and includes reprocessing of previously milled ore. The heap leach extraction process does not include leaching in a vat or tank.

(4) "In situ extraction" means the process of dissolving base or precious metals from their natural place in the geological setting and retrieving the solutions from which metals can be recovered.

(5) "Regulated substances" means any materials regulated under a waste discharge permit pursuant to the requirements of chapter 90.48 RCW and/or a permit issued pursuant to chapter 70.94 RCW.

(6) "To mitigate" means: (a) To avoid the adverse impact altogether by not taking a certain action or parts of an action; (b) to minimize adverse impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology or by taking affirmative steps to avoid or reduce impacts; (c) to rectify adverse impacts by repairing, rehabilitating, or restoring the affected environment; (d) to reduce or eliminate adverse impacts over time by preservation and maintenance operations during the life of the action; (e) to compensate for the impact by replacing, enhancing, or providing substitute resources or environments; or (f) to monitor the adverse impact and take appropriate corrective measures. [1994 c 232 § 2.]

**78.56.030 Operations subject to this chapter and other requirements.** Metals mining and milling operations are subject to the requirements of this chapter in addition to the requirements established in other statutes and rules. [1994 c 232 § 3.]

**78.56.040 Disclosures required with state environmental policy act checklist—Public inspection of information.** The department of ecology shall require each applicant submitting a checklist pursuant to chapter 43.21C RCW for a metals mining and milling operation to disclose the ownership and each controlling interest in the proposed operation. The applicant shall also disclose all other mining operations within the United States which the applicant operates or in which the applicant has an ownership or controlling interest. In addition, the applicant shall disclose and may enumerate and describe the circumstances of: (1) Any past or

present bankruptcies involving the ownerships and their subsidiaries, (2) any abandonment of sites regulated by the model toxics control act, chapter 70.105D RCW, or other similar state remedial cleanup programs, or the federal comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601 et seq., as amended, (3) any penalties in excess of ten thousand dollars assessed for violations of the provisions of 33 U.S.C. Sec. 1251 et seq. or 42 U.S.C. Sec. 7401 et seq., and (4) any previous forfeitures of financial assurance due to noncompliance with reclamation or remediation requirements. This information shall be available for public inspection and copying at the department of ecology. Ownership or control of less than ten percent of the stock of a corporation shall not by itself constitute ownership or a controlling interest under this section. [1994 c 232 § 4.]

**78.56.050 Environmental impact statement required—Mitigation measures to be part of permit requirements—Department of ecology to cooperate with affected local governments.** (1) An environmental impact statement must be prepared for any proposed metals mining and milling operation. The department of ecology shall be the lead agency in coordinating the environmental review process under chapter 43.21C RCW and in preparing the environmental impact statement, except for uranium and thorium operations regulated under Title 70 RCW.

(2) As part of the environmental review of metals mining and milling operations regulated under this chapter, the applicant shall provide baseline data adequate to document the premining conditions at the proposed site of the metals mining and milling operation. The baseline data shall contain information on the elements of the natural environment identified in rules adopted pursuant to chapter 43.21C RCW.

(3) The department of ecology, after consultation with the department of fish and wildlife, shall incorporate measures to mitigate significant probable adverse impacts to fish and wildlife as part of the department of ecology's permit requirements for the proposed operation.

(4) In conducting the environmental review and preparing the environmental impact statement, the department of ecology shall cooperate with all affected local governments to the fullest extent practicable. [1994 c 232 § 5.]

**78.56.060 Metals mining coordinator to be appointed—Duties.** The department of ecology will appoint a metals mining coordinator. The coordinator will maintain current information on the status of any metals mining and milling operation regulated under this chapter from the preparation of the environmental impact statement through the permitting, construction, operation, and reclamation phases of the project or until the proposal is no longer active. The coordinator shall also maintain current information on post-closure activities. The coordinator will act as a contact person for the applicant, the operator, and interested members of the public. The coordinator may also assist agencies with coordination of their inspection and monitoring responsibilities. [1994 c 232 § 6.]

**78.56.070 Quarterly inspections by responsible state agencies required—Cross-training and coordination of inspections encouraged.** (1) State agencies with the responsibility for inspecting metals mining and milling operations regulated under this chapter shall conduct such inspections at least quarterly: PROVIDED, That the inspections are not prevented by inclement weather conditions.

(2) The legislature encourages state agencies with inspection responsibilities for metals mining and milling operations regulated under this chapter to explore opportunities for cross-training of inspectors among state agencies and programs. This cross-training would be for the purpose of meeting the inspection responsibilities of these agencies in a more efficient and cost-effective manner. If doing so would be more efficient and cost-effective, state agency inspectors are also encouraged to coordinate inspections with federal and local government inspectors as well as with one another. [1994 c 232 § 7.]

**78.56.080 Metals mining account—Estimate of costs by department of ecology and department of natural resources—Fee on operations to be established by department of ecology.** (1) The metals mining account is created in the state treasury. Expenditures from this account are subject to appropriation. Expenditures from this account may only be used for: (a) The additional inspections of metals mining and milling operations required by RCW 78.56.070 and (b) the metals mining coordinator established in RCW 78.56.060.

(2)(a) As part of its normal budget development process and in consultation with the metals mining industry, the department of ecology shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994. The department shall also estimate the cost of employing the metals mining coordinator established in RCW 78.56.060.

(b) As part of its normal budget development process and in consultation with the metals mining industry, the department of natural resources shall estimate the costs required for the department to meet its obligations for the additional inspections of metals mining and milling operations required by chapter 232, Laws of 1994.

(3) Based on the cost estimates generated by the department of ecology and the department of natural resources, the department of ecology shall establish the amount of a fee to be paid by each active metals mining and milling operation regulated under this chapter. The fee shall be established at a level to fully recover the direct and indirect costs of the agency responsibilities identified in subsection (2) of this section. The amount of the fee for each operation shall be proportional to the number of visits required per site. Each applicant for a metals mining and milling operation shall also be assessed the fee based on the same criterion. The department of ecology may adjust the fees established in this subsection if unanticipated activity in the industry increases or decreases the amount of funding necessary to meet agencies' inspection responsibilities.

(4) The department of ecology shall collect the fees established in subsection (3) of this section. All moneys from these fees shall be deposited into the metals mining account. [1997 c 170 § 1; 1994 c 232 § 8.]

**Effective date—1997 c 170:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 170 § 2.]

**78.56.090 Initial waste discharge permits for tailings facilities—Siting criteria—Primary screening process—Technical site investigation—Site selection report.** (1) In the processing of an application for an initial waste discharge permit for a tailings facility pursuant to the requirements of chapter 90.48 RCW, the department of ecology shall consider site-specific criteria in determining a preferred location of tailings facilities of metals mining and milling operations and incorporate the requirements of all known available and reasonable methods in order to maintain the highest possible standards to insure the purity of all waters of the state in accordance with the public policy identified by RCW 90.48.010.

In implementing the siting criteria, the department shall take into account the objectives of the proponent's application relating to mining and milling operations. These objectives shall consist of, but not be limited to (a) operational feasibility, (b) compatibility with optimum tailings placement methods, (c) adequate volume capacity, (d) availability of construction materials, and (e) an optimized embankment volume.

(2) To meet the mandate of subsection (1) of this section, siting of tailings facilities shall be accomplished through a two-stage process that consists of a primary alternatives screening phase, and a secondary technical site investigation phase.

(3) The primary screening phase will consist of, but not be limited to, siting criteria based on considerations as to location as follows:

(a) Proximity to the one hundred year floodplain, as indicated in the most recent federal emergency management agency maps;

(b) Proximity to surface and ground water;

(c) Topographic setting;

(d) Identifiable adverse geologic conditions, such as landslides and active faults; and

(e) Visibility impacts of the public generally and residents more particularly.

(4) The department of ecology, through the primary screening process, shall reduce the available tailings facility sites to one or more feasible locations whereupon a technical site investigation phase shall be conducted by the department for the purpose of verifying the adequacy of the remaining potential sites. The technical site investigations phase shall consist of, but not be limited to, the following:

(a) Soil characteristics;

(b) Hydrologic characteristics;

(c) A local and structural geology evaluation, including seismic conditions and related geotechnical investigations;

(d) A surface water control analysis; and

(e) A slope stability analysis.

(5) Upon completion of the two phase evaluation process set forth in this section, the department of ecology shall issue a site selection report on the preferred location. This report shall address the above criteria as well as analyze the feasibility of reclamation and stabilization of the tailings facility.

The siting report may recommend mitigation or engineering factors to address siting concerns. The report shall be developed in conjunction with the preparation of and contained in an environmental impact statement prepared pursuant to chapter 43.21C RCW. The report may be utilized by the department of ecology for the purpose of providing information related to the suitability of the site and for ruling on an application for a waste discharge permit.

(6) The department of ecology may, at its discretion, require the applicant to provide the information required in either phase one or phase two as described in subsections (3) and (4) of this section. [1994 c 232 § 9.]

**78.56.100 Waste discharge permits for metals mining and milling operations tailing facilities—Pollution control standards—Waste rock management plan—Citizen observation and verification of water samples—Voluntary reduction plan—Application of this section.** (1) In order to receive a waste discharge permit from the department of ecology pursuant to the requirements of chapter 90.48 RCW or in order to operate a metals mining and milling tailing facility, an applicant proposing a metals mining and milling operation regulated under this chapter must meet the following additional requirements:

(a) Any tailings facility shall be designed and operated to prevent the release of pollution and must meet the following standards:

(i) Operators shall apply all known available and reasonable technology to limit the concentration of potentially toxic materials in the tailings facility to assure the protection of wildlife and human health;

(ii) The tailings facility shall have a containment system that includes an engineered liner system, leak detection and leak collection elements, and a seepage collection impoundment to assure that a leak of any regulated substance under chapter 90.48 RCW will be detected before escaping from the containment system. The design and management of the facility must ensure that any leaks from the tailings facility are detected in a manner which allows for remediation pursuant to chapter 90.48 RCW. The applicant shall prepare a detailed engineering report setting forth the facility design and construction. The applicant shall submit the report to the department of ecology for its review and approval of a design as determined by the department. Natural conditions, such as depth to groundwater or net rainfall, shall be taken into account in the facility design, but not in lieu of the protection required by the engineered liner system;

(iii) The toxicity of mine or mill tailings and the potential for long-term release of regulated substances from mine or mill tailings shall be reduced to the greatest extent practicable through stabilization, removal, or reuse of the substances; and

(iv) The closure of the tailings facility shall provide for isolation or containment of potentially toxic materials and shall be designed to prevent future release of regulated substances contained in the impoundment;

(b) The applicant must develop a waste rock management plan approved by the department of ecology and the department of natural resources which emphasizes pollution prevention. At a minimum, the plan must contain the following elements:

(i) An accurate identification of the acid generating properties of the waste rock;

(ii) A strategy for encapsulating potentially toxic material from the environment, when appropriate, in order to prevent the release of heavy metals and acidic drainage; and

(iii) A plan for reclaiming and closing waste rock sites which minimizes infiltration of precipitation and runoff into the waste rock and which is designed to prevent future releases of regulated substances contained within the waste rock;

(c) If an interested citizen or citizen group so requests of the department of ecology, the metals mining and milling operator or applicant shall work with the department of ecology and the interested party to make arrangements for citizen observation and verification in the taking of required water samples. While it is the intent of this subsection to provide for citizen observation and verification of water sampling activities, it is not the intent of this subsection to require additional water sampling and analysis on the part of the mining and milling operation or the department. The citizen observation and verification program shall be incorporated into the applicant's, operator's, or department's normal sampling regimen and shall occur at least once every six months. There is no duty of care on the part of the state or its employees to any person who participates in the citizen observation and verification of water sampling under chapter 232, Laws of 1994 and the state and its employees shall be immune from any civil lawsuit based on any injuries to or claims made by any person as a result of that person's participation in such observation and verification of water sampling activities. The metals mining and milling operator or applicant shall not be liable for any injuries to or claims made by any person which result from that person coming onto the property of the metals mining and milling operator or applicant as an observer pursuant to chapter 232, Laws of 1994. The results from these and all other relevant water sampling activities shall be kept on file with the relevant county and shall be available for public inspection during normal working hours; and

(d) An operator or applicant for a metals mining and milling operation must complete a voluntary reduction plan in accordance with RCW 70.95C.200.

(2) Only those tailings facilities constructed after April 1, 1994, must meet the requirement established in subsection (1)(a) of this section. Only those waste rock holdings constructed after April 1, 1994, must meet the requirement established in subsection (1)(b) of this section. [1994 c 232 § 10.]

**78.56.110 Performance security required—Conditions—Department of ecology authority to adopt requirements—Liability under performance security.** (1) The department of ecology shall not issue necessary permits to an applicant for a metals mining and milling operation until the applicant has deposited with the department of ecology a performance security which is acceptable to the department of ecology based on the requirements of subsection (2) of this section. This performance security may be:

(a) Bank letters of credit;

(b) A cash deposit;

(c) Negotiable securities;

(d) An assignment of a savings account;

(e) A savings certificate in a Washington bank; or

(f) A corporate surety bond executed in favor of the department of ecology by a corporation authorized to do business in the state of Washington under Title 48 RCW.

The department of ecology may, for any reason, refuse any performance security not deemed adequate.

(2) The performance security shall be conditioned on the faithful performance of the applicant or operator in meeting the following obligations:

(a) Compliance with the environmental protection laws of the state of Washington administered by the department of ecology, or permit conditions administered by the department of ecology, associated with the construction, operation, and closure pertaining to metals mining and milling operations, and with the related environmental protection ordinances and permit conditions established by local government when requested by local government;

(b) Reclamation of metals mining and milling operations that do not meet the threshold of surface mining as defined by RCW 78.44.031(17);

(c) Postclosure environmental monitoring as determined by the department of ecology; and

(d) Provision of sufficient funding as determined by the department of ecology for cleanup of potential problems revealed during or after closure.

(3) The department of ecology may, if it deems appropriate, adopt rules for determining the amount of the performance security, requirements for the performance security, requirements for the issuer of the performance security, and any other requirements necessary for the implementation of this section.

(4) The department of ecology may increase or decrease the amount of the performance security at any time to compensate for any alteration in the operation that affects meeting the obligations in subsection (2) of this section. At a minimum, the department shall review the adequacy of the performance security every two years.

(5) Liability under the performance security shall be maintained until the obligations in subsection (2) of this section are met to the satisfaction of the department of ecology. Liability under the performance security may be released only upon written notification by the department of ecology.

(6) Any interest or appreciation on the performance security shall be held by the department of ecology until the obligations in subsection (2) of this section have been met to the satisfaction of the department of ecology. At such time, the interest shall be remitted to the applicant or operator. However, if the applicant or operator fails to comply with the obligations of subsection (2) of this section, the interest or appreciation may be used by the department of ecology to comply with the obligations.

(7) Only one agency may require a performance security to satisfy the deposit requirements of RCW 78.44.087, and only one agency may require a performance security to satisfy the deposit requirements of this section. However, a single performance security, when acceptable to both the department of ecology and the department of natural resources, may be utilized by both agencies to satisfy the requirements of this section and RCW 78.44.087. [1995 c 223 § 1; 1994 c 232 § 11.]

**78.56.120 Remediation or mitigation by department of ecology—Order to submit performance security.** The department of ecology may, with staff, equipment, and material under its control, or by contract with others, remediate or mitigate any impact of a metals mining and milling operation when it finds that the operator or permit holder has failed to comply with relevant statutes, rules, or permits, and the operator or permit holder has failed to take adequate or timely action to rectify these impacts.

If the department intends to remediate or mitigate such impacts, the department shall issue an order to submit performance security requiring the permit holder or surety to submit to the department the amount of moneys posted pursuant to RCW 78.56.110. If the amount specified in the order to submit performance security is not paid within twenty days after issuance of the notice, the attorney general upon request of the department shall bring an action on behalf of the state in a superior court to recover the amount specified and associated legal fees.

The department may proceed at any time after issuing the order to submit performance security to remediate or mitigate adverse impacts.

The department shall keep a record of all expenses incurred in carrying out any remediation or mitigation activities authorized under this section, including:

(1) Remediation or mitigation;

(2) A reasonable charge for the services performed by the state's personnel and the state's equipment and materials utilized; and

(3) Administrative and legal expenses related to remediation or mitigation.

The department shall refund to the surety or permit holder all amounts received in excess of the amount of expenses incurred. If the amount received is less than the expenses incurred, the attorney general, upon request of the department of ecology, may bring an action against the permit holder on behalf of the state in the superior court to recover the remaining costs listed in this section. [1995 c 223 § 2; 1994 c 232 § 12.]

**78.56.130 Legislative finding—Impact analysis required for large-scale operations—Impact fees by county legislative authority—Application of this section—Application of chapter 82.02 RCW.** (1) The legislature finds that the construction and operation of large-scale metals mining and milling facilities may create new job opportunities and enhance local tax revenues. However, the legislature also finds that such operations may also result in new demands on public facilities owned and operated by local government entities, such as public streets and roads; publicly owned parks, open space, and recreation facilities; school facilities; and fire protection facilities in jurisdictions that are not part of a fire district. It is important for these economic impacts to be identified as part of any proposal for a large-scale metals mining and milling operation. It is then appropriate for the county legislative authority to balance expected revenues, including revenues derived from taxes paid by the owner of such an operation, and costs associated with the operation to determine to what degree any new costs require mitigation by the metals mining applicant.

(2) An applicant for a large-scale metals mining and milling operation regulated under this chapter must submit to the relevant county legislative authority an impact analysis describing the economic impact of the proposed mining operation on local governmental units. For the purposes of this section, a metals mining operation is large-scale if, in the construction or operation of the mine and the associated milling facility, the applicant and contractors at the site employ more than thirty-five persons during any consecutive six-month period. The relevant county is the county in which the mine and mill are to be sited, unless the economic impacts to local governmental units are projected to substantially affect more than one county. In that case, the impact plan must be submitted to the legislative authority of all affected counties. Local governmental units include counties, cities, towns, school districts, and special purpose districts.

(3) The economic impact analysis shall include at least the following information:

(a) A timetable for development of the mining operation, including the opening date of the operation and the estimated closing date;

(b) The estimated number of persons coming into the impacted area as a result of the development of the mining operation;

(c) An estimate of the increased capital and operating costs to local governmental units for providing services necessary as a result of the development of the mining operation; and

(d) An estimate of the increased tax or other revenues accruing to local governmental units as a result of development of the mining and milling operation.

(4) The county legislative authority of a county planning under chapter 36.70A RCW may assess impact fees under chapter 82.02 RCW to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(5) The county legislative authority of a county which is not planning under chapter 36.70A RCW may negotiate with the applicant on a strategy to address economic impacts associated with development of the mining operation. The county legislative authority shall hold at least one public hearing on the economic impact analysis and any proposed mitigation measures.

(6) The county legislative authority must approve or disapprove the impact analysis and any associated proposals from the applicant to address economic impacts to local governmental units resulting from development of the mining operation. If the applicant does not submit an adequate impact analysis to the relevant county legislative authority or if the county legislative authority does not find the applicant's proposals to be acceptable because of their failure to adequately mitigate adverse economic impacts, the county legislative authority shall refuse to issue any permits under its jurisdiction necessary for the construction or operation of the mine and associated mill.

(7) The requirements established in this section apply to metals mining operations under construction or constructed after April 1, 1994.

(8) The provisions of chapter 82.02 RCW shall apply to new mining and milling operations. [1994 c 232 § 13.]

**78.56.140 Citizen action suits.** (1) Except as provided in subsections (2) and (5) of this section, any aggrieved person may commence a civil action on his or her own behalf:

(a) Against any person, including any state agency or local government agency, who is alleged to be in violation of a law, rule, order, or permit pertaining to metals mining and milling operations regulated under chapter 232, Laws of 1994;

(b) Against a state agency if there is alleged a failure of the agency to perform any nondiscretionary act or duty under state laws pertaining to metals mining and milling operations; or

(c) Against any person who constructs a metals mining and milling operation without the permits and authorizations required by state law.

The superior courts shall have jurisdiction to enforce metals mining laws, rules, orders, and permit conditions, or to order the state to perform such act or duty, as the case may be. In addition to injunctive relief, a superior court may award a civil penalty when deemed appropriate in an amount not to exceed ten thousand dollars per violation per day, payable to the state of Washington.

(2) No action may be commenced:

(a) Under subsection (1)(a) of this section:

(i) Prior to sixty days after the plaintiff has given notice of the alleged violation to the state, and to any alleged violator of a metals mining and milling law, rule, order, or permit condition; or

(ii) If the state has commenced and is diligently prosecuting a civil action in a court of the state or of the United States or is diligently pursuing authorized administrative enforcement action to require compliance with the law, rule, order, or permit. To preclude a civil action, the enforcement action must contain specific, aggressive, and enforceable timelines for compliance and must provide for public notice of and reasonable opportunity for public comment on the enforcement action. In any such court action, any aggrieved person may intervene as a matter of right; or

(b) Under subsection (1)(b) of this section prior to sixty days after the plaintiff has given notice of such action to the state.

(3)(a) Any action respecting a violation of a law, rule, order, or permit condition pertaining to metals mining and milling operations may be brought in the judicial district in which such operation is located or proposed.

(b) In such action under this section, the state, if not a party, may intervene as a matter of right.

(4) The court, in issuing any final order in any action brought pursuant to subsection (1) of this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any prevailing party, wherever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the rules of civil procedure.

(5) A civil action to enforce compliance with a law, rule, order, or permit may not be brought under this section if any other statute, or the common law, provides authority for the

plaintiff to bring a civil action and, in such action, obtain the same relief, as authorized under this section, for enforcement of such law, rule, order, or permit. Nothing in this section restricts any right which any person, or class of persons, may have under any statute or common law to seek any relief, including relief against the state or a state agency. [1994 c 232 § 14.]

**78.56.150 Application of requirements to milling facilities not adjacent to mining operation.** A milling facility which is not adjacent to or in the vicinity of the metals mining operation producing the ore to be milled and which processes precious or base metal ore by treatment or concentration is subject to the provisions of RCW 78.56.010 through 78.56.090, 78.56.100(1) (a), (c), and (d), 78.56.110 through 78.56.140, 70.94.620, and 70.105.300 and chapters 70.94, 70.105, 90.03, and 90.48 RCW and all other applicable laws. The smelting of aluminum does not constitute a metals milling operation under this section. [1994 c 232 § 15.]

**78.56.160 Moratorium on use of heap leach extraction process—Joint review by department of ecology and department of natural resources—Permanent prohibition of in situ extraction.** (1) Until June 30, 1996, there shall be a moratorium on metals mining and milling operations using the heap leach extraction process. The department of natural resources and the department of ecology shall jointly review the existing laws and regulations pertaining to the heap leach extraction process for their adequacy in safeguarding the environment.

(2) Metals mining using the process of in situ extraction is permanently prohibited in the state of Washington. [1998 c 245 § 161; 1994 c 232 § 16.]

**78.56.900 Severability—1994 c 232.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 232 § 29.]

**78.56.901 Effective date—1994 c 232 §§ 1-5, 9-17, and 23-29.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and, with the exception of sections 6 through 8 and 18 through 22 of this act, shall take effect immediately [April 1, 1994]. [1994 c 232 § 30.]

**78.56.902 Effective date—1994 c 232 §§ 6-8 and 18-22.** Sections 6 through 8 and 18 through 22 of this act shall take effect July 1, 1995. [1994 c 232 § 31.]

### Chapter 78.60 RCW GEOHERMAL RESOURCES

#### Sections

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**78.60.010 Legislative declaration.** The public has a direct interest in the safe, orderly and nearly pollution-free development of the geothermal resources of the state, as hereinafter in \*RCW 79.76.030(1) defined. The legislature hereby declares that it is in the best interests of the state to further the development of geothermal resources for the benefit of all of the citizens of the state while at the same time fully providing for the protection of the environment. The development of geothermal resources shall be so conducted as to protect the rights of landowners, other owners of interests therein, and the general public. In providing for such development, it is the purpose of this chapter to provide for the orderly exploration, safe drilling, production and proper abandonment of geothermal resources in the state of Washington. [1974 ex.s. c 43 § 1. Formerly RCW 79.76.010.]

\*Reviser's note: RCW 79.76.030 was recodified as RCW 78.60.030 pursuant to 2003 c 334 § 567.

**78.60.020 Short title.** This chapter shall be known as the Geothermal Resources Act. [1974 ex.s. c 43 § 2. Formerly RCW 79.76.020.]

**78.60.030 Definitions.** For the purposes of this chapter, unless the text otherwise requires, the following terms shall have the following meanings:

(1) "Geothermal resources" means only that natural heat energy of the earth from which it is technologically practical to produce electricity commercially and the medium by which such heat energy is extracted from the earth, including liquids or gases, as well as any minerals contained in any natural or injected fluids, brines and associated gas, but excluding oil, hydrocarbon gas and other hydrocarbon substances.

(2) "Waste", in addition to its ordinary meaning, shall mean "physical waste" as that term is generally understood and shall include:

(a) The inefficient, excessive, or improper use of, or unnecessary dissipation of, reservoir energy; or the locating, spacing, drilling, equipping, operating or producing of any geothermal energy well in a manner which results, or tends to result, in reducing the quantity of geothermal energy to be recovered from any geothermal area in this state;

(b) The inefficient above-ground transporting or storage of geothermal energy; or the locating, spacing, drilling, equipping, operating, or producing of any geothermal well in a manner causing, or tending to cause, unnecessary excessive surface loss or destruction of geothermal energy;

(c) The escape into the open air, from a well of steam or hot water, in excess of what is reasonably necessary in the efficient development or production of a geothermal well.

(3) "Geothermal area" means any land that is, or reasonably appears to be, underlain by geothermal resources.

(4) "Energy transfer system" means the structures and enclosed fluids which facilitate the utilization of geothermal energy. The system includes the geothermal wells, cooling towers, reinjection wells, equipment directly involved in converting the heat energy associated with geothermal resources to mechanical or electrical energy or in transferring it to another fluid, the closed piping between such equipment, wells and towers and that portion of the earth which facilitates the transfer of a fluid from reinjection wells to geothermal wells: PROVIDED, That the system shall not include any geothermal resources which have escaped into or have been released into the nongeothermal ground or surface waters from either man-made containers or through leaks in the structure of the earth caused by or to which access was made possible by any drilling, redrilling, reworking or operating of a geothermal or reinjection well.

(5) "Operator" means the person supervising or in control of the operation of a geothermal resource well, whether or not such person is the owner of the well.

(6) "Owner" means the person who possesses the legal right to drill, convert or operate any well or other facility subject to the provisions of this chapter.

(7) "Person" means any individual, corporation, company, association of individuals, joint venture, partnership, receiver, trustee, guardian, executor, administrator, personal representative, or public agency that is the subject of legal rights and duties.

(8) "Pollution" means any damage or injury to ground or surface waters, soil or air resulting from the unauthorized loss, escape, or disposal of any substances at any well subject to the provisions of this chapter.

(9) "Department" means the department of natural resources.

(10) "Well" means any excavation made for the discovery or production of geothermal resources, or any special facility, converted producing facility, or reactivated or converted abandoned facility used for the reinjection of geothermal resources, or the residue thereof underground.

(11) "Core holes" are holes drilled or excavations made expressly for the acquisition of geological or geophysical data for the purpose of finding and delineating a favorable geothermal area prior to the drilling of a well.

(12) A "completed well" is a well that has been drilled to its total depth, has been adequately cased, and is ready to be

either plugged and abandoned, shut-in, or put into production.

(13) "Plug and abandon" means to place permanent plugs in the well in such a way and at such intervals as are necessary to prevent future leakage of fluid from the well to the surface or from one zone in the well to the other, and to remove all drilling and production equipment from the site, and to restore the surface of the site to its natural condition or contour or to such condition as may be prescribed by the department.

(14) "Shut-in" means to adequately cap or seal a well to control the contained geothermal resources for an interim period. [1974 ex.s. c 43 § 3. Formerly RCW 79.76.030.]

#### **78.60.040 Geothermal resources deemed sui generis.**

Notwithstanding any other provision of law, geothermal resources are found and hereby determined to be sui generis, being neither a mineral resource nor a water resource and as such are hereby declared to be the private property of the holder of the title to the surface land above the resource. [1979 ex.s. c 2 § 1; 1974 ex.s. c 43 § 4. Formerly RCW 79.76.040.]

**Severability—1979 ex.s. c 2:** "If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 2 § 2.]

**78.60.050 Administration of chapter.** (1) The department shall administer and enforce the provisions of this chapter and the rules, regulations, and orders relating to the drilling, operation, maintenance, abandonment and restoration of geothermal areas, to prevent damage to and waste from underground geothermal deposits, and to prevent damage to underground and surface waters, land or air that may result from improper drilling, operation, maintenance or abandonment of geothermal resource wells.

(2) In order to implement the terms and provisions of this chapter, the department under the provisions of chapter 34.05 RCW, as now or hereafter amended, may from time to time promulgate those rules and regulations necessary to carry out the purposes of this chapter, including but not restricted to defining geothermal areas; establishing security requirements, which may include bonding; providing for liens against production; providing for casing and safety device requirements; providing for site restoration plans to be completed prior to abandonment; and providing for abandonment requirements. [1974 ex.s. c 43 § 5. Formerly RCW 79.76.050.]

**78.60.060 Scope of chapter.** This chapter is intended to preempt local regulation of the drilling and operation of wells for geothermal resources but shall not be construed to permit the locating of any well or drilling when such well or drilling is prohibited under state or local land use law or regulations promulgated thereunder. Geothermal resources, byproducts and/or waste products which have escaped or been released from the energy transfer system and/or a mineral recovery process shall be subject to provisions of state law relating to the pollution of ground or surface waters (Title 90 RCW), provisions of the state fisheries law and the state game laws (Title 77 RCW), and any other state environmental pollution

control laws. Authorization for use of byproduct water resources for all beneficial uses, including but not limited to greenhouse heating, warm water fish propagation, space heating plants, irrigation, swimming pools, and hot springs baths, shall be subject to the appropriation procedure as provided in Title 90 RCW. [2003 c 39 § 40; 1974 ex.s. c 43 § 6. Formerly RCW 79.76.060.]

**78.60.070 Drilling permits—Applications—Hearing—Fees.** (1) Any person proposing to drill a well or redrill an abandoned well for geothermal resources shall file with the department a written application for a permit to commence such drilling or redrilling on a form prescribed by the department accompanied by a permit fee of two hundred dollars. The department shall forward a duplicate copy to the department of ecology within ten days of filing.

(2) Upon receipt of a proper application relating to drilling or redrilling the department shall set a date, time, and place for a public hearing on the application, which hearing shall be in the county in which the drilling or redrilling is proposed to be made, and shall instruct the applicant to publish notices of such application and hearing by such means and within such time as the department shall prescribe. The department shall require that the notice so prescribed shall be published twice in a newspaper of general circulation within the county in which the drilling or redrilling is proposed to be made and in such other appropriate information media as the department may direct.

(3) Any person proposing to drill a core hole for the purpose of gathering geothermal data, including but not restricted to heat flow, temperature gradients, and rock conductivity, shall be required to obtain a single permit for each core hole according to subsection (1) of this section, including a permit fee for each core hole, but no notice need be published, and no hearing need be held. Such core holes that penetrate more than seven hundred and fifty feet into bedrock shall be deemed geothermal test wells and subject to the payment of a permit fee and to the requirement in subsection (2) of this section for public notices and hearing. In the event geothermal energy is discovered in a core hole, the hole shall be deemed a geothermal well and subject to the permit fee, notices, and hearing. Such core holes as described by this subsection are subject to all other provisions of this chapter, including a bond or other security as specified in RCW 78.60.130.

(4) All moneys paid to the department under this section shall be deposited with the state treasurer for credit to the general fund. [2007 c 338 § 1; 1974 ex.s. c 43 § 7. Formerly RCW 79.76.070.]

**78.60.080 Drilling permits—Criteria for granting.** A permit shall be granted only if the department is satisfied that the area is suitable for the activities applied for; that the applicant will be able to comply with the provisions of this chapter and the rules and regulations enacted hereunder; and that a permit would be in the best interests of the state.

The department shall not allow operation of a well under permit if it finds that the operation of any well will unreasonably decrease groundwater available for prior water rights in any aquifer or other groundwater source for water for benefi-

cial uses, unless such affected water rights are acquired by condemnation, purchase or other means.

The department shall have the authority to condition the permit as it deems necessary to carry out the provisions of this chapter, including but not limited to conditions to reduce any environmental impact.

The department shall forward a copy of the permit to the department of ecology within five days of issuance. [1974 ex.s. c 43 § 8. Formerly RCW 79.76.080.]

**78.60.090 Casing requirements.** Any operator engaged in drilling or operating a well for geothermal resources shall equip such well with casing of sufficient strength and with such safety devices as may be necessary, in accordance with methods approved by the department.

No person shall remove a casing, or any portion thereof, from any well without prior approval of the department. [1974 ex.s. c 43 § 9. Formerly RCW 79.76.090.]

**78.60.100 Plugging and abandonment of wells or core holes—Transfer of jurisdiction to department of ecology.** Any well or core hole drilled under authority of this chapter from which:

(1) It is not technologically practical to derive the energy to produce electricity commercially, or the owner or operator has no intention of deriving energy to produce electricity commercially, and

(2) Usable minerals cannot be derived, or the owner or operator has no intention of deriving usable minerals, shall be plugged and abandoned as provided in this chapter or, upon the owner's or operator's written application to the department of natural resources and with the concurrence and approval of the department of ecology, jurisdiction over the well may be transferred to the department of ecology and, in such case, the well shall no longer be subject to the provisions of this chapter but shall be subject to any applicable laws and rules relating to wells drilled for appropriation and use of groundwaters. If an application is made to transfer jurisdiction, a copy of all logs, records, histories, and descriptions shall be provided to the department of ecology by the applicant. [2007 c 338 § 2; 1974 ex.s. c 43 § 10. Formerly RCW 79.76.100.]

**78.60.110 Suspension of drilling, shut-in or removal of equipment for authorized period—Unlawful abandonment.**

(1) The department may authorize the operator to suspend drilling operations, shut-in a completed well, or remove equipment from a well for the period stated in the department's written authorization. The period of suspension may be extended by the department upon the operator showing good cause for the granting of such extension.

(2) If drilling operations are not resumed by the operator, or the well is not put into production, upon expiration of the suspension or shut-in permit, an intention to unlawfully abandon shall be presumed.

(3) A well shall also be deemed unlawfully abandoned if, without written approval from the department, drilling equipment is removed.

(4) An unlawful abandonment under this chapter shall be entered in the department records and written notice thereof

shall be mailed by registered mail both to such operator at his last known address as disclosed by records of the department and to the operator's surety. The department may thereafter proceed against the operator and his surety. [1974 ex.s. c 43 § 11. Formerly RCW 79.76.110.]

**78.60.120 Notification of abandonment or suspension of operations—Required—Procedure.** (1) Before any operation to plug and abandon or suspend the operation of any well is commenced, the owner or operator shall submit in writing a notification of abandonment or suspension of operations to the department for approval. No operation to abandon or suspend the operation of a well shall commence without approval by the department. The department shall respond to such notification in writing within ten working days following receipt of the notification.

(2) Failure to abandon or suspend operations in accordance with the method approved by the department shall constitute a violation of this chapter, and the department shall take appropriate action under the provisions of \*RCW 79.76.270. [1974 ex.s. c 43 § 12. Formerly RCW 79.76.120.]

\*Reviser's note: RCW 79.76.270 was recodified as RCW 78.60.270 pursuant to 2003 c 334 § 567.

**78.60.130 Performance bond or other security—Required.** Every operator who engages in the drilling, redrilling, or deepening of any well or core hole shall file with the department a reasonable bond or bonds with good and sufficient surety, or the equivalent thereof, acceptable to the department, conditioned on compliance with the provisions of this chapter and all rules and permit conditions adopted pursuant to this chapter. This performance bond shall be executed in favor of and approved by the department.

In lieu of a bond the operator may file with the department a cash deposit, negotiable securities acceptable to the department, or an assignment of a savings account in a Washington bank on an assignment form prescribed by the department. The department, in its discretion, may accept a single surety or security arrangement covering more than one well or core hole. [2007 c 338 § 3; 1974 ex.s. c 43 § 13. Formerly RCW 79.76.130.]

**78.60.140 Termination or cancellation of bond or change in other security, when.** The department shall not consent to the termination and cancellation of any bond by the operator, or change as to other security given, until the well or wells for which it has been issued have been properly abandoned or another valid bond for such well has been submitted and approved by the department. A well is properly abandoned when abandonment has been approved by the department. [1974 ex.s. c 43 § 14. Formerly RCW 79.76.140.]

**78.60.150 Notification of sale, exchange, etc.** The owner or operator of a well shall notify the department in writing within ten days of any sale, assignment, conveyance, exchange, or transfer of any nature which results in any change or addition in the owner or operator of the well on such forms with such information as may be prescribed by

(2008 Ed.)

the department. [1974 ex.s. c 43 § 15. Formerly RCW 79.76.150.]

**78.60.160 Combining orders, unitization programs and well spacing—Authority of department.** The department has the authority, through rules and regulations, to promulgate combining orders, unitization programs, and well spacing, and establish proportionate costs among owners or operators for the operation of such units as the result of said combining orders, if good and sufficient reason is demonstrated that such measures are necessary to prevent the waste of geothermal resources. [1974 ex.s. c 43 § 16. Formerly RCW 79.76.160.]

**78.60.170 Designation of resident agent for service of process.** Each owner or operator of a well shall designate a person who resides in this state as his agent upon whom may be served all legal processes, orders, notices, and directives of the department or any court. [1974 ex.s. c 43 § 17. Formerly RCW 79.76.170.]

**78.60.180 General authority of department.** The department shall have the authority to conduct or authorize investigations, research, experiments, and demonstrations, cooperate with other governmental and private agencies in making investigations, receive any federal funds, state funds, and other funds and expend them on research programs concerning geothermal resources and their potential development within the state, and to collect and disseminate information relating to geothermal resources in the state: PROVIDED, That the department shall not construct or operate commercial geothermal facilities. [1974 ex.s. c 43 § 18. Formerly RCW 79.76.180.]

**78.60.190 Employment of personnel.** The department shall have the authority, and it shall be its duty, to employ all personnel necessary to carry out the provisions of this chapter pursuant to chapter 41.06 RCW. [1974 ex.s. c 43 § 19. Formerly RCW 79.76.190.]

**78.60.200 Drilling records, etc., to be maintained—Inspection—Filing.** (1) The owner or operator of any well or core hole shall keep or cause to be kept careful and accurate logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, descriptions, and histories of the drilling, redrilling, or deepening of the well.

(2) All logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, and descriptions referred to in subsection (1) of this section shall be kept in the local office of the owner or operator, and together with other reports of the owner or operator shall be subject during business hours to inspection by the department. Each owner or operator, upon written request from the department, shall file with the department one paper and one electronic copy of the logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, records, histories, descriptions, or other records or portions thereof pertaining to the geothermal drill-

ing or operation underway or suspended. [2007 c 338 § 4; 1974 ex.s. c 43 § 20. Formerly RCW 79.76.200.]

**78.60.210 Filing of logs and surveys with department upon completion, plugging, abandonment, or suspension of operations.** Upon completion or plugging and abandonment of any well or core hole or upon the suspension of operations conducted with respect to any well or core hole for a period of at least six months, one paper and one electronic copy of logs, including but not restricted to heat flow, temperature gradients, and rock conductivity logs, core, electric log, history, and all other logs and surveys that may have been run on the well, shall be filed with the department within thirty days after such completion, plugging and abandonment, or six months' suspension. [2007 c 338 § 5; 1974 ex.s. c 43 § 21. Formerly RCW 79.76.210.]

**78.60.220 Statement of geothermal resources produced—Filing.** The owner or operator of any well producing geothermal resources shall file with the department a statement of the geothermal resources produced. Such report shall be submitted on such forms and in such manner as may be prescribed by the department. [1974 ex.s. c 43 § 22. Formerly RCW 79.76.220.]

**78.60.230 Confidentiality of records—Preservation in an electronic data system.** (1) The records of any owner or operator, when filed with the department as provided in this chapter, shall be confidential and shall be open to inspection only to personnel of the department for the purpose of carrying out the provisions of this chapter and to those authorized in writing by such owner or operator, until the expiration of a twenty-four month confidential period to begin at the date of commencement of production or of abandonment of the well or core hole. After expiration of the twenty-four month confidential period, the department shall ensure all logs and surveys that may have been run on the well or core hole are preserved in an electronic data system and made available to the public.

(2) Such records shall in no case, except as provided in this chapter, be available as evidence in court proceedings. No officer, employee, or member of the department shall be allowed to give testimony as to the contents of such records, except as provided in this chapter for the review of a decision of the department or in any proceeding initiated for the enforcement of an order of the department, for the enforcement of a lien created by the enforcement of this chapter, or for use as evidence in criminal proceedings arising out of such records or the statements upon which they are based. [2007 c 338 § 6; 1974 ex.s. c 43 § 23. Formerly RCW 79.76.230.]

**78.60.240 Removal, destruction, alteration, etc., of records prohibited.** No person shall, for the purpose of evading the provision of this chapter or any rule, regulation or order of the department made thereunder, remove from this state, or destroy, mutilate, alter or falsify any such record, account, or writing. [1974 ex.s. c 43 § 24. Formerly RCW 79.76.240.]

**78.60.250 Violations—Modification of permit, when necessary—Departmental order—Issuance—Appeal.** Whenever it appears with probable cause to the department that:

(1) A violation of any provision of this chapter, regulation adopted pursuant thereto, or condition of a permit issued pursuant to this chapter has occurred or is about to occur, or

(2) That a modification of a permit is deemed necessary to carry out the purpose of this chapter,

the department shall issue a written order in person to the operator or his employees or agents, or by certified mail, concerning the drilling, testing, or other operation conducted with respect to any well drilled, in the process of being drilled, or in the process of being abandoned or in the process of reclamation or restoration, and the operator, owner, or designated agent of either shall comply with the terms of the order and may appeal from the order in the manner provided for in \*RCW 79.76.280. When the department deems necessary the order may include a shutdown order to remain in effect until the deficiency is corrected. [1974 ex.s. c 43 § 25. Formerly RCW 79.76.250.]

**\*Reviser's note:** RCW 79.76.280 was recodified as RCW 78.60.280 pursuant to 2003 c 334 § 567.

**78.60.260 Liability in damages for violations—Procedure.** Any person who violates any of the provisions of this chapter, or fails to perform any duty imposed by this chapter, or violates an order or other determination of the department made pursuant to the provisions of this chapter, and in the course thereof causes the death of, or injury to, fish, animals, vegetation or other resources of the state, shall be liable to pay the state damages including an amount equal to the sum of money necessary to restock such waters, replenish such resources, and otherwise restore the stream, lake, other water source, or land to its condition prior to the injury, as such condition is determined by the department. Such damages shall be recoverable in an action brought by the attorney general on behalf of the people of the state of Washington in the superior court of the county in which such damages occurred: PROVIDED, That if damages occurred in more than one county the attorney general may bring action in any of the counties where the damage occurred. Any moneys so recovered by the attorney general shall be transferred to the department under whose jurisdiction the damaged resource occurs, for the purposes of restoring the resource. [1974 ex.s. c 43 § 26. Formerly RCW 79.76.260.]

**78.60.270 Injunctions—Restraining orders.** Whenever it shall appear that any person is violating any provision of this chapter, or any rule, regulation, or order made by the department hereunder, and if the department cannot, without litigation, effectively prevent further violation, the department may bring suit in the name of the state against such person in the court in the county of the residence of the defendant, or in the county of the residence of any defendant if there be more than one defendant, or in the county where the violation is alleged to have occurred, to restrain such person from continuing such violation. In such suit the department may, without bond, obtain injunctions prohibitory and mandatory, including temporary restraining orders and prelimi-

nary injunctions, as the facts may warrant. [1974 ex.s. c 43 § 27. Formerly RCW 79.76.270.]

**78.60.280 Judicial review.** (1) Any person adversely affected by any rule, regulation, order, or permit entered by the department pursuant to this chapter may obtain judicial review thereof in accordance with the applicable provisions of chapter 34.05 RCW.

(2) The court having jurisdiction, insofar as is practicable, shall give precedence to proceedings for judicial review brought under this chapter. [1974 ex.s. c 43 § 28. Formerly RCW 79.76.280.]

**78.60.290 Violations—Penalty.** Violation of any provision of this chapter or of any rule, regulation, order of the department, or condition of any permit made hereunder is a gross misdemeanor punishable, upon conviction, by a fine of not more than two thousand five hundred dollars or by imprisonment in the county jail for not more than six months, or both. [2003 c 53 § 381; 1974 ex.s. c 43 § 29. Formerly RCW 79.76.290.]

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

**78.60.300 Aiding or abetting violations.** No person shall knowingly aid or abet any other person in the violation of any provision of this chapter or of any rule, regulation or order of the department made hereunder. [1974 ex.s. c 43 § 30. Formerly RCW 79.76.300.]

**78.60.900 Severability—1974 ex.s. c 43.** If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 43 § 32. Formerly RCW 79.76.900.]



# Title 79

## PUBLIC LANDS

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<sup>1</sup>Section 1 is codified as RCW 79.24.020; section 10 as RCW 79.24.090, repealed by 1959 c 257 § 48.

<sup>2</sup>Section 9 is codified as RCW 79.24.040, repealed by 1959 c 257 § 48; section 10 as RCW 79.24.060; section 11 as RCW 79.24.070, repealed by 1959 c 257 § 48; and section 12 as RCW 79.24.030.

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PUBLIC LANDS ACT**

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**79.01.072 False statements—Penalty.**

**Reviser's note:** RCW 79.01.072 was amended by 2003 c 53 § 378 without reference to its repeal by 2003 c 334 § 551. It has been decodified for publication purposes under RCW 1.12.025.

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OTHER TRUST/GRANT/FOREST RESERVE LANDS**

79.02.400	Charitable, educational, penal, and reformatory real property—Inventory—Transfer.
79.02.410	Charitable, educational, penal, and reformatory real property—High economic return potential—Income.
79.02.420	Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue.

**PART 1  
GENERAL PROVISIONS**

**79.02.010 Definitions.** The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Aquatic lands" means all state-owned tidelands, shorelands, harbor areas, and the beds of navigable waters as defined in \*chapter 79.90 RCW that are administered by the department.

(2) "Board" means the board of natural resources.

(3) "Commissioner" means the commissioner of public lands.

(4) "Community and technical college forest reserve lands" means lands managed under RCW 79.02.420.

(5) "Department" means the department of natural resources.

(6) "Improvements" means anything considered a fixture in law placed upon or attached to lands administered by the department that has changed the value of the lands or any changes in the previous condition of the fixtures that changes the value of the lands.

(7) "Land bank lands" means lands acquired under RCW 79.19.020.

(8) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of a federal, state, or local governmental unit, however designated.

(9) "Public lands" means lands of the state of Washington administered by the department including but not limited to state lands, state forest lands, and aquatic lands.

(10) "State forest lands" means lands acquired under RCW 79.22.010, 79.22.040, and 79.22.020.

(11) "State lands" includes:

(a) School lands, that is, lands held in trust for the support of the common schools;

(b) University lands, that is, lands held in trust for university purposes;

(c) Agricultural college lands, that is, lands held in trust for the use and support of agricultural colleges;

(d) Scientific school lands, that is, lands held in trust for the establishment and maintenance of a scientific school;

(e) Normal school lands, that is, lands held in trust for state normal schools;

(f) Capitol building lands, that is, lands held in trust for the purpose of erecting public buildings at the state capital for legislative, executive, and judicial purposes;

(g) Institutional lands, that is, lands held in trust for state charitable, educational, penal, and reformatory institutions; and

(h) Land bank, escheat, donations, and all other lands, except aquatic lands, administered by the department that are not devoted to or reserved for a particular use by law.

(12) "Valuable materials" means any product or material on the lands, such as forest products, forage or agricultural crops, stone, gravel, sand, peat, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. [2004 c 199 § 201; 2003 c 334 § 301; 1927 c 255 § 1; RRS § 7797-1. Prior: 1911 c 36 § 1; 1907 c 256 § 1; 1897 c 89 §§ 4, 5; 1895 c 178 §§ 1, 2. Formerly RCW 79.01.004, 79.04.010.]

**\*Reviser's note:** Chapter 79.90 RCW was repealed and/or recodified in its entirety by 2005 c 155.

**Part headings—2004 c 199:** "Part headings used in this act are not any part of the law." [2004 c 199 § 302.]

**Intent—2003 c 334:** "This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive, policy implications." [2003 c 334 § 616.]

**79.02.020 Witnesses—Compelling attendance.** (1) The board or the commissioner has the power to compel through subpoena the attendance of witnesses and production of records for:

(a) Hearings pertaining to public lands as provided by this title;

(b) Determining the value and character of land, valuable materials, or improvements; and

(c) Determining waste or damage to the land.

(2) A subpoena may be served by any person authorized by law to serve process.

(3) Each witness subpoenaed is allowed the same fees and mileage as paid witnesses in courts of records in this state. The department shall pay these fees and mileage from its general fund appropriation.

(4) Any witness failing to comply with a subpoena, without legal excuse, is considered in contempt.

(a) The board or commissioner shall certify the facts to the court of the county in which the witness resides for contempt of court proceedings as provided in chapter 7.21 RCW.

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(b) The certificate of the board or commissioner must be considered by the court as prima facie evidence of the guilt of the witness.

(c) Upon legal proof of the facts, the witness is subject to the same penalties as provided in like cases for contempt of court. [2003 c 334 § 302.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.030 Court review of actions.** Any applicant to purchase, or lease, any public lands of the state, or any valuable materials thereon, and any person whose property rights or interests will be affected by such sale or lease, feeling aggrieved by any order or decision of the board, or the commissioner, concerning the same, may appeal therefrom to the superior court of the county in which such lands or materials are situated, by serving upon all parties who have appeared in the proceedings in which the order or decision was made, or their attorneys, a written notice of appeal, and filing such notice, with proof, or admission, of service, with the board, or the commissioner, within thirty days from the date of the order or decision appealed from, and at the time of filing the notice, or within five days thereafter, filing a bond to the state, in the penal sum of two hundred dollars, with sufficient sureties, to be approved by the secretary of the board, or the commissioner, conditioned that the appellant shall pay all costs that may be awarded against the appellant on appeal, or the dismissal thereof. Within thirty days after the filing of notice of appeal, the secretary of the board, or the commissioner, shall certify, under official seal, a transcript of all entries in the records of the board, or the commissioner, together with all processes, pleadings and other papers relating to and on file in the case, except evidence used in such proceedings, and file such transcript and papers, at the expense of the applicant, with the clerk of the court to which the appeal is taken. The hearing and trial of said appeal in the superior court shall be de novo before the court, without a jury, upon the pleadings and papers so certified, but the court may order the pleadings to be amended, or new and further pleadings to be filed. Costs on appeal shall be awarded to the prevailing party as in actions commenced in the superior court, but no costs shall be awarded against the state, the board, or the commissioner. Should judgment be rendered against the appellant, the costs shall be taxed against the appellant and the appellant's sureties on the appeal bond, except when the state is the only adverse party, and shall be included in the judgment, upon which execution may issue as in other cases. Any party feeling aggrieved by the judgment of the superior court may seek appellate review as in other civil cases. Unless appellate review of the judgment of the superior court is sought, the clerk of said court shall, on demand, certify, under the clerk's hand and the seal of the court, a true copy of the judgment, to the board, or the commissioner, which judgment shall thereupon have the same force and effect as if rendered by the board, or the commissioner. In all cases of appeals from orders or decisions of the commissioner involving the prior right to purchase tidelands of the first class, if the appeal is not prosecuted, heard and determined, within two years from the date of the appeal, the attorney general shall, after thirty days' notice to the appellant of the attorney general's intention so to do, move the

court for a dismissal of the appeal, but nothing herein shall be construed to prevent the dismissal of such appeal at any time in the manner provided by law. [2003 c 334 § 397. Prior: 1988 c 202 § 59; 1988 c 128 § 56; 1971 c 81 § 139; 1927 c 255 § 125; RRS § 7797-125; prior: 1901 c 62 §§ 1 through 7; 1897 c 89 § 52; 1895 c 178 § 82. Formerly RCW 79.01.500, 79.08.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1988 c 202:** See note following RCW 2.24.050.

**79.02.040 Reconsideration of official acts.** The department may review and reconsider any of its official acts relating to public lands until such time as a lease, contract, or deed shall have been made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2004 c 199 § 202; 2003 c 334 § 432; 1982 1st ex.s. c 21 § 177; 1927 c 255 § 195; RRS § 7797-195. Formerly RCW 79.01.740, 43.65.080.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.96.901 through 79.96.905.

**79.02.050 Effect of mistake or fraud.** (1) Any sale, transfer, or lease in which the purchaser, transfer recipient, or lessee obtains the sale or lease by fraud or misrepresentation is void, and the contract of purchase or lease shall be of no effect. In the event of fraud, the contract, transferred property, or lease must be surrendered to the department, but the purchaser, transfer recipient, or lessee may not be refunded any money paid on account of the surrendered contract, transfer, or lease.

(2) In the event that a mistake is discovered in the sale or lease, or in the sale of valuable materials, the department may take action to correct the mistake in accordance with RCW 79.02.040 if maintaining the corrected contract, transfer, or lease is in the best interests of the affected trust or trusts. [2004 c 199 § 203; 2003 c 334 § 365; 2001 c 250 § 11; 1982 1st ex.s. c 21 § 164; 1959 c 257 § 28; 1927 c 255 § 60; RRS § 7797-60. Prior: 1903 c 79 § 3. Formerly RCW 79.01.240, 79.12.280.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.02.060 Scope of provisions of chapter 199, Laws of 2004.** The provisions of chapter 199, Laws of 2004 are not intended to affect the trust responsibilities or trust management by the department for any trust lands granted by the federal government or legislatively created trusts. The trust obligations relating to federally granted lands, state forest lands, community and technical college forest reserve lands, and university repayment lands shall not be altered by the definition clarifications contained in chapter 199, Laws of 2004. The rights, privileges, and prerogatives of the public shall not be altered in any way by chapter 199, Laws of 2004, and no

additional or changed authority or power is granted to any person, corporation, or entity. [2004 c 199 § 301.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**79.02.080 Rewards for information regarding violations.** The department is authorized to offer and pay a reward not to exceed ten thousand dollars in each case for information regarding violations of any statute or rule relating to the state's public lands and natural resources on those lands, except forest practices under chapter 76.09 RCW. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department is authorized to adopt rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. The department is also authorized to adopt rules establishing the criteria for paying a reward and the amount to be paid. No appropriation shall be required for disbursement. [2003 c 334 § 436; 1994 c 56 § 1; 1990 c 163 § 8. Formerly RCW 79.01.765.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.090 Transfer of county auditor's duties.** The duties of the county auditor in each county with a population of two hundred ten thousand or more, with regard to sales and leases dealt with under this title except RCW 79.11.250, 79.11.260, and \*79.94.040, are transferred to the county treasurer. [2003 c 334 § 451; 1991 c 363 § 152; 1983 c 3 § 201; 1955 c 184 § 1. Formerly RCW 79.08.170.]

**\*Reviser's note:** RCW 79.94.040 was recodified as RCW 79.125.040 pursuant to 2005 c 155 § 1008.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**79.02.095 Statutes not applicable to state tidelands, shorelands, harbor areas, and the beds of navigable waters.** RCW 79.11.080, 79.11.010, 79.11.110, \*79.01.140, 79.11.160, 79.10.125, 79.13.130, \*79.01.252, \*79.01.256, \*79.01.260, \*79.01.264, 79.13.180, 79.02.260, 79.13.320, 79.13.410, 79.13.010, and \*79.01.277 do not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. [2003 c 334 § 317; 1979 ex.s. c 109 § 22. Formerly RCW 79.01.093.]

**Reviser's note:** RCW 79.01.140, 79.01.252, 79.01.256, 79.01.260, 79.01.264, and 79.01.277 were repealed by 2003 c 334 § 551.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

## PART 2 FEDERAL LAND GRANTS

**79.02.100 Appearance by commissioner before United States land offices.** The commissioner of public lands is authorized and directed to appear before the United States land offices in all cases involving the validity of the selections of any lands granted to the state, and to summon witnesses and pay necessary witness fees and stenographer

fees in such contested cases. [1927 c 255 § 193; RRS § 7797-193. Formerly RCW 79.01.732, 43.12.070.]

**79.02.110 Applications for federal certification that lands are nonmineral.** The commissioner of public lands is authorized and directed to make applications, and to cause publication of notices of applications, to the interior department of the United States for certification that any land granted to the state is nonmineral in character, in accordance with the rules of the general land office of the United States. [1927 c 255 § 77; RRS § 7797-77. Prior: 1897 c 89 § 33. Formerly RCW 79.01.308, 79.08.130.]

**79.02.120 Lieu lands—Selection agreements authorized.** For the purpose of obtaining from the United States indemnity or lieu lands for such lands granted to the state for common schools, educational, penal, reformatory, charitable, capitol building, or other purposes, as have been or may be lost to the state, or the title to or use or possession of which is claimed by the United States or by others claiming by, through or under the United States, by reason of any of the causes entitling the state to select other lands in lieu thereof, the inclusion of the same in any reservation by or under authority of the United States, or any other appropriation or disposition of the same by the United States, whether such lands are now surveyed or unsurveyed, the department, with the advice and approval of the attorney general, is authorized and empowered to enter into an agreement or agreements, on behalf of the state, with the proper officer or officers of the United States for the relinquishment of any such lands and the selection in lieu thereof, under the provisions of RCW 79.02.120 through 79.02.140, of lands of the United States of equal area and value. [2003 c 334 § 488; 1988 c 128 § 63; 1913 c 102 § 1; RRS § 7824. Formerly RCW 79.28.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.130 Lieu lands—Examination and appraisal.** Upon the making of any such agreement, the board shall be empowered and it shall be its duty to cause such examination and appraisal to be made as will determine the area and value, as nearly as may be, of the lands lost to the state, or the title to, use or possession of which is claimed by the United States by reason of the causes mentioned in RCW 79.02.120, and proposed to be relinquished to the United States, and shall cause an examination and appraisal to be made of any lands which may be designated by the officers of the United States as subject to selection by the state in lieu of the lands aforesaid, to the end that the state shall obtain lands in lieu thereof of equal area and value. [2003 c 334 § 489; 1988 c 128 § 64; 1913 c 102 § 2; RRS § 7825. Formerly RCW 79.28.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.140 Lieu lands—Transfer of title to lands relinquished.** Whenever the title to any lands selected under the provisions of RCW 79.02.120 through 79.02.140 shall become vested in the state of Washington by the acceptance and approval of the lists of lands so selected, or other proper action of the United States, the governor, on behalf of the state of Washington, shall execute and deliver to the United States a deed of conveyance of the lands of the state relin-

quished under the provisions of RCW 79.02.120 through 79.02.140, which deed shall convey to and vest in the United States all the right, title and interest of the state of Washington therein. [2003 c 334 § 490; 1913 c 102 § 3; RRS § 7826. Formerly RCW 79.28.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.150 Selection to complete uncompleted grants.** So long as any grant of lands by the United States to the state of Washington, for any purpose, or as lieu or indemnity lands therefor, remains incomplete, the commissioner of public lands shall, from time to time, cause the records in his office and in the United States land offices, to be examined for the purpose of ascertaining what of the unappropriated lands of the United States are open to selection, and whether any thereof may be of sufficient value and so situated as to warrant their selection as state lands, and in that case may cause the same to be inspected and appraised by one or more state land inspectors, and a full report made thereon by the smallest legal subdivisions of forty acres each, classifying such lands into grazing, farming and timbered lands, and estimating the value of each tract inspected and the quantity and value of all valuable material thereon, and in the case of timbered lands the amount and value of the standing timber thereon, and the estimated value of such lands after the timber is removed, which report shall be made as amply and expeditiously as possible on blanks to be furnished by the commissioner of public lands for that purpose, under the oath of the inspector to the effect that he has personally examined the tracts mentioned in each forty acres thereof, and that said report and appraisal is made from such personal examination, and is, to the best of affiant's knowledge and belief, true and correct, and that the lands are not occupied by any bona fide settler.

The commissioner of public lands shall select such unappropriated lands as he shall deem advisable, and do all things necessary under the laws of the United States to vest title thereto in the state, and shall assign lands of equal value, as near as may be, to the various uncompleted grants. [1927 c 255 § 19; RRS § 7797-19. Prior: 1897 c 89 §§ 5, 7, 9, 10. Formerly RCW 79.01.076, 79.08.050.]

*Lieu lands: Chapter 79.02 RCW.*

**79.02.160 Relinquishment on failure or rejection of selection.** In case any person interested in any tract of land heretofore selected by the territory of Washington or any officer, board, or agent thereof or by the state of Washington or any officer, board, or agent thereof or which may be hereafter selected by the state of Washington or the department, in pursuance to any grant of lands made by the United States to the territory or state of Washington for any purpose or upon any trust whatever, the selection of which has failed or been rejected or shall fail or shall be rejected for any reason, shall request it, the department shall have the authority and power on behalf of the state to relinquish to the United States such tract of land. [2004 c 199 § 204; 2003 c 334 § 308; 1927 c 255 § 20; RRS § 7797-20. Prior: 1899 c 63 § 1. Formerly RCW 79.01.080, 79.08.060.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

PART 3  
CONTRACTS/RECORDS/FEE/APPLICATIONS

**79.02.200 Abstracts of public lands.** The department shall cause full and correct abstracts of all the public lands to be made and kept in suitable and well bound books, and other suitable records. Such abstracts shall show in proper columns and pages the section or part of section, lot or block, township and range in which each tract is situated, whether timber or prairie, improved or unimproved, the appraised value per acre, the value of improvements and the value of damages, and the total value, the several values of timber, stone, gravel, or other valuable materials thereon, the date of sale, the name of purchaser, sale price per acre, the date of lease, the name of lessee, the term of the lease, the annual rental, amount of cash paid, amount unpaid and when due, amount of annual interest, and in proper columns such other facts as may be necessary to show a full and complete abstract of the conditions and circumstances of each tract or parcel of land from the time the title was acquired by the state until the issuance of a deed or other disposition of the land by the state. [2003 c 334 § 382; 1982 1st ex.s. c 21 § 166; 1927 c 255 § 76; RRS § 7797-76. Prior: (i) 1897 c 89 § 32; RRS § 7823. (ii) 1911 c 59 § 9; RRS § 7899. Formerly RCW 79.01.304, 43.12.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.02.210 Maps and plats—Record and index—Public inspection.** All maps, plats, and field notes of surveys, required to be made by this title shall, after approval by the department, be deposited and filed in the office of the department, which shall keep a careful and complete record and index of all maps, plats, and field notes of surveys in its possession, in well bound books, which shall at all times be open to public inspection. [2003 c 334 § 426; 1988 c 128 § 57; 1927 c 255 § 187; RRS § 7797-187. Formerly RCW 79.01.708, 43.12.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.220 Seal.** All notices, orders, contracts, certificates, rules and regulations, or other documents or papers made and issued by or on behalf of the department, or the commissioner, as provided in this title, shall be authenticated by a seal whereon shall be the vignette of George Washington, with the words "Seal of the commissioner of public lands, State of Washington." [2003 c 334 § 427; 1988 c 128 § 58; 1927 c 255 § 188; RRS § 7797-188. Formerly RCW 79.01.712, 43.65.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.230 Blank forms of applications for appraisal, transfer, sale, and lease of state lands, valuable materials.** The department shall cause to be prepared, and furnish to applicants, blank forms of applications for the appraisal, transfer, and purchase of any state lands and the purchase of valuable materials situated thereon, and for the lease of state

lands. These forms shall contain instructions to inform and aid applicants. [2003 c 334 § 310; 2001 c 250 § 1; 1982 1st ex.s. c 21 § 150; 1959 c 257 § 2; 1927 c 255 § 21; RRS § 7797-21. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.084, 79.08.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.02.240 Fees.** The department may charge and collect fees as determined by the board for each category of services performed based on costs incurred. [2003 c 334 § 428; 1979 ex.s. c 109 § 18; 1959 c 153 § 1; 1927 c 255 § 190; RRS § 7797-190. Formerly RCW 79.01.720, 43.12.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.02.250 Reasonable fees—Disposition.** (1) Applications for the purchase or use of lands and the sale of valuable materials by the department shall be accompanied by reasonable fees to be prescribed by the board in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed.

(2) Fees shall be credited to the resource management cost account fund as established under RCW 79.64.020, the forest development account fund as established under RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, as applicable. [2003 c 334 § 313.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.260 Fee book.** The department shall keep a fee book, in which shall be entered all fees received, with the date paid and the name of the person paying the same, and the nature of the services rendered for which the fee is charged, which book shall be verified monthly by affidavit entered therein. All fees collected by the department shall be paid into the state treasury, as applicable, to the resource management cost account created in RCW 79.64.020, the forest development account created in RCW 79.64.100, or the agricultural college trust management account fund as established under RCW 79.64.090, and the receipt of the state treasurer taken and retained in the department's Olympia office as a voucher. [2003 c 334 § 429; 1979 ex.s. c 109 § 19; 1927 c 255 § 191; RRS § 7797-191. Formerly RCW 79.01.724, 43.12.130.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.02.270 Deed.** When the entire purchase price of any state lands shall have been fully paid, the commissioner shall certify such fact to the governor, and shall cause a quitclaim deed signed by the governor and attested by the secretary of

state, with the seal of the state attached thereto, to be issued to the purchaser and to be recorded in the department's Olympia office. No fee is required for any deed of land issued by the governor other than the fee provided for in this title. [2003 c 334 § 360; 1982 1st ex.s. c 21 § 160; 1959 c 257 § 25; 1927 c 255 § 55; RRS § 7797-55. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 § 25, 29. Formerly RCW 79.01.220, 79.12.390.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.02.280 Assignment of contracts or leases.** All contracts of purchase or leases issued by the department shall be assignable in writing by the contract holder or lessee and the assignee shall be subject to and governed by the provisions of law applicable to the assignor and shall have the same rights in all respects as the original purchaser, or lessee, of the lands, provided the assignment is approved by the department and entered of record in its office. [2004 c 199 § 205; 2003 c 334 § 377; 1982 1st ex.s. c 21 § 165; 1927 c 255 § 73; RRS § 7797-73. Prior: 1903 c 79 § 8. Formerly RCW 79.01.292, 79.12.270.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.02.290 Subdivision of contracts or leases—Fee.** Whenever the holder of a contract of purchase or the holder of any lease, except for mining of valuable minerals or coal, or extraction of petroleum or gas, shall surrender the same to the department with the request to have it divided into two or more contracts, or leases, the department may divide the same and issue new contracts, or leases, but no new contract, or lease, shall issue while there is due and unpaid any interest, rental, or taxes or assessments on the land held under such contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all such new contracts, or leases, a fee as provided under this chapter, shall be paid by the applicant. [2004 c 199 § 206; 2003 c 334 § 363; 1982 1st ex.s. c 21 § 163; 1979 ex.s. c 109 § 8; 1959 c 257 § 27; 1955 c 394 § 2; 1927 c 255 § 59; RRS § 7797-59. Prior: 1903 c 79 § 3. Formerly RCW 79.01.236, 79.12.260.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

#### PART 4 TRESPASS/REGULATIONS/PENALTIES

##### **79.02.300 Trespass, waste, damages—Prosecutions.**

(1) Every person who, without authorization, uses or occupies public lands, removes any valuable material as defined in RCW 79.02.010 from public lands, or causes waste or

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damage to public lands, or injures publicly owned personal property or publicly owned improvements to real property on public lands, is liable to the state for treble the amount of the damages. However, liability shall be for single damages if the department determines, or the person proves upon trial, that the person, at time of the unauthorized act or acts, did not know, or have reason to know, that he or she lacked authorization. Damages recoverable under this section include, but are not limited to, the market value of the use, occupancy, or things removed, had the use, occupancy, or removal been authorized; and any damages caused by injury to the land, publicly owned personal property or publicly owned improvement, including the costs of restoration. In addition, the person is liable for reimbursing the state for its reasonable costs, including but not limited to, its administrative costs, survey costs to the extent they are not included in damages awarded for restoration costs, and its reasonable attorneys' fees and other legal costs.

(2) This section does not apply in any case where liability for damages is provided under RCW 64.12.030, 4.24.630, 79.02.320, or 79.02.340.

(3) The department is authorized and directed to investigate all trespasses and wastes upon, and damages to, public lands of the state, and to cause prosecutions for, and/or actions for the recovery of the same to be commenced as is provided by law. [2004 c 199 § 207; 2003 c 334 § 435; 1994 c 280 § 2; 1993 c 266 § 1; 1927 c 255 § 200; RRS § 7797-200. Prior: 1897 c 89 § 64; 1895 c 178 § 99. Formerly RCW 79.01.760, 79.40.040.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Waste and trespass: Chapter 64.12 RCW.*

**79.02.310 Trespasser guilty of theft, when.** Every person who willfully commits any trespass upon any public lands of the state and cuts down, destroys or injures any timber, or any tree standing or growing thereon, or takes, or removes, or causes to be taken, or removed, therefrom any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes or removes therefrom any earth, soil, stone, mineral, clay, sand, gravel, or any valuable materials, is guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 379; 1927 c 255 § 197; RRS § 7797-197. Prior: 1889-90 pp 124-125 §§ 1, 4. Formerly RCW 79.01.748, 79.40.010.]

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

##### **79.02.320 Removal of timber—Treble damages.**

Every person who shall cut or remove, or cause to be cut or removed, any timber growing or being upon any public lands of the state, or who shall manufacture the same into logs, bolts, shingles, lumber or other articles of use or commerce, unless expressly authorized so to do by a bill of sale from the state, or by a lease or contract from the state under which he holds possession of such lands, or by the provisions of law under and by virtue of which such bill of sale, lease or contract was issued, shall be liable to the state in treble the value of the timber or other articles so cut, removed or manufactured, to be recovered in a civil action, and shall forfeit to the

state all interest in and to any article into which said timber is manufactured. [1927 c 255 § 199; RRS § 7797-199. Prior: 1897 c 89 § 66; 1895 c 178 § 101. Formerly RCW 79.01.756, 79.40.030.]

*Firewood on state lands: Chapter 79.15 RCW.*

*Injunction to prevent waste on public land: RCW 64.12.050.*

*Injury to or removing trees, etc.—Damages: RCW 64.12.030.*

*Penalty for destroying native flora: RCW 47.40.080.*

**79.02.330 Lessee or contract holder guilty of misdemeanor.** Every person being in lawful possession of any public lands of the state, under and by virtue of any lease or contract of purchase from the state, cuts down, destroys, or injures, or causes to be cut down, destroyed, or injured, any timber standing or growing thereon, or takes or removes, or causes to be taken or removed, therefrom, any wood or timber lying thereon, or maliciously injures or severs anything attached thereto, or the produce thereof, or digs, quarries, mines, takes, or removes therefrom, any earth, soil, clay, sand, gravel, stone, mineral, or other valuable material, or causes the same to be done, or otherwise injures, defaces, or damages, or causes to be injured, defaced, or damaged, any such lands unless expressly authorized so to do by the lease or contract under which possession of such lands is held, or by the provisions of law under and by virtue of which such lease or contract was issued, shall be guilty of a misdemeanor. [2003 c 334 § 434; 1927 c 255 § 198; RRS § 7797-198. Prior: 1899 c 34 §§ 1 through 3. Formerly RCW 79.01.752, 79.40.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.340 Removal of Christmas trees—Compensation.** It shall be unlawful for any person to enter upon public lands or upon any private land without the permission of the owner thereof and to cut, break, or remove therefrom for commercial purposes any evergreen trees, commonly known as Christmas trees, including fir, hemlock, spruce, and pine trees. Any person cutting, breaking, or removing or causing to be cut, broken, or removed, or who cuts down, cuts off, breaks, tops, or destroys any of such Christmas trees shall be liable to the state, or to the private owner thereof, for payment for such trees at a price of one dollar each if payment is made immediately upon demand. Should it be necessary to institute civil action to recover the value of such trees, the state in the case of public lands, or the owner in case of private lands, may exact treble damages on the basis of three dollars per tree for each tree so cut or removed. [2004 c 199 § 208; 2003 c 334 § 504; 1988 c 128 § 66; 1955 c 225 § 1; 1937 c 87 § 1; RRS § 8074-1. Formerly RCW 79.40.070.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.350 Intent of RCW 79.02.340.** RCW 79.02.340 is not intended to repeal or modify any of the provisions of existing statutes providing penalties for the unlawful removal of timber from state lands. [2003 c 334 § 505; 1937 c 87 § 2; RRS § 8074-2. Formerly RCW 79.40.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.370 Protection against cedar theft.** The board must establish procedures to protect against cedar theft and to ensure adequate notice is given for persons interested in purchasing cedar. [2003 c 334 § 333.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 5

### OTHER TRUST/GRANT/FOREST RESERVE LANDS

**79.02.400 Charitable, educational, penal, and reformatory real property—Inventory—Transfer.** (1) Every five years the department of social and health services and other state agencies that operate institutions shall conduct an inventory of all real property subject to the charitable, educational, penal, and reformatory institution account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled. The inventory shall identify which of those real properties are not needed for state-provided residential care, custody, or treatment. By December 1, 1992, and every five years thereafter the department shall report the results of the inventory to the house of representatives committee on capital facilities and financing, the senate committee on ways and means, and the joint legislative audit and review committee.

(2) Real property identified as not needed for state-provided residential care, custody, or treatment shall be transferred to the corpus of the charitable, educational, penal, and reformatory institution account. This subsection shall not apply to leases of real property to a consortium of three or more counties in order for the counties to construct or otherwise acquire correctional facilities for juveniles or adults or to real property subject to binding conditions that conflict with the other provisions of this subsection.

(3) The department of natural resources shall manage all property subject to the charitable, educational, penal, and reformatory institution account and, in consultation with the department of social and health services and other affected agencies, shall adopt a plan for the management of real property subject to the account and other real property acquired for institutional purposes or for the benefit of the blind, deaf, mentally ill, developmentally disabled, or otherwise disabled.

(a) The plan shall be consistent with state trust land policies and shall be compatible with the needs of institutions adjacent to real property subject to the plan.

(b) The plan may be modified as necessary to ensure the quality of future management and to address the acquisition of additional real property. [1996 c 288 § 51; 1996 c 261 § 1; 1991 c 204 § 1. Formerly RCW 79.01.006.]

**Reviser's note:** This section was amended by 1996 c 261 § 1 and by 1996 c 288 § 51, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

*Department of social and health services duty: RCW 43.20A.035.*

**79.02.410 Charitable, educational, penal, and reformatory real property—High economic return potential—Income.** Where charitable, educational, penal, and reformatory institutions land has the potential for lease for commercial, industrial, or residential uses or other uses with the potential for high economic return and is within urban or sub-

urban areas, the department shall make every effort consistent with trust land management principles and all other provisions of law to lease the lands for such purposes, unless the land is subject to a lease to a state agency operating an existing state institution. The department is authorized, subject to approval by the board and only if a higher return can be realized, to exchange such lands for lands of at least equal value and to sell such lands and use the proceeds to acquire replacement lands. The department shall report to the appropriate legislative committees all charitable, educational, penal, and reformatory institutions land purchased, sold, or exchanged. Income from the leases shall be deposited in the charitable, educational, penal, and reformatory institutions account. The legislature shall give priority consideration to appropriating one-half of the money derived from lease income to providing community housing for persons who are mentally ill, developmentally disabled, or youth who are blind, deaf, or otherwise disabled. [2003 c 334 § 303; 1991 c 204 § 5. Formerly RCW 79.01.007.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.02.420 Finding—Intent—Community and technical college forest reserve land base—Management—Disposition of revenue.** (1) The legislature finds that the state’s community and technical colleges need a dedicated source of revenue to augment other sources of capital improvement funding. The intent of this section is to ensure that the forest land purchased under section 310, chapter 16, Laws of 1990 1st ex. sess. and known as the community and technical college forest reserve land base, is managed in perpetuity and in the same manner as state forest lands for sustainable commercial forestry and multiple use of lands consistent with RCW 79.10.120. These lands will also be managed to provide an outdoor education and experience area for organized groups. The lands will provide a source of revenue for the long-term capital improvement needs of the state community and technical college system.

(2) There has been increasing pressure to convert forest lands within areas of the state subject to population growth. Loss of forest land in urbanizing areas reduces the production of forest products and the available supply of open space, watershed protection, habitat, and recreational opportunities. The land known as the community and technical college forest reserve land base is forever reserved from sale. However, the timber and other products on the land may be sold, or the land may be leased in the same manner and for the same purposes as authorized for state granted lands if the department finds the sale or lease to be in the best interest of this forest reserve land base and approves the terms and conditions of the sale or lease.

(3) The land exchange and acquisition powers provided in RCW 79.17.020 may be used by the department to reposition land within the community and technical college forest reserve land base consistent with subsection (1) of this section.

(4) Up to twenty-five percent of the revenue from these lands, as determined by the board, will be deposited in the forest development account to reimburse the forest development account for expenditures from the account for management of these lands.

(2008 Ed.)

(5) The community college forest reserve account, created under section 310, chapter 16, Laws of 1990 1st ex. sess., is renamed the community and technical college forest reserve account. The remainder of the revenue from these lands must be deposited in the community and technical college forest reserve account. Money in the account may be appropriated by the legislature for the capital improvement needs of the state community and technical college system or to acquire additional forest reserve lands. [2003 c 334 § 225; 1996 c 264 § 1. Formerly RCW 76.12.240.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Chapter 79.10 RCW  
LAND MANAGEMENT AUTHORITIES  
AND POLICIES**

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PART 1  
GENERAL PROVISIONS

**79.10.010 Reports.** (1) It shall be the duty of the department to report, and recommend, to each session of the legislature, any changes in the law relating to the methods of handling the public lands of the state that the department may deem advisable.

(2) The department shall provide a comprehensive biennial report to reflect the previous fiscal period. The report shall include, but not be limited to, descriptions of all department activities including: Revenues generated, program costs, capital expenditures, personnel, special projects, new and ongoing research, environmental controls, cooperative projects, intergovernmental agreements, the adopted sustainable harvest compared to the sales program, and outlines of ongoing litigation, recent court decisions, and orders on major issues with the potential for state liability. The report shall describe the status of the resources managed and the recreational and commercial utilization. The report must be delivered to the appropriate committees of the legislature and made available to the public.

(3) The department shall provide annual reports to the respective trust beneficiaries, including each county. The report shall include, but not be limited to, the following: Acres sold, acres harvested, volume from those acres, acres planted, number of stems per acre, acres precommercially thinned, acres commercially thinned, acres partially cut, acres clear cut, age of final rotation for acres clear cut, and the total number of acres off base for harvest and an explanation of why those acres are off base for harvest. [2003 c 334 § 433; 1997 c 448 § 3; 1987 c 505 § 76; 1985 c 93 § 3; 1927 c 255 § 196; RRS § 7797-196. Prior: 1907 c 114 § 1; RRS § 7801. Formerly RCW 79.01.744, 43.12.150.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.020 Department authority to accept land.** The department is hereby authorized, when in its judgment it appears advisable, to accept on behalf of the state, any grant of land within the state which shall then become a part of the state forests. No grant may be accepted until the title has been examined and approved by the attorney general of the state and a report made to the board of natural resources of the result of the examination. [1986 c 100 § 48. Formerly RCW 79.01.074.]

**79.10.030 Management of acquired lands—Land acquired by escheat suitable for park purposes.** (1) Except as provided in subsection (2) of this section, the department shall manage and control all lands acquired by the state by escheat or under RCW 79.19.010 through 79.19.110 and all lands acquired by the state by deed of sale or gift or by devise, except such lands which are conveyed or devised to the state to be used for a particular purpose.

(2) When land is acquired by the state by escheat which because of its location or features may be suitable for park purposes, the department shall notify the state parks and recreation commission. The department and the commission shall jointly evaluate the land for its suitability for park purposes, based upon the features of the land and the need for

park facilities in the vicinity. Where the department and commission determine that such land is suitable for park purposes, it shall be offered for transfer to the commission, or, in the event that the commission declines to accept the land, to the local jurisdiction providing park facilities in that area. When so offered, the payment required by the recipient agency shall not exceed the costs incurred by the department in managing and protecting the land since receipt by the state.

(3) The department may review lands acquired by escheat since January 1, 1983, for their suitability for park purposes, and apply the evaluation and transfer procedures authorized by subsection (2) of this section. [2003 c 334 § 398; 1993 c 49 § 1; 1984 c 222 § 13; 1927 c 255 § 154; RRS § 7797-154. Formerly RCW 79.01.612, 43.12.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1984 c 222:** See RCW 79.19.900 and 79.19.901.

*Real property distributed to state by probate court decree, jurisdiction of commissioner of public lands over:* RCW 11.08.220.

**79.10.040 Gifts of land for offices.** Any county, city or town is authorized and empowered to convey to the state of Washington any lands owned by such county, city or town upon the selection of such lands by the department and the department is hereby authorized to select and accept conveyances of lands from such counties, cities or towns, suitable for use by the department as locations for offices, warehouses and machinery storage buildings in the administration of the forestry laws and lands of the state of Washington: PROVIDED, HOWEVER, No consideration shall be paid by the state nor by the department for the conveyance of such lands by such county, city or town. [1988 c 128 § 25; 1937 c 125 § 1; RRS § 5812-3c. FORMER PART OF SECTION: 1937 c 125 § 2 now codified as RCW 76.12.045. Formerly RCW 76.12.040.]

**79.10.050 Gifts of county or city land for offices, warehouses, etc.—Use of lands authorized.** The department is authorized to use such lands for the purposes hereinbefore expressed and to improve said lands and build thereon any necessary structures for the purposes hereinbefore expressed and expend in so doing such funds as may be authorized by law therefor. [1988 c 128 § 26; 1937 c 125 § 2; RRS § 5812-3d. Formerly RCW 76.12.045, 76.12.040.]

**79.10.060 Compliance with local ordinances, when.** The department may comply with county or municipal zoning ordinances, laws, rules, or regulations affecting the use of public lands where such regulations are consistent with the treatment of similar private lands. [2004 c 199 § 209; 2003 c 334 § 544; 1971 ex.s. c 234 § 13. Formerly RCW 79.68.110.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.070 Management of public lands within watershed area providing water supply for city or town—Lake Whatcom municipal watershed pilot project—Report—Exclusive method of condemnation by city or town for watershed purposes.** (1) In the management of public lands lying within the limits of any watershed over and through

which is derived the water supply of any city or town, the department may alter its land management practices to provide water with qualities exceeding standards established for intrastate and interstate waters by the department of ecology. However, if such alterations of management by the department reduce revenues from, increase costs of management of, or reduce the market value of public lands the city or town requesting such alterations shall fully compensate the department.

(2) The department shall initiate a pilot project for the municipal watershed delineated by the Lake Whatcom hydrographic boundaries to determine what factors need to be considered to achieve water quality standards beyond those required under chapter 90.48 RCW and what additional management actions can be taken on state trust lands that can contribute to such higher water quality standards. The department shall establish an advisory committee consisting of a representative each of the city of Bellingham, Whatcom county, the Whatcom county water district 10, the department of ecology, the department of fish and wildlife, and the department of health, and three general citizen members to assist in this pilot project. In the event of differences of opinion among the members of the advisory committee, the committee shall attempt to resolve these differences through various means, including the retention of facilitation or mediation services.

(3) The pilot project in subsection (2) of this section shall be completed by June 30, 2000. The department shall defer all timber sales in the Lake Whatcom hydrographic boundaries until the pilot project is complete.

(4) Upon completion of the study, the department shall provide a report to the natural resources committee of the house of representatives and to the natural resources, parks, and recreation committee of the senate summarizing the results of the study.

(5) The exclusive manner, notwithstanding any provisions of the law to the contrary, for any city or town to acquire by condemnation ownership or rights in public lands for watershed purposes within the limits of any watershed over or through which is derived the water supply of any city or town shall be to petition the legislature for such authority. Nothing in RCW 79.44.003 and this chapter shall be construed to affect any existing rights held by third parties in the lands applied for. [2003 c 334 § 332; 1999 c 257 § 1; 1971 ex.s. c 234 § 11; 1927 c 255 § 32; RRS § 7797-32. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.128, 79.12.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Condemnation proceedings where state land involved: RCW 8.28.010.*

*Municipal corporation in adjoining state may condemn watershed property: RCW 8.28.050.*

**79.10.080 Classification of land after timber removed.** When the merchantable timber has been sold and actually removed from any state lands, the department may classify the land, and may reserve from any future sale such portions thereof as may be found suitable for reforestation, and in such case, shall enter such reservation in its records. All lands reserved shall not be subject to sale or lease. The commissioner shall certify all such reservations for reforesta-

tion so made, to the board. It shall be the duty of the department to protect such lands, and the remaining timber thereon, from fire and to reforest the same. [2003 c 334 § 340; 1959 c 257 § 16; 1927 c 255 § 41; RRS § 7797-41. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.164, 79.12.200.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Acquisition, management, and disposition of state forest lands: Chapter 79.22 RCW.*

**79.10.090 Economic analysis of state lands held in trust—Scope—Use.** Periodically at intervals to be determined by the board, the department shall cause an economic analysis to be made of those state lands held in trust, where the nature of the trust makes maximization of the economic return to the beneficiaries of income from state lands the prime objective. The analysis shall be by specific tracts, or where such tracts are of similar economic characteristics, by groupings of such tracts.

The most recently made analysis shall be considered by the department in making decisions as to whether to sell or lease state lands, standing timber or crops thereon, or minerals therein, including but not limited to oil and gas and other hydrocarbons, rocks, gravel, and sand.

The economic analysis shall include, but shall not be limited to the following criteria: (1) Present and potential sale value; (2) present and probable future returns on the investment of permanent state funds; (3) probable future inflationary or deflationary trends; (4) present and probable future income from leases or the sale of land products; and (5) present and probable future tax income derivable therefrom specifically including additional state, local, and other tax revenues from potential private development of land currently used primarily for grazing and other similar low priority use; such private development would include, but not be limited to, development as irrigated agricultural land. [2003 c 334 § 320; 1969 ex.s. c 131 § 1. Formerly RCW 79.01.095.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 2 MULTIPLE USE

**79.10.100 Concept to be utilized, when.** The legislature hereby directs that a multiple use concept be utilized by the department in the administration of public lands where such a concept is in the best interests of the state and the general welfare of the citizens thereof, and is consistent with the applicable provisions of the various lands involved. [2004 c 199 § 210; 2003 c 334 § 534; 1971 ex.s. c 234 § 1. Formerly RCW 79.68.010.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.110 "Multiple use" defined.** "Multiple use" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean the management and administration of state-owned lands under the jurisdiction of the department to provide for several uses simultaneously on a single tract and/or planned

rotation of one or more uses on and between specific portions of the total ownership consistent with the provisions of RCW 79.10.100. [2003 c 334 § 535; 1971 ex.s. c 234 § 2. Formerly RCW 79.68.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.120 Multiple uses compatible with financial obligations of trust management—Other uses permitted, when.** Multiple uses additional to and compatible with those basic activities necessary to fulfill the financial obligations of trust management may include but are not limited to:

- (1) Recreational areas;
- (2) Recreational trails for both vehicular and nonvehicular uses;
- (3) Special educational or scientific studies;
- (4) Experimental programs by the various public agencies;
- (5) Special events;
- (6) Hunting and fishing and other sports activities;
- (7) Nonconsumptive wildlife activities as defined by the board of natural resources;
- (8) Maintenance of scenic areas;
- (9) Maintenance of historical sites;
- (10) Municipal or other public watershed protection;
- (11) Greenbelt areas;
- (12) Public rights-of-way;
- (13) Other uses or activities by public agencies;

If such additional uses are not compatible with the financial obligations in the management of trust land they may be permitted only if there is compensation from such uses satisfying the financial obligations. [2003 c 182 § 2; 1971 ex.s. c 234 § 5. Formerly RCW 79.68.050.]

**79.10.125 Land open to public for fishing, hunting, and nonconsumptive wildlife activities.** All state lands hereafter leased for grazing or agricultural purposes shall be open and available to the public for purposes of hunting and fishing, and for nonconsumptive wildlife activities, as defined by the board of natural resources, unless closed to public entry because of fire hazard or unless the department gives prior written approval and the area is lawfully posted by lessee to prohibit hunting and fishing, and nonconsumptive wildlife activities, thereon in order to prevent damage to crops or other land cover, to improvements on the land, to livestock, to the lessee, or to the general public, or closure is necessary to avoid undue interference with carrying forward a departmental or agency program. In the event any such lands are so posted it shall be unlawful for any person to hunt or fish, or pursue nonconsumptive wildlife activities, on any such posted lands. Such lands shall not be open and available for wildlife activities when access could endanger crops on the land or when access could endanger the person accessing the land.

The department shall insert the provisions of this section in all new grazing and agricultural leases. [2003 c 334 § 371; 2003 c 182 § 1; 1979 ex.s. c 109 § 9; 1969 ex.s. c 46 § 1; 1959 c 257 § 29; 1947 c 171 § 1; 1927 c 255 § 61; RRS § 7797-61. Prior: 1915 c 147 § 4; 1903 c 79 § 4; 1897 c 89 § 19; 1895 c 178 § 32. Formerly RCW 79.01.244, 79.12.430.]

**Reviser's note:** (1) This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

(2) This section was amended by 2003 c 182 § 1 and by 2003 c 334 § 371, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.10.130 Scope of department's authorized activities.** The department is hereby authorized to carry out all activities necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456, including, but not limited to:

(1) Planning, construction, and operation of conservation, recreational sites, areas, roads, and trails, by itself or in conjunction with any public agency;

(2) Planning, construction, and operation of special facilities for educational, scientific, conservation, or experimental purposes by itself or in conjunction with any other public or private agency;

(3) Improvement of any lands to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456;

(4) Cooperation with public and private agencies in the utilization of such lands for watershed purposes;

(5) The authority to make such leases, contracts, agreements, or other arrangements as are necessary to accomplish the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456. However, nothing in this section shall affect any existing requirements for public bidding or auction with private agencies or parties, except that agreements or other arrangements may be made with public schools, colleges, universities, governmental agencies, and nonprofit scientific and educational associations. [2003 c 334 § 540; 1987 c 472 § 12; 1971 ex.s. c 234 § 7. Formerly RCW 79.68.070.]

**\*Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1987 c 472:** See RCW 79.71.900.

**79.10.140 Outdoor recreation—Construction, operation, and maintenance of primitive facilities—Right-of-way and public access—Use of state and federal outdoor recreation funds.** The department is authorized:

(1) To construct, operate, and maintain primitive outdoor recreation and conservation facilities on lands under its jurisdiction which are of primitive character when deemed necessary by the department to achieve maximum effective development of such lands and resources consistent with the purposes for which the lands are held. This authority shall be exercised only after review by the recreation and conservation funding board and determination by the recreation and conservation funding board that the department is the most appropriate agency to undertake such construction, operation, and maintenance. Such review is not required for campgrounds designated and prepared or approved by the department;

(2) To acquire right-of-way and develop public access to lands under the jurisdiction of the department and suitable for public outdoor recreation and conservation purposes;

(3) To receive and expend funds from federal and state outdoor recreation funding measures for the purposes of this section and RCW 79A.50.110. [2007 c 241 § 23; 2003 c 334 § 122; 1987 c 472 § 13; 1986 c 100 § 51; 1967 ex.s. c 64 § 1. Formerly RCW 43.30.300.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1987 c 472:** See RCW 79.71.900.

**Construction—1967 ex.s. c 64:** "Nothing in this act shall be construed as affecting the jurisdiction or responsibility of any other state or local governmental agency, except as provided in section 1 of this act." [1967 ex.s. c 64 § 4.]

**Severability—1967 ex.s. c 64:** "If any provision of sections 1 through 4 of this act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 64 § 3.]

*Exchange of lands to secure private lands for parks and recreation purposes:* RCW 79A.50.110.

*Recreation and conservation funding board:* Chapter 79A.25 RCW.

**79.10.200 Multiple use land resource allocation plan—Adoption—Factors considered.** The department may adopt a multiple use land resource allocation plan for all or portions of the lands under its jurisdiction providing for the identification and establishment of areas of land uses and identifying those uses which are best suited to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456. Such plans shall take into consideration the various ecological conditions, elevations, soils, natural features, vegetative cover, climate, geographical location, values, public use potential, accessibility, economic uses, recreational potentials, local and regional land use plans or zones, local, regional, state, and federal comprehensive land use plans or studies, and all other factors necessary to achieve the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456. [2003 c 334 § 542; 1971 ex.s. c 234 § 9. Formerly RCW 79.68.090.]

**\*Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.210 Public lands identified and withdrawn.** For the purpose of providing increased continuity in the management of public lands and of facilitating long range planning by interested agencies, the department is authorized to identify and to withdraw from all conflicting uses at such times and for such periods as it shall determine appropriate, limited acreages of public lands under its jurisdiction. Acreages so withdrawn shall be maintained for the benefit of the public and, in particular, of the public schools, colleges, and universities, as areas in which may be observed, studied, enjoyed, or otherwise utilized the natural ecological systems thereon, whether such systems be unique or typical to the state of Washington. Nothing herein is intended to or shall modify the department's obligation to manage the land under its jurisdiction in the best interests of the beneficiaries of

granted trust lands. [2003 c 334 § 539; 1971 ex.s. c 234 § 6. Formerly RCW 79.68.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.220 Conferring with other agencies.** The department may confer with other public and private agencies to facilitate the formulation of policies and/or plans providing for multiple use concepts. The department is empowered to hold public hearings from time to time to assist in achieving the purposes of RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456. [2003 c 334 § 543; 1971 ex.s. c 234 § 10. Formerly RCW 79.68.100.]

**\*Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.240 Department's existing authority and powers preserved.** Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456 shall be construed to affect or repeal any existing authority or powers of the department in the management or administration of the lands under its jurisdiction. [2003 c 334 § 546; 1971 ex.s. c 234 § 12. Formerly RCW 79.68.900.]

**\*Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.250 Existing withdrawals for state park and state game purposes preserved.** Nothing in RCW 79.10.060, 79.10.070, 79.10.100 through 79.10.120, 79.10.130, 79.10.200 through 79.10.330, 79.44.003, and \*79.90.456 shall be construed to affect, amend, or repeal any existing withdrawal of public lands for state park or state game purposes. [2003 c 334 § 547; 1971 ex.s. c 234 § 15. Formerly RCW 79.68.910.]

**\*Reviser's note:** RCW 79.90.456 was recodified as RCW 79.105.050 pursuant to 2005 c 155 § 1003.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.280 Land use data bank—Contents, source.** (1) The department shall design expansion of its land use data bank to include additional information that will assist in the formulation, evaluation, and updating of intermediate and long-range goals and policies for land use, population growth and distribution, urban expansion, open space, resource preservation and utilization, and other factors which shape statewide development patterns and significantly influence the quality of the state's environment. The system shall be designed to permit inclusion of other lands in the state and will do so as financing and time permit.

(2) Such data bank shall contain any information relevant to the future growth of agriculture, forestry, industry, business, residential communities, and recreation; the wise use of land and other natural resources which are in accordance with their character and adaptability; the conservation and protection of the soil, air, water, and forest resources; the protection of the beauty of the landscape; and the promotion of the efficient and economical uses of public resources.

The information shall be assembled from all possible sources, including but not limited to, the federal government and its agencies, all state agencies, all political subdivisions of the state, all state operated universities and colleges, and any source in the private sector. All state agencies, all political subdivisions of the state, and all state universities and colleges are directed to cooperate to the fullest extent in the collection of data in their possession. Information shall be collected on all areas of the state but collection may emphasize one region at a time.

(3) The data bank shall make maximum use of computerized or other advanced data storage and retrieval methods. The department is authorized to engage consultants in data processing to ensure that the data bank will be as complete and efficient as possible.

(4) The data shall be made available for use by any governmental agency, research organization, university or college, private organization, or private person as a tool to evaluate the range of alternatives in land and resource planning in the state. [2003 c 334 § 545; 1971 ex.s. c 234 § 16. Formerly RCW 79.68.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

### PART 3 SUSTAINABLE HARVEST

**79.10.300 Definitions.** Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 79.10.310, 79.10.320, and 79.10.330.

(1) "Arrearage" means the summation of the annual sustainable harvest timber volume since July 1, 1979, less the sum of state timber sales contract default volume and the state timber sales volume deficit since July 1, 1979.

(2) "Default" means the volume of timber remaining when a contractor fails to meet the terms of the sales contract on the completion date of the contract or any extension thereof and timber returned to the state under \*RCW 79.01.1335.

(3) "Deficit" means the summation of the difference between the department's annual planned sales program volume and the actual timber volume sold.

(4) "Planning decade" means the ten-year period covered in the forest land management plan adopted by the board.

(5) "Sustainable harvest level" means the volume of timber scheduled for sale from state-owned lands during a planning decade as calculated by the department and approved by the board. [2003 c 334 § 537; 1987 c 159 § 2. Formerly RCW 79.68.035.]

\*Reviser's note: RCW 79.01.1335 expired December 31, 1984.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Legislative findings—1987 c 159:** "Adequately funding construction of the state's educational facilities represents one of the highest priority uses of state-owned lands. Many existing facilities need replacement and many additional facilities will be needed by the year 2000 to house students entering the educational system. The sale of timber from state-owned lands plays a key role in supporting the construction of school facilities. Currently and in the future, demands for school construction funds are expected to exceed available revenues.

The department of natural resources sells timber on a sustained yield basis. Since 1980, purchasers defaulted on sales contracts affecting over one billion one hundred million board feet of timber. Between 1981 and 1983, the department sold six hundred million board feet of timber less than the sustainable harvest level. As a consequence of the two actions, the depart-

ment entered their 1984-1993 planning decade with a timber sale arrearage which could be sold without adversely affecting the continued productivity of the state-owned forests." [1987 c 159 § 1.]

**79.10.310 "Sustained yield plans" defined.** "Sustained yield plans" as used in RCW 79.10.070, 79.44.003, and this chapter shall mean management of the forest to provide harvesting on a continuing basis without major prolonged curtailment or cessation of harvest. [2003 c 334 § 536; 1971 ex.s. c 234 § 3. Formerly RCW 79.68.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.320 Sustainable harvest program.** The department shall manage the state-owned lands under its jurisdiction which are primarily valuable for the purpose of growing forest crops on a sustained yield basis insofar as compatible with other statutory directives. To this end, the department shall periodically adjust the acreages designated for inclusion in the sustained yield management program and calculate a sustainable harvest level. [2003 c 334 § 538; 1987 c 159 § 3; 1971 ex.s. c 234 § 4. Formerly RCW 79.68.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Legislative findings—1987 c 159:** See note following RCW 79.10.300.

**79.10.330 Arrearages—End of decade.** If an arrearage exists at the end of any planning decade, the department shall conduct an analysis of alternatives to determine the course of action regarding the arrearage which provides the greatest return to the trusts based upon economic conditions then existing and forecast, as well as impacts on the environment of harvesting the additional timber. The department shall offer for sale the arrearage in addition to the sustainable harvest level adopted by the board of natural resources for the next planning decade if the analysis determined doing so will provide the greatest return to the trusts. [1987 c 159 § 4. Formerly RCW 79.68.045.]

**Legislative findings—1987 c 159:** See note following RCW 79.10.300.

**79.10.340 Sustainable harvest sale.** The board of natural resources shall offer for sale the sustainable harvest as identified in the 1984-1993 forest land management program, or as subsequently revised. In the event that decisions made by entities other than the department cause a decrease in the sustainable harvest the department shall offer additional timber sales from state-managed lands. [1989 c 424 § 9. Formerly RCW 43.30.390.]

**Effective date—1989 c 424:** See note following RCW 43.30.810.

### PART 4 COOPERATIVE FOREST MANAGEMENT AGREEMENTS

**79.10.400 Cooperative agreements.** The department with regard to state forest lands and state lands is hereby authorized to enter into cooperative agreements with the United States of America, Indian tribes, and private owners of timber land providing for coordinated forest management, including time, rate, and method of cutting timber and method of silvicultural practice on a sustained yield unit.

[2003 c 334 § 510; 1988 c 128 § 67; 1941 c 123 § 1; 1939 c 130 § 1; Rem. Supp. 1941 § 7879-11. Formerly RCW 79.60.010, 79.52.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.410 Cooperative units.** The department is hereby authorized and directed to determine, define, and declare informally the establishment of a sustained yield unit, comprising the land area to be covered by any such cooperative agreement and include therein such other lands as may be later acquired by the department and included under the cooperative agreement. [2003 c 334 § 511; 1988 c 128 § 68; 1939 c 130 § 2; RRS § 7879-12. Formerly RCW 79.60.020, 79.52.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.420 Limitations on agreements.** The department shall agree that the cutting from combined national forest lands, state forest lands, and state lands will be limited to the sustained yield capacity of these lands in the management unit as determined by the contracting parties and approved by the board for state forest lands and by the department for state lands. Cooperation with the private contracting party or parties shall be contingent on limitation of production to a specified amount as determined by the contracting parties and approved by the board for state forest lands and by the department for state lands and shall comply with the other conditions and requirements of such cooperative agreement. [2003 c 334 § 512; 1988 c 128 § 69; 1939 c 130 § 3; RRS § 7879-13. Formerly RCW 79.60.030, 79.52.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.430 Easements—Life of agreements.** The private contracting party or parties shall enjoy the right of easement over state forest lands and state lands included under said cooperative agreement for railway, road, and other uses necessary to the carrying out of the agreement. This easement shall be only for the life of the cooperative agreement and shall be granted without charge with the provision that payment shall be made for all merchantable timber cut, removed, or damaged in the use of such easement, payment to be based on the contract stumpage price for timber of like value and species and to be made within thirty days from date of cutting, removal, and/or damage of such timber and appraisal thereof by the department. [2003 c 334 § 513; 1988 c 128 § 70; 1941 c 123 § 2; Rem. Supp. 1941 § 7879-13a. Formerly RCW 79.60.040, 79.52.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.440 Sale agreements.** During the period when any such cooperative agreement is in effect, the timber on the state forest lands and state lands which the department determines shall be included in the sustained yield unit may, from time to time, be sold at not less than its appraised value as approved by the department for state lands and the board for state forest lands, due consideration being given to existing forest conditions on all lands included in the cooperative management unit and such sales may be made in the discretion of the department and the contracting party or parties in the cooperative sustained yield agreement. These sale agree-

ments shall contain such provisions as are necessary to effectually permit the department to carry out the purpose of this section and in other ways afford adequate protection to the public interests involved. [2003 c 334 § 514; 1988 c 128 § 71; 1939 c 130 § 4; RRS § 7879-14. Formerly RCW 79.60.050, 79.52.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.450 Minimum price.** The sale of timber upon state forest land and state land within such sustained yield unit or units shall be made for not less than the appraised value thereof as heretofore provided for the sale of timber on state lands. However, if in the judgment of the department, it is to the best interests of the state to do so, the timber or any such sustained yield unit or units may be sold on a stumpage or scale basis for a price per thousand not less than the appraised value thereof. The department shall reserve the right to reject any and all bids if the intent of this chapter will not be carried out. Permanency of local communities and industries, prospects of fulfillment of contract requirements, and financial position of the bidder shall all be factors included in this decision. [2003 c 334 § 515; 1988 c 128 § 72; 1939 c 130 § 5; RRS § 7879-15. Formerly RCW 79.60.060, 79.52.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.460 Contracts—Requirements.** A written contract shall be entered into with the successful bidder which shall fix the time when logging operations shall be commenced and concluded and require monthly payments for timber removed as soon as scale sheets have been tabulated and the amount of timber removed during the month determined, or require payments monthly in advance at the discretion of the board or the department. The board and the department shall designate the price per thousand to be paid for each species of timber and shall provide for supervision of logging operations, the methods of scaling and report, and shall require the purchaser to comply with all laws of the state of Washington with respect to fire protection and logging operation of the timber purchased; and shall contain such other provisions as may be deemed advisable. [2003 c 334 § 516; 1939 c 130 § 6; RRS § 7879-16. Formerly RCW 79.60.070, 79.52.050, part.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.470 Transfer or assignment of contracts.** No transfer or assignment by the purchaser shall be valid unless the transferee or assignee is acceptable to the department and the transfer or assignment approved by it in writing. [2003 c 334 § 517; 1988 c 128 § 73; 1941 c 123 § 3; Rem. Supp. 1941 § 7879-16a. Formerly RCW 79.60.080, 79.52.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.10.480 Performance bond—Cash deposit.** The purchaser shall, at the time of executing the contract, deliver a performance bond or sureties acceptable in regard to terms and amount to the department, but such performance bond or sureties shall not exceed ten percent of the estimated value of the timber purchased computed at the stumpage price and at no time shall exceed a total of fifty thousand dollars. The

purchaser shall also be required to make a cash deposit equal to twenty percent of the estimated value of the timber purchased, computed at the stumpage bid. Upon failure of the purchaser to comply with the terms of the contract, the performance bond or sureties may be forfeited to the state upon order of the department.

At no time shall the amount due the state for timber actually cut and removed exceed the amount of the deposit as set forth in this section. The amount of the deposit shall be returned to the purchaser upon completion and full compliance with the contract by the purchaser, or it may, at the discretion of the purchaser, be applied on final payment on the contract. [2003 c 334 § 518; 1988 c 128 § 74; 1941 c 123 § 4; 1939 c 130 § 7; Rem. Supp. 1941 § 7879-17. Formerly RCW 79.60.090, 79.52.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

### Chapter 79.11 RCW STATE LAND SALES

#### Sections

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#### PART 1 SALE PROCEDURES

**79.11.005 Sale of administrative sites.** (1) The department is authorized to sell any real property not designated or acquired as state forest lands, but acquired by the state, either

in the name of the forest board, the forestry board, or the division of forestry, for administrative sites, lien foreclosures, or other purposes whenever it shall determine that the lands are no longer or not necessary for public use.

(2) The sale may be made after public notice to the highest bidder for such a price as approved by the governor, but not less than the fair market value of the real property, plus the value of improvements thereon. Any instruments necessary to convey title must be executed by the governor in a form approved by the attorney general.

(3) All amounts received from the sale must be credited to the fund of the department of government that is responsible for the acquisition and maintenance of the property sold. [2003 c 334 § 201; 1988 c 128 § 12; 1955 c 121 § 1. Formerly RCW 76.01.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.11.010 Maximum and minimum acreage subject to sale—Exception—Approval by legislature or regents.**

(1) Not more than one hundred and sixty acres of any land granted to the state by the United States shall be offered for sale in one parcel and no university lands shall be offered for sale except by legislative directive or with the consent of the board of regents of the University of Washington.

(2) Any land granted to the state by the United States may be sold for any lawful purpose in such minimum acreage as may be fixed by the department. [2003 c 334 § 321; 1982 c 54 § 1; 1979 ex.s. c 109 § 4; 1971 ex.s. c 200 § 1; 1970 ex.s. c 46 § 1; 1967 ex.s. c 78 § 1; 1959 c 257 § 5; 1955 c 394 § 1; 1927 c 255 § 24; RRS § 7797-24. Prior: 1915 c 147 § 15; 1909 p 256 § 4; 1907 c 256 § 5; 1903 c 91 § 3; 1897 c 89 § 11. Formerly RCW 79.01.096, 79.12.030.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**Severability—1971 ex.s. c 200:** "If any provision of this 1971 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 200 § 6.]

*Public lands, funds for support of common school fund: State Constitution Art. 9 § 3.*

*School and granted lands: State Constitution Art. 16.*

*University of Washington: Chapter 28B.20 RCW.*

**79.11.020 Powers/duties of department.** The department shall exercise general supervision and control over the sale for any purpose of land granted to the state for educational purposes. It shall be the duty of the department to prepare all reports, data, and information in its records pertaining to any such proposed sale. The department shall have power, if it deems it advisable, to order that any particular sale of such land be held in abeyance pending further inspection and report. The department may cause such further inspection and report of land involved in any proposed sale to be made and for that purpose shall have power to employ its own inspectors, cruisers, and other technical assistants. Upon the basis of such further inspection and report the department shall determine whether or not, and the terms upon which, the proposed sale shall be consummated. [2003 c 334 § 318;

1988 c 128 § 54; 1941 c 217 § 3; Rem. Supp. 1941 § 7797-23A. Formerly RCW 79.01.094, 43.65.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.030 Terms of sale.** All state lands shall be sold on terms and conditions established by the board in light of market conditions. Sales by real estate contract or for cash may be authorized. All deferred payments shall draw interest at such rate as may be fixed, from time to time, by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of sale and in the contract of sale. All remittances for payment of either principal or interest shall be forwarded to the department. [2003 c 334 § 359; 1984 c 222 § 11; 1982 1st ex.s. c 21 § 159; 1969 ex.s. c 267 § 1; 1959 c 257 § 24; 1927 c 255 § 54; RRS § 7797-54. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.216, 79.12.380.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1984 c 222:** See RCW 79.19.900 and 79.19.901.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.11.040 Who may purchase—Application—Fees.** Any person desiring to purchase any state lands shall file an application on the forms provided by the department and accompanied by the fees authorized under RCW 79.02.250. [2003 c 334 § 311; 1982 1st ex.s. c 21 § 151; 1979 ex.s. c 109 § 2; 1967 c 163 § 4; 1959 c 257 § 3; 1927 c 255 § 22; RRS § 7797-22. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.088, 79.12.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**Severability—1979 ex.s. c 109:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 109 § 24.]

**Effective date—1979 ex.s. c 109:** "The provisions of this 1979 amendatory act shall take effect September 26, 1979." [1979 ex.s. c 109 § 25.]

**79.11.060 Entire section may be inspected.** Whenever application is made to purchase less than a section of unplatted state lands, the department may order the inspection of the entire section or sections of which the lands applied for form a part. [2003 c 334 § 327; 1959 c 257 § 9; 1927 c 255 § 28; RRS § 7797-28. Prior: 1909 c 223 § 2. Formerly RCW 79.01.112, 79.12.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.070 Survey to determine area subject to sale.** The department may cause any state lands to be surveyed for the purpose of ascertaining and determining the area subject to sale. [2003 c 334 § 330; 1982 1st ex.s. c 21 § 153; 1959 c 257 § 11; 1927 c 255 § 30; RRS § 7797-30. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.120, 79.12.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.11.080 Inspection and appraisal.** When in the judgment of the department, there is sufficient interest for the appraisalment and sale of state lands, the department shall cause each tract of land to be inspected as to its topography, development potential, forestry, agricultural, and grazing qualities, coal, mineral, stone, gravel, or other valuable material, the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway, and location of utilities. In case of an application to purchase land granted to the state for educational purposes, the department shall submit a report to the board, which board shall fix the value per acre of each lot, block, subdivision, or tract proposed to be sold in one parcel, which value shall be not less than ten dollars per acre. In case of applications to purchase state lands, other than lands granted to the state for educational purposes and capitol building lands, the department shall appraise and fix the value thereof. [2003 c 334 § 314; 1979 ex.s. c 109 § 3; 1967 ex.s. c 78 § 3; 1959 c 257 § 4; 1941 c 217 § 2; 1935 c 136 § 1; 1927 c 255 § 23; Rem. Supp. 1941 § 7797-23. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.092, 79.12.020.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.11.090 Sales by public auction—Appraised value.** Except as provided in RCW 79.11.340, all sales of land under this chapter shall be at public auction, to the highest bidder, on the terms prescribed by law and as specified in the notice provided under RCW 79.11.120, and no land shall be sold for less than its appraised value. [2003 c 334 § 352; (2003 c 381 § 3 repealed by 2006 c 42 § 3); 1989 c 148 § 3; 1988 c 136 § 1; 1979 c 54 § 2; 1975 1st ex.s. c 45 § 1; 1971 ex.s. c 123 § 3; 1969 ex.s. c 14 § 4; 1961 c 73 § 3; 1959 c 257 § 21; 1933 c 66 § 1; 1927 c 255 § 50; RRS § 7797-50. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.200, 79.12.340.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.100 Date of sale limited by time of appraisal—Purchasers required to make independent appraisals.** In no case shall any lands granted to the state be offered for sale under this chapter unless the same shall have been appraised by the board within ninety days prior to the date fixed for the sale. A purchaser of state lands may not rely upon the appraisal prepared by the department or made by the board for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals. [2004 c 199 § 211; 2003 c 334 § 328; 2001 c 250 § 2; 1982 1st ex.s. c 21 § 152; 1959 c 257 § 10; 1935 c 55 § 1 (adding section 29 to 1927 c 255 in lieu of original section 29 which was vetoed); RRS § 7797-29. Prior: 1909 c 223 § 2. Formerly RCW 79.01.116, 79.12.080.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.11.110 Separate appraisal of improvements.**

Before any state lands are offered for sale, the department may establish the fair market value of those authorized improvements not owned by the state. [2003 c 334 § 336; 1979 ex.s. c 109 § 5; 1959 c 257 § 14; 1927 c 255 § 34; RRS § 7797-34. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.136, 79.12.130.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.11.120 Sale procedure—Fixing date, place, and time of sale.** When the department decides to sell any state lands, or with the consent of the board of regents of the University of Washington, or by legislative directive, decides to sell any lot, block, tract, or tracts of university lands, it is the duty of the department to fix the date, place, and time of sale.

(1) No sale may be conducted on any day that is a legal holiday.

(2) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(3) Sales must take place:

(a) At the department's regional office administering the respective sale; or

(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of state lands are situated. [2003 c 334 § 344; (2003 c 381 § 2 repealed by 2006 c 42 § 3); 2001 c 250 § 6; 1997 c 116 § 2; 1989 c 148 § 2; 1988 c 136 § 3; 1983 c 2 § 17. Prior: 1982 1st ex.s. c 21 § 156; 1982 c 27 § 1; 1971 ex.s. c 123 § 2; 1969 ex.s. c 14 § 3; 1959 c 257 § 18; 1927 c 255 § 46; RRS § 7797-46; prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.184, 79.12.300.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1983 c 2 § 17:** "Section 17 of this act shall take effect on July 1, 1983." [1983 c 2 § 18.]

**Severability—1983 c 2:** See note following RCW 18.71.030.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*County auditor, transfer of duties:* RCW 79.02.090.

*School and granted lands, manner and terms of sale:* State Constitution Art. 16 § 2.

**79.11.130 Notice—Pamphlet—List of lands to be sold—Certain valuable materials exempt.** (1) The department shall give notice of the sale by advertisement published not fewer than two times during a four-week period prior to the time of sale in at least one newspaper of general circulation in the county in which the whole, or any part of any lot, block, or tract of land to be sold is situated, and by posting a copy of the notice in a conspicuous place in the department's

Olympia office, the region headquarters administering such sale, and in the office of the county auditor of such county. The notice shall specify the place, date, and time of sale, the appraised value of the land, describe with particularity each parcel of land to be sold, and specify that the terms of sale will be available in the region headquarters and the department's Olympia office.

(2) The advertisement is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals.

(3) The department shall print a list of all public lands and the appraised value thereof, that are to be sold. This list should be published in a pamphlet form to be issued at least four weeks prior to the date of any sale of the lands. The list should be organized by county and by alphabetical order, and provide sale information to prospective buyers. The department shall retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested so to do, shall mail copies of the pamphlet as issued to any requesting applicant. The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(4) The sale of valuable materials appraised at an amount not exceeding two hundred fifty thousand dollars, as described in \*RCW 79.01.200 and as authorized by the board of natural resources, are exempt from the requirements of subsection (3) of this section. [2003 c 381 § 4; 2003 c 334 § 346; 2001 c 250 § 7; 1982 1st ex.s. c 21 § 157; 1959 c 257 § 19; 1927 c 255 § 47; RRS § 7797-47. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.188, 79.12.310.]

**Reviser's note:** \*(1) RCW 79.01.200 was recodified as RCW 79.11.090 pursuant to 2003 c 334 § 556.

(2) This section was amended by 2003 c 334 § 346 and by 2003 c 381 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*County auditor, transfer of duties:* RCW 79.02.090.

**79.11.135 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 3.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

**79.11.140 Additional advertising.** The department is authorized to expend any sum in additional advertising of such sale as it determines to be for the best interest of the state. [2003 c 334 § 348; 1927 c 255 § 48; RRS § 7797-48. Prior: 1923 c 19 § 1; 1897 c 89 § 14. Formerly codified as RCW 79.01.192, 79.12.320.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.150 Conduct of sales.** Sales by public auction under this chapter shall be conducted under the direction of the department or its authorized representative. The department or department's representative are hereinafter referred to as auctioneers. On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, money order payable to the order of the department of natural resources, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the land offered for sale, together with any fee required by law for the issuance of contracts, deeds, or bills of sale. The deposit may, when prescribed in notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, bank draft, or money order, made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, money order, or other acceptable payment method payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale. The auctioneer shall deliver to the purchaser a memorandum of his or her purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale. The auctioneer shall at once send to the department the cash, certified check, cashier's check, bank draft, money order, bid guarantee, or other acceptable payment method received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the proceedings with reference to such sales as may be required by the department. [2003 c 334 § 354; 2001 c 250 § 8; 1982 c 27 § 2; 1979 c 54 § 3; 1961 c 73 § 4; 1959 c 257 § 22; 1927 c 255 § 51; RRS § 7797-51. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.204, 79.12.350.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.160 Deposit by purchaser to cover value of improvements.** A purchaser of state lands who is not the owner of the authorized improvements thereon shall deposit with the auctioneer making the sale, at the time of the sale, the appraised value of such improvements. The department shall pay to the owner of the improvements the sum deposited. However, when the improvements are owned by the state in accordance with the provisions of this chapter or have been acquired by the state by escheat or operation of law, the purchaser may pay for such improvements in equal annual installments at the same time, and with the same rate of interest, as the installments of the purchase price of the land are paid, and under such rules regarding use and care of the improvements as may be fixed by the department. [2003 c 334 § 338; 1979 ex.s. c 109 § 7; 1935 c 57 § 1; 1927 c 255 § 37; RRS § 7797-37. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.148, 79.12.160.]

(2008 Ed.)

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.11.165 Reoffer.** Any sale which has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.11.130 and 79.11.140. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between 10:00 a.m. and 4:00 p.m. [2003 c 334 § 349; 1965 ex.s. c 23 § 3; 1959 c 257 § 20; 1927 c 255 § 49; RRS § 7797-49. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 28. Formerly RCW 79.01.196, 79.12.330.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.175 Confirmation of sale.** The department shall enter upon its records a confirmation of sale and issue to the purchaser a contract of sale if the following conditions have been met:

- (1) No fewer than ten days have passed since the auctioneer's report has been filed;
- (2) No affidavit is filed with the department showing that the interests of the state in the sale was injuriously affected by fraud or collusion;
- (3) It appears from the auctioneer's report that:
  - (a) The sale was fairly conducted; and
  - (b) The purchaser was the highest bidder and the bid was not less than the appraised value of the land sold;
- (4) The department is satisfied that the land sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price bid by the purchaser;
- (5) The payment required by law to be made at the time of making the sale has been made;
- (6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 357; 1982 1st ex.s. c 21 § 158; 1959 c 257 § 23; 1927 c 255 § 53; RRS § 7797-53. Prior: 1907 c 256 § 7; 1903 c 79 § 2; 1897 c 89 § 15; 1895 c 178 § 29. Formerly RCW 79.01.212, 79.12.370.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*County auditor, transfer of duties:* RCW 79.02.090.

**79.11.190 Readvertisement of lands not sold.** If any land offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the commissioner it shall be expedient to do so. Whenever any person applies to the department in writing to have such land offered for sale, agrees to pay at least the appraised value thereof and deposits with the department at the time of making such application a sufficient sum of money to pay the cost of advertising such sale, the land shall again be advertised and offered for sale as provided in this chapter. [2003 c 334 § 356; 1927 c 255 § 52; RRS § 7797-52. Prior: 1923 c 19 § 1; 1913 c 36 § 1; 1909 c 223 § 4; 1907 c 152 § 1; 1897 c 89 § 14; 1895 c 178 § 24. Formerly RCW 79.01.208, 79.12.360.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.200 Form of contract—Rate of interest.** The purchaser of state lands under the provisions of this chapter, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state, to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, in which the purchaser shall covenant to make the payments of principal and interest, computed from the date the contract is issued, when due, and that the purchaser will pay all taxes and assessments that may be levied or assessed on such land, and that on failure to make the payments as prescribed in this chapter when due all rights of the purchaser under said contract may, at the election of the commissioner, acting for the state, be forfeited, and that when forfeited the state shall be released from all obligation to convey the land. The purchaser's rights under the real estate contract shall not be forfeited except as provided in chapter 61.30 RCW.

The contract provided for in this section shall be executed in duplicate, and one copy shall be retained by the purchaser and the other shall be filed in the department's Olympia office.

The commissioner may, as deemed advisable, extend the time for payment of principal and interest on contracts heretofore issued, and contracts to be issued under this chapter.

The department shall notify the purchaser of any state lands in each instance when payment on the purchaser's contract is overdue, and that the purchaser is liable to forfeiture if payment is not made when due. [2003 c 334 § 361; 1985 c 237 § 18; 1982 1st ex.s. c 21 § 162; 1959 c 257 § 26; 1927 c 255 § 57; RRS § 7797-57. Prior: 1897 c 89 §§ 17, 18, 27; 1895 c 178 §§ 30, 31. Formerly RCW 79.01.228, 79.12.400.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—Application—1985 c 237:** See RCW 61.30.905 and 61.30.910.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.11.210 Reservation in contract.** Each and every contract for the sale of, and each deed to, state lands shall contain the following reservation: "The party of the first part hereby expressly saves, excepts, and reserves out of the grant hereby made, unto itself and its successors and assigns forever, all oils, gases, coal, ores, minerals, and fossils of every name, kind, or description, and which may be in or upon said lands above described, or any part thereof, and the right to explore the same for such oils, gases, coal, ores, minerals, and fossils; and it also hereby expressly saves and reserves out of the grant hereby made, unto itself and its successors and assigns forever, the right to enter by itself or its agents, attorneys, and servants upon said lands, or any part or parts thereof, at any and all times, for the purpose of opening, developing, and working mines thereon, and taking out and removing therefrom all such oils, gases, coal, ores, minerals, and fossils, and to that end it further expressly reserves out of the grant hereby made, unto itself its successors and assigns, forever, the right by its or their agents, servants, and attorneys at any and all times to erect, construct, maintain, and use all such buildings, machinery, roads, and railroads, sink such shafts, remove such soil, and to remain on said lands or any part thereof for the business of mining and to occupy as much

of said lands as may be necessary or convenient for the successful prosecution of such mining business, hereby expressly reserving to itself and its successors and assigns, as aforesaid, generally, all rights and powers in, to, and over said land, whether herein expressed or not, reasonably necessary or convenient to render beneficial and efficient the complete enjoyment of the property and the rights hereby expressly reserved.

No rights shall be exercised under the foregoing reservation, by the state or its successors or assigns, until provision has been made by the state or its successors or assigns, to pay to the owner of the land upon which the rights reserved under this section to the state or its successors or assigns, are sought to be exercised, full payment for all damages sustained by said owner, by reason of entering upon said land: PROVIDED, That if said owner from any cause whatever refuses or neglects to settle said damages, then the state or its successors or assigns, or any applicant for a lease or contract from the state for the purpose of prospecting for or mining valuable minerals, or option contract, or lease, for mining coal, or lease for extracting petroleum or natural gas, shall have the right to institute such legal proceedings in the superior court of the county wherein the land is situate, as may be necessary to determine the damages which said owner of said land may suffer." [1982 1st ex.s. c 21 § 161; 1927 c 255 § 56; RRS § 7797-56. Prior: 1917 c 149 § 1; 1915 c 147 § 3; 1907 c 256 § 3; 1897 c 89 § 16; 1895 c 178 §§ 25, 29. Formerly RCW 79.01.224, 79.12.410.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.11.220 Relinquishment to United States, in certain cases of reserved mineral rights.** Whenever the state shall have heretofore sold or may hereafter sell any state lands and issued a contract of purchase or executed a deed of conveyance therefor, in which there is a reservation of all oils, gases, coal, ores, minerals, and fossils of every kind and of rights in connection therewith, and the United States of America shall have acquired for governmental purposes and uses all right, title, claim, and interest of the purchaser, or grantee, or his or her successors in interest or assigns, in or to the contract or the land described therein, except such reserved rights, and no oils, gases, coal, ores, minerals, or fossils of any kind have been discovered or are known to exist in or upon such lands, the commissioner may, if it is advisable, cause to be prepared a deed of conveyance to the United States of America of such reserved rights, and certify the same to the governor in the manner provided by law for deeds to state lands, and the governor shall be, and hereby is authorized to execute, and the secretary of state to attest, a deed of conveyance for such reserved rights to the United States of America. [2003 c 334 § 449; 1931 c 105 § 1; RRS § 8124-1. Formerly RCW 79.08.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Certification of deed to governor:* RCW 79.02.270.

## PART 2 PLATTING

**79.11.250 Lands subject to platting.** The department shall cause all unplatted state lands, within the limits of any

incorporated city or town, or within two miles of the boundary thereof, where the valuation of such lands is found by appraisal to exceed one hundred dollars per acre, to be platted into lots and blocks, of not more than five acres in a block, before the same are offered for sale, and not more than one block shall be offered for sale in one parcel. The department may designate or describe any such plat by name, or numeral, or as an addition to such city or town, and, upon the filing of any such plat, it shall be sufficient to describe the lands, or any portion thereof, embraced in such plat, according to the designation prescribed by the department. Such plats shall be made in duplicate, and when properly authenticated by the department, one copy thereof shall be filed in the office of the department and one copy in the office of the county auditor in which the lands are situated, and the auditor shall receive and file such plats without compensation or fees and make record thereof in the same manner as required by law for the filing and recording of other plats in the auditor's office.

In selling lands subject to the provisions of Article 16, section 4, of the state Constitution, the department will be permitted to sell the land within the required land subdivision without being required to complete the construction of streets, utilities, and such similar things as may be required by any local government entity in the instance of the platting of private or other property within their area of jurisdiction. However, no construction will be permitted on lands so sold until the purchaser or purchasers collectively comply with all of the normal requirements for platting. [2003 c 334 § 324; 1967 ex.s. c 78 § 4; 1959 c 257 § 6; 1927 c 255 § 25; RRS § 7797-25. Prior: 1909 c 223 § 2; 1907 c 256 § 5; 1903 c 74 § 1; 1897 c 89 § 11; 1895 c 178 §§ 17, 18. Formerly RCW 79.01.100, 79.12.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Platting: State Constitution Art. 16 § 4.*

*Recording—Duties of county auditor: Chapter 65.04 RCW.*

**79.11.260 Vacation—Vested rights.** When, in the judgment of the department the best interest of the state will be thereby promoted, the department may vacate any plat or plats covering state lands, and vacate any street, alley, or other public place therein situated. The vacation of any such plat shall not affect the vested rights of any person or persons theretofore acquired therein. In the exercise of this authority to vacate the department shall enter an order in the records of its office and at once forward a certified copy thereof to the county auditor of the county wherein the platted lands are located. The auditor shall cause the same to be recorded in the miscellaneous records of the auditor's office and noted on the plat by reference to the volume and page of the record. [2003 c 334 § 325; 1959 c 257 § 7; 1927 c 255 § 26; RRS § 7797-26. Prior: 1903 c 127 §§ 1, 2. Formerly RCW 79.01.104, 79.12.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.270 Vacation—Preference right to purchase.** Whenever all the owners and other persons having a vested interest in the lands abutting on any street, alley, or other public place, or any portion thereof, in any plat of state lands, lying outside the limits of any incorporated city or town, peti-

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tion the department, the department may vacate any such tract, alley, or public place or part thereof and in such case all such streets, alleys, or other public places or portions thereof so vacated shall be platted, appraised, and sold or leased in the manner provided for the platting, appraisal, and sale or lease of similar lands. However, where the area vacated can be determined from the plat already filed it shall not be necessary to survey such area before platting the same. The owner or owners, or other persons having a vested interest in the lands abutting on any of the lots, blocks, or other parcels platted upon the lands embraced within any area vacated as provided in this section, shall have a preference right for the period of sixty days from the date of filing with the department such plat and the appraisal of such lots, blocks, or other parcels of land, to purchase the same at the appraised value thereof. [2003 c 334 § 326; 1959 c 257 § 8; 1927 c 255 § 27; RRS § 7797-27. Prior: 1903 c 127 § 3. Formerly RCW 79.01.108, 79.12.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

### PART 3 OTHER SALE PROVISIONS

**79.11.290 Leased lands reserved from sale.** State lands held under lease as provided in RCW 79.13.370 shall not be offered for sale, or sold, during the life of the lease, except upon application of the lessee. [2003 c 334 § 380; 1927 c 255 § 75; RRS § 7797-75. Prior: 1897 c 89 § 23. Formerly RCW 79.01.300, 79.12.560.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.310 Sale of lands with low-income potential.** (1) The purpose of this section is to provide revenues to the state and its various taxing districts through the sale of public lands which are currently used primarily for grazing and similar low priority purposes, by enabling their development as irrigated agricultural lands.

(2) All applications for the purchase of lands of the foregoing character, when accompanied by a proposed plan of development of the lands for a higher priority use, shall be individually reviewed by the board. The board shall thereupon determine whether the sale of the lands is in the public interest and upon an affirmative finding shall offer such lands for sale. However, any such parcel of land shall be sold to the highest bidder but only at a bid equal to or higher than the last appraised valuation thereof as established by appraisers for the department for any such parcel of land. Further, any lands lying within United States reclamation areas, the sale price of which is limited or otherwise regulated pursuant to federal reclamation laws or regulations thereunder, need not be offered for sale so long as such limitations or regulations are applicable thereto.

(3) The department shall adopt appropriate rules defining properties of such irrigated agricultural potential and shall take into account the economic benefits to the locality in classifying such properties for sale. [2003 c 334 § 381; 1967 ex.s. c 78 § 5. Formerly RCW 79.01.301.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.11.320 Assessments added to purchase price.** (1)

When any public land of the state is offered for sale and the state has paid assessments for local improvements, or benefits, to any municipal corporation authorized by law to assess the same, the amount of the assessments paid by the state shall be added to the appraised value of such land.

(2) The amount of assessments paid by the state shall be paid by the purchaser in addition to the amount due the state for the land.

(3) In case of sale by contract under RCW 79.11.220 the purchaser may pay the assessments in equal annual installments at the same time, and with the same rate of interest upon deferred payments, as the installments of the purchase price for the land are paid.

(4) No deed shall be executed until such assessments have been paid. [2003 c 334 § 430; 1927 c 255 § 192; RRS § 7797-192. Prior: 1925 ex.s. c 180 § 1; 1909 c 154 § 7; 1907 c 73 § 3; 1905 c 144 § 5. Formerly RCW 79.01.728, 79.44.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Assessments paid by state to be added to purchase price of land: RCW 79.44.095.*

**79.11.340 Sale of acquired lands.** (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state by escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except such lands that are conveyed or devised to the state for a particular purpose.

(2) When the department determines to sell the lands, they shall initially be offered for sale either at public auction or direct sale to public agencies as provided in this chapter.

(3) If the lands are not sold at public auction, the department may, with approval of the board, market the lands through persons licensed under chapter 18.85 RCW or through other commercially feasible means at a price not lower than the land's appraised value.

(4) Necessary marketing costs may be paid from the sale proceeds. For the purpose of this subsection, necessary marketing costs include reasonable costs associated with advertising the property and paying commissions.

(5) Proceeds of the sale shall be deposited into the appropriate fund in the state treasury unless the grantor in any deed or the testator in case of a devise specifies that the proceeds of the sale be devoted to a particular purpose. [2003 c 334 § 399.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

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**PART 1  
GENERAL PROVISIONS**

**79.13.010 Lease of state lands—General.** (1) Subject to other provisions of this chapter and subject to rules adopted by the board, the department may lease state lands for purposes it deems advisable, including, but not limited to, commercial, industrial, residential, agricultural, and recreational purposes in order to obtain a fair market rental return to the state or the appropriate constitutional or statutory trust, and if the lease is in the best interest of the state or affected trust.

(2) Notwithstanding any provision in this chapter to the contrary, in leases for residential purposes, the board may waive or modify any conditions of the lease if the waiver or modification is necessary to enable any federal agency or lending institution authorized to do business in this state or elsewhere in the United States to participate in any loan secured by a security interest in a leasehold interest.

(3) Any land granted to the state by the United States may be leased for any lawful purpose in such minimum acreage as may be fixed by the department.

(4) The department shall exercise general supervision and control over the lease of state lands for any lawful purpose.

(5) State lands leased or for which permits are issued or contracts are entered into for the prospecting and extraction of valuable materials, coal, oil, gas, or other hydrocarbons are subject to the provisions of chapter 79.14 RCW.

(6) The department may also lease or lease development rights on state lands held for the benefit of the common schools to public agencies, as defined in RCW 79.17.200. [2007 c 504 § 1; 2003 c 334 § 366; 1984 c 222 § 12; 1979 ex.s. c 109 § 10. Formerly RCW 79.01.242.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Savings—2007 c 504:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 504 § 4.]

**Severability—2007 c 504:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 504 § 5.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1984 c 222:** See RCW 79.19.900 and 79.19.901.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.13.020 Who may lease.** Any person desiring to lease any state lands for any purpose not prohibited by law may make application to the department on forms provided by the department and accompanied by the fee provided under RCW 79.02.250. [2003 c 334 § 370.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.030 Lease contents.** Every lease issued by the department must contain:

(1) The specific use or uses to which the land is to be employed;

(2) The improvements required, if any;

(3) Provisions providing that the rent is payable in advance in quarterly, semiannual, or annual payments as determined by the department, or as agreed upon by the lessee and the department;

(4) Other terms and conditions as the department deems advisable, subject to review by the board, to achieve the purposes of the state Constitution and this chapter. [2003 c 334 § 367.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.040 Inspections—Surveys.** (1) When in the judgment of the department there is sufficient interest for the lease of state lands, it must inspect each tract of land as to its topography, development potential, forestry, agricultural, and grazing qualities; the presence of coal, mineral, stone, gravel, or other valuable materials; the distance from any city or town, railroad, river, irrigation canal, ditch, or other waterway; and location of utilities.

(2) The department may survey any state lands to determine the area subject to lease.

(3) It is the duty of the department to prepare all reports, data, and information in its records pertaining to any proposed lease.

(4) The department may order that any particular application for a lease be held in abeyance pending further inspection and report by the department. Based on the further inspection and report, the department must determine whether or not, and the terms upon which, the proposed lease is consummated. [2003 c 334 § 316.]

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**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.050 Improvements.** (1) Only improvements authorized in writing by the department or consistent with the approved plan of development may be placed on the state lands under lease. Improvements are subject to the following conditions:

(a) A minimum reasonable time must be allowed for completion of the improvements;

(b) Improvements become the property of the state at the expiration or termination of the lease unless otherwise agreed upon under the terms of the lease; and

(c) The department may require improvements to be removed at the end of the lease term at the lessee's expense.

(2) Any improvements placed upon any state lands without the written authority of the department become the property of the state and are considered part of the land, unless required to be removed by the lessee under subsection (1)(c) of this section. [2003 c 334 § 315.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.060 Lease terms.** (1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years;

(d) The lands may be leased for residential purposes not to exceed ninety-nine years; and

(e) The lands and development rights on state lands held for the benefit of the common schools may be leased to public agencies, as defined in RCW 79.17.200, not to exceed ninety-nine years. The leases may include provisions for renewal of lease terms.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or

recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend the terms and conditions of the lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section. [2007 c 504 § 2; 2003 c 334 § 323.]

**Savings—Severability—2007 c 504:** See notes following RCW 79.13.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.070 Forfeiture.** If any rental is not paid on or before its due date according to the terms of the lease, the department must declare a forfeiture, cancel the lease, and eject the lessee from the land. The department may extend the time for payment of annual rental when in its judgment the interests of the state will not be prejudiced by the extension. [2003 c 334 § 375.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.080 Disposition of crops on forfeited land.** Whenever the state of Washington shall become the owner of any growing crop, or crop grown upon, any state lands, by reason of the forfeiture, cancellation, or termination of any contract or lease of state lands, or from any other cause, the department is authorized to arrange for the harvesting, sale, or other disposition of such crop in such manner as the department deems for the best interest of the state, and shall pay the proceeds of any such sale into the state treasury to be credited to the same fund as the rental of the lands upon which the crop was grown would be credited. [2003 c 334 § 342; 1927 c 255 § 43; RRS § 7797-43. Prior: 1915 c 89 §§ 1, 2. Formerly RCW 79.01.172, 79.12.240.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.090 Leases to United States for national defense.** State lands may be leased to the United States for national defense purposes at the fair rental value thereof as determined by the department, for a period of five years or less. Such leases may be made without competitive bidding at public auction and without payment in advance by the United States government of the first year's rental. Such leases otherwise shall be negotiated and arranged in the same manner as other leases of state lands. [2003 c 334 § 450; 1941 c 66 § 1; Rem. Supp. 1941 § 8122-1. Formerly RCW 79.08.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 2 LEASE PROCEDURE

**79.13.110 Types of lease authorization.** (1) The department may authorize the use of state land by lease at state auction for initial leases or by negotiation for existing leases.

(2) Leases that authorize commercial, industrial, or residential uses may be entered into by public auction or negotiations at the option of the department. Negotiations are subject to rules approved by the board.

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(3) Leases to public agencies, as defined in RCW 79.17.200, may be entered into by negotiations. Property subject to lease agreements under this section must be appraised at fair market value. The leases may allow for a lump sum payment for the entire term of the lease at the beginning of the lease. The department shall calculate lump sum payments using professional appraisal standards. Renewal terms for the leases must include provisions for calculating appropriate payments upon renewal. [2007 c 504 § 3; 2003 c 334 § 368.]

**Savings—Severability—2007 c 504:** See notes following RCW 79.13.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.120 Notice of leasing.** (1) The department must give thirty days' notice of leasing by public auction. The notice must:

(a) Specify the place and time of auction, bid deposit if any, the appraised value, describe each parcel to be leased, and the terms and conditions of the lease;

(b) Be posted in some conspicuous place in the county auditor's office and the department's regional headquarters administering the lease; and

(c) Be published in at least two newspapers of general circulation in the area where the state land subject to public auction leasing is located.

(2) Notice of intent to lease by negotiation must be published in at least two newspapers of general circulation in the area where the state land subject to lease negotiation is located. The notice must be published within the ninety days preceding commencement of negotiations.

(3) The department is authorized to conduct any additional advertising that it determines to be in the best interest of the state. [2003 c 334 § 369.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.130 Lease procedure—Scheduling auctions.** (1) When the department decides to lease any state lands at public auction it is the duty of the department to fix the date, place, and time when such lands shall be offered for lease.

(2) The auction must be conducted between the hours of 10:00 a.m. and 4:00 p.m.

(3) The auction must take place:

(a) At the department's regional office administering the lease; or

(b) When leases are auctioned by the county auditor, in the county where the state land to be leased is situated at such place as specified in the notice. [2003 c 334 § 372; 1979 ex.s. c 109 § 11; 1927 c 255 § 62; RRS § 7797-62. Prior: 1897 c 89 § 20. Formerly RCW 79.01.248, 79.12.440.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.13.140 Public auction procedure.** (1) All leasing by public auction shall be by oral or by sealed bid. Leases will be awarded to the highest bidder on the terms prescribed by law and as specified in the notice of leasing described in

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RCW 79.13.120. No lease may be awarded for less than the appraised value.

(2) The public auction must be conducted under the direction of the department or by the auditor for the county in which the land to be leased is located. The person conducting the auction is called the auctioneer.

(3) The person to whom a lease of state lands is awarded shall pay the rental in accordance with that person's bid to the auctioneer in cash or by certified check or accepted draft on any bank in this state.

(4) The auctioneer shall send to the department such cash, certified check, draft, or money order received from the successful bidder, together with any additional report of the auction proceeding as may be required by the department.

(5) The department may reject any and all bids when the interests of the state justify it. If the department rejects a bid, it must refund any rental and bid deposit to the bidder upon return of the receipts issued.

(6) If the department approves any leasing made by the auctioneer, it must proceed to issue a lease to the successful bidder upon a form approved by the attorney general.

(a) All leases must be in duplicate and both copies signed by the lessee and the department.

(b) One signed copy must be forwarded to the lessee and one signed copy must be kept in the office of the department. [2003 c 334 § 373.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.150 Lease/rent of acquired lands.** (1) Except as provided in RCW 79.10.030(2), the department shall manage and control all lands acquired by the state through escheat, deed of sale, gift, devise, or under RCW 79.19.010 through 79.19.110, except lands that are conveyed or devised to the state for a particular purpose.

(2) The department shall lease the lands in the same manner as school lands.

(3) The department may employ agents to rent any escheated, deeded, or devised lands, or lands acquired under RCW 79.19.010 through 79.19.110 for such rental, time, and manner as the department directs.

(a) The agent shall not rent the property for a period longer than one year.

(b) No tenant is entitled to compensation for any improvement that he or she makes on the property.

(c) The agent shall cause repairs to be made to the property as the department directs.

(d) Rental shall be transmitted monthly to the department. The agent shall deduct the cost of any repairs made under (c) of this subsection, together with such compensation and commission as the department authorizes from the rental.

(4) Proceeds of any lease or rental shall be deposited into the appropriate fund in the state treasury. If the grantor in any deed or the testator in case of a devise specifies that the proceeds be devoted to a particular purpose, such proceeds shall be so applied. [2003 c 334 § 400.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.160 Appraisal of improvement before lease.** Before any state lands are offered for lease, or are assigned, the department may establish the fair market value

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of those authorized improvements not owned by the state. In the event that agreement cannot be reached between the state and the lessee on the fair market value, such valuation shall be submitted to a review board of appraisers. The board is comprised of the following members: One member to be selected by the lessee and that person's expenses shall be borne by the lessee; one member selected by the state and that person's expenses shall be borne by the state; these members so selected shall mutually select a third member and that person's expenses shall be shared equally by the lessee and the state. The majority decision of this appraisal review board shall be binding on both parties. For this purpose, "fair market value" is defined as: The highest price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller, each prudently knowledgeable and assuming the price is not affected by undue stimulus. All damages and wastes committed upon such lands and other obligations due from the lessee shall be deducted from the appraised value of the improvements. However, the department on behalf of the respective trust may purchase at fair market value those improvements if it appears to be in the best interest of the state from the resource management cost account created in RCW 79.64.020. [2003 c 334 § 337.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.170 Water right for irrigation as improvement.**

At any time during the existence of any lease of state lands, except lands leased for the purpose of mining of valuable minerals, or coal, or extraction of petroleum or gas, the lessee with the consent of the department, first obtained, by written application, showing the cost and benefits to be derived thereby, may purchase or acquire a water right appurtenant to and in order to irrigate the land leased. If such water right shall become a valuable and permanent improvement to the lands, then, in case of the sale or lease of such lands to other parties, the lessee acquiring such water right shall be entitled to receive the value thereof as in case of other improvements which have been placed upon the land by the lessee. [2003 c 334 § 376; 1959 c 257 § 32; 1927 c 255 § 71; RRS § 7797-71. Prior: 1903 c 79 § 7; 1897 c 89 § 31; 1895 c 178 § 41. Formerly RCW 79.01.284, 79.12.530.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.180 Record of leases.** The department shall keep a full and complete record of all leases issued under the provisions of the preceding sections and the payments made thereon. [2003 c 334 § 374; 1979 ex.s. c 109 § 16; 1933 c 139 § 1; 1927 c 255 § 67; RRS § 7797-67. Prior: 1915 c 147 § 6; 1909 c 223 § 5; 1897 c 89 § 25. Formerly RCW 79.01.268, 79.12.490.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

PART 3  
AGRICULTURAL/GRAZING LEASES

**79.13.320 Share crop leases authorized.** The department may lease state lands on a share crop basis. Upon receipt of a written application to lease state lands, the department shall make such investigations as it deems necessary. If the department finds that such a lease would be advantageous to the state, it may proceed with the leasing of such lands on such terms and conditions as other state lands are leased. [2003 c 334 § 466; 1979 ex.s. c 109 § 20; 1961 c 73 § 10; 1949 c 203 § 1; Rem. Supp. 1949 § 7895-1. Formerly RCW 79.12.570.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

**79.13.330 Harvest, storage of crop—Notice—Warehouse receipt.** When crops that are covered by a share crop lease are harvested, the lessee shall give written notice to the department that the crop is being harvested, and shall also give to the department the name and address of the warehouse or elevator to which such crops are sold or in which such crops will be stored. The lessee shall also serve on the owner of such warehouse or elevator a written copy of so much of the lease as shall show the percentage of division of the proceeds of such crop as between lessee and lessor. The owner of such warehouse or elevator shall make out a warehouse receipt, which receipt may be negotiable or nonnegotiable as directed by the state, showing the percentage of crops belonging to the state, and the respective gross and net amounts, grade, and location thereof, and shall deliver to the department the receipt for the state's percentage of such crops within ten days after the owner has received such instructions. [2003 c 334 § 467; 2000 c 18 § 1; 1949 c 203 § 4; Rem. Supp. 1949 § 7895-4. Formerly RCW 79.12.600.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.340 Sale, storage, or other disposition of crops.** The department shall sell the crops covered by the warehouse receipt required in RCW 79.13.330 and may comply with the provisions of any federal act or the regulation of any federal agency with relation to the storage or disposition of the crop. [2003 c 334 § 468; 1977 c 20 § 1; 1949 c 203 § 5; Rem. Supp. 1949 § 7895-5. Formerly RCW 79.12.610.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.350 Insurance of crop—Division of cost.** The lessee under any share crop lease issued by the department shall notify the department as soon as an estimated yield of the crop can be obtained. The estimate must be immediately submitted to the department, which is hereby authorized to insure the crop from loss by fire or hail. The cost of such insurance shall be paid by the state and lessee on the same basis as the crop returns to which each is entitled. [2003 c 334 § 469; 1949 c 203 § 6; Rem. Supp. 1949 § 7895-6. Formerly RCW 79.12.620.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.360 Application of other provisions to share crop leases.** RCW 79.13.320 through 79.13.360 shall not repeal the provisions of the general leasing statutes of the state of Washington and all of the general provisions of such statutes with reference to filing of applications, deposits required therewith, forfeiture of deposits, cancellation of leases for noncompliance and general procedures shall apply to all leases issued under the provisions of RCW 79.13.320 through 79.13.360. [2003 c 334 § 470; 1949 c 203 § 7; Rem. Supp. 1949 § 7895-7. Formerly RCW 79.12.630.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.370 Grazing leases—Restrictions.** The lessee, or assignee of any lease leased for grazing purposes, shall not use the land for any other purpose than that expressed in the lease. However, the lessee, or assignee, may surrender the lease to the department and request the department to issue an agricultural lease in lieu of the original lease. The department is authorized to issue a new lieu lease for the unexpired portion of the term of the lease surrendered upon payment of the fixed rental based on an appraisal of the land for agricultural purposes. Under the lieu lease the lessee shall be permitted to clear, plow, and cultivate the lands as in the case of an original lease for agricultural purposes. [2003 c 334 § 379; 1959 c 257 § 34; 1927 c 255 § 74; RRS § 7797-74. Prior: 1903 c 79 § 8. Formerly RCW 79.01.296, 79.12.550.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.380 Livestock grazing on lieu lands.** The department has the power, and it is its duty, to adopt, from time to time, reasonable rules for the grazing of livestock on such tracts and areas of the indemnity or lieu lands of the state contiguous to national forests and suitable for grazing purposes, as have been, or shall be, obtained from the United States under the provisions of RCW 79.02.120. [2004 c 199 § 212; 2003 c 334 § 491; 1923 c 85 § 1; RRS § 7826-1. Formerly RCW 79.28.040.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.390 Grazing permits—United States government.** The department may issue permits for the grazing of livestock on the lands described in RCW 79.13.380 in such manner and upon such terms, as near as may be, as permits are, or shall be, issued by the United States for the grazing of livestock on national forest lands. The department may charge such fees as it deems adequate and advisable. The department may cooperate with the United States for the protection and preservation of the grazing areas on the state lands contiguous to national forests and for the administration of the provisions of RCW 79.13.380 and 79.13.390. [2003 c 334 § 492; 1983 c 3 § 202; 1923 c 85 § 2; RRS § 7826-2. Formerly RCW 79.28.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.400 Improvement of grazing ranges—Agreements.** The department is hereby authorized on behalf of the state of Washington to enter into cooperative agreements with any person as defined in RCW 1.16.080 for the improve-

ment of the state's grazing ranges by the clearing of debris, maintenance of trails and water holes, and other requirements for the general improvement of the grazing ranges. [2003 c 334 § 493; 1963 c 99 § 1; 1955 c 324 § 1. Formerly RCW 79.28.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.410 Improvement of grazing ranges—Extension of permit.** In order to encourage the improvement of grazing ranges by holders of grazing permits, the department shall consider (1) extension of grazing permit periods to a maximum of ten years; and (2) reduction of grazing fees, in situations where the permittee contributes or agrees to contribute to the improvement of the range, financially, by labor, or otherwise. [2003 c 334 § 494; 1985 c 197 § 3; 1979 ex.s. c 109 § 21; 1955 c 324 § 2. Formerly RCW 79.28.080.]

**Reviser's note:** This section does not apply to state tidelands, shorelands, harbor areas, and the beds of navigable waters. See RCW 79.02.095.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—1979 ex.s. c 109:** See notes following RCW 79.11.040.

#### PART 4 OTHER LEASES

**79.13.500 Amateur radio repeater stations—Legislative intent.** The department leases state lands and space on towers located on state lands to amateur radio operators for their repeater stations. These sites are necessary to maintain emergency communications for public safety and for use in disaster relief and search and rescue support.

The licensed amateur radio operators of the state provide thousands of hours of public communications service to the state every year. Their communication network spans the entire state, based in individual residences and linked across the state through a series of mountain-top repeater stations. The amateur radio operators install and maintain their radios and the electronic repeater stations at their own expense. The amateur radio operators who use their equipment to perform public services should not bear the sole responsibility for supporting the electronic repeater stations.

In recognition of the essential role performed by the amateur radio operators in emergency communications, the legislature intends to reduce the rental fee paid by the amateur radio operators while assuring the department full market rental for the use of state-owned property. [2003 c 334 § 461; 1988 c 209 § 1. Formerly RCW 79.12.015.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.510 Amateur radio electronic repeater sites and units—Reduced rental rates—Frequencies.** The department shall determine the lease rate for amateur radio electronic repeater sites and units available for public service communication. For the amateur operator to qualify for a rent of one hundred dollars per year per site, the amateur operator shall do one of the following: (1) Register and remain in good standing with the state's radio amateur civil emergency services and amateur radio emergency services organizations, or (2) if an amateur group, sign a statement of public service developed by the department.

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The legislature's biennial appropriations shall account for the estimated difference between the one hundred dollar per year, per site, per lessee paid by the qualified amateur operators and the fair market amateur rent, as established by the department.

The amateur radio regulatory authority approved by the federal communication commission shall assign the radio frequencies used by amateur radio lessees. The department shall develop guidelines to determine which lessees are to receive reduced rental fees as moneys are available by legislative appropriation to pay a portion of the rent for electronic repeaters operated by amateur radio operators. [2003 c 334 § 462; 1995 c 105 § 1; 1988 c 209 § 2. Formerly RCW 79.12.025.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.13.520 Nonprofit television reception improvements districts—Rental of public lands—Intent.** The department shall determine the fair market rental rate for leases to nonprofit television reception improvement districts. It is the intent of the legislature to appropriate general funds to pay a portion of the rent charged to nonprofit television reception improvement districts. It is the further intent of the legislature that such a lessee pay an annual lease rent of fifty percent of the fair market rental rate, as long as there is a general fund appropriation to compensate the trusts for the remainder of the fair market rental rate. [2003 c 334 § 464; 1994 c 294 § 1. Formerly RCW 79.12.055.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1994 c 294:** "This act shall take effect July 1, 1994." [1994 c 294 § 3.]

**79.13.530 Geothermal resources—Guidelines for development.** In an effort to increase potential revenue to the geothermal account, the department shall, by December 1, 1991, adopt rules providing guidelines and procedures for leasing state-owned land for the development of geothermal resources. [2003 c 334 § 465; 1991 c 76 § 3. Formerly RCW 79.12.095.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Geothermal account: Chapter 43.140 RCW.*

#### PART 5 ECOSYSTEM STANDARDS

**79.13.600 Findings—Salmon stocks—Grazing lands—Coordinated resource management plans.** The legislature finds that many wild stocks of salmonids in the state of Washington are in a state of decline. Stocks of salmon on the Columbia and Snake rivers have been listed under the federal endangered species act, and the bull trout has been petitioned for listing. Some scientists believe that numerous other stocks of salmonids in the Pacific Northwest are in decline or possibly extinct. The legislature declares that to lose wild stocks is detrimental to the genetic diversity of the fisheries resource and the economy, and will represent the loss of a vital component of Washington's aquatic ecosystems. The legislature further finds that there is a continuing loss of habitat for fish and wildlife. The legislature declares that steps must be taken in the areas of wildlife and fish hab-

itat management, water conservation, wild salmonid stock protection, and education to prevent further losses of Washington's fish and wildlife heritage from a number of causes including urban and rural subdivisions, shopping centers, industrial park, and other land use activities.

The legislature finds that the maintenance and restoration of Washington's rangelands and shrub-steppe vegetation is vital to the long-term benefit of the people of the state. The legislature finds that approximately one-fourth of the state is open range or open-canopied grazable woodland. The legislature finds that these lands provide forage for livestock, habitat for wildlife, and innumerable recreational opportunities including hunting, hiking, and fishing.

The legislature finds that the development of coordinated resource management plans, that take into consideration the needs of wildlife, fish, livestock, timber production, water quality protection, and rangeland conservation on all state-owned grazing lands will improve the stewardship of these lands and allow for the increased development and maintenance of fish and wildlife habitat and other multipurpose benefits the public derives from these lands.

The legislature finds that the state currently provides insufficient technical support for coordinated resource management plans to be developed for all state-owned lands and for many of the private lands desiring to develop such plans. As a consequence of this lack of technical assistance, our state grazing lands, including fish and wildlife habitat and other resources provided by these lands, are not achieving their potential. The legislature also finds that with many state lands being intermixed with private grazing lands, development of coordinated resource management plans on state-owned and managed lands provides an opportunity to improve the management and enhance the conditions of adjacent private lands.

A purpose of chapter 4, Laws of 1993 sp. sess. is to establish state grazing lands as the model in the state for the development and implementation of standards that can be used in coordinated resource management plans and to thereby assist the timely development of coordinated resource management plans for all state-owned grazing lands. Every lessee of state lands who wishes to participate in the development and implementation of a coordinated resource management plan shall have the opportunity to do so. [1996 c 163 § 2. Prior: 1993 sp.s. c 4 § 1. Formerly RCW 79.01.2951.]

**79.13.610 Grazing lands—Fish and wildlife goals—Technical advisory committee—Implementation.** (1) By December 31, 1993, the department of fish and wildlife shall develop goals for the wildlife and fish that this agency manages, to preserve, protect, and perpetuate wildlife and fish on shrub steppe habitat or on lands that are presently agricultural lands, rangelands, or grazable woodlands. These goals shall be consistent with the maintenance of a healthy ecosystem.

(2) By July 31, 1993, the conservation commission shall appoint a technical advisory committee to develop standards that achieve the goals developed in subsection (1) of this section. The committee members shall include but not be limited to technical experts representing the following interests: Agriculture, academia, range management, utilities, environmental groups, commercial and recreational fishing interests,

the Washington rangelands committee, Indian tribes, the department of fish and wildlife, the department of natural resources, the department of ecology, conservation districts, and the department of agriculture. A member of the conservation commission shall chair the committee.

(3) By December 31, 1994, the committee shall develop standards to meet the goals developed under subsection (1) of this section. These standards shall not conflict with the recovery of wildlife or fish species that are listed or proposed for listing under the federal endangered species act. These standards shall be utilized to the extent possible in development of coordinated resource management plans to provide a level of management that sustains and perpetuates renewable resources, including fish and wildlife, riparian areas, soil, water, timber, and forage for livestock and wildlife. Furthermore, the standards are recommended for application to model watersheds designated by the Northwest power planning council in conjunction with the conservation commission. The maintenance and restoration of sufficient habitat to preserve, protect, and perpetuate wildlife and fish shall be a major component included in the standards and coordinated resource management plans. Application of standards to privately owned lands is voluntary and may be dependent on funds to provide technical assistance through conservation districts.

(4) The conservation commission shall approve the standards and shall provide them to the departments of natural resources and fish and wildlife, each of the conservation districts, and Washington State University cooperative extension service. The conservation districts shall make these standards available to the public and for coordinated resource management planning. Application to private lands is voluntary.

(5) The department of natural resources shall implement practices necessary to meet the standards developed pursuant to this section on department managed agricultural and grazing lands, consistent with the trust mandate of the Washington state Constitution and Title 79 RCW. The standards may be modified on a site-specific basis as needed to achieve the fish and wildlife goals, and as determined by the department of fish and wildlife, and the department of natural resources. Existing lessees shall be provided an opportunity to participate in any site-specific field review. Department agricultural and grazing leases issued after December 31, 1994, shall be subject to practices to achieve the standards that meet those developed pursuant to this section. [1998 c 245 § 162; 1993 sp.s. c 4 § 5. Formerly RCW 79.01.2951.]

**Findings—Grazing lands—1993 sp.s. c 4:** See RCW 79.13.600.

**79.13.620 Purpose—Ecosystem standards.** (1) It is the purpose of chapter 163, Laws of 1996 that all state agricultural lands, grazing lands, and grazable woodlands shall be managed in keeping with the statutory and constitutional mandates under which each agency operates. Chapter 163, Laws of 1996 is consistent with section 1, chapter 4, Laws of 1993 sp. sess.

(2) The ecosystem standards developed under chapter 4, Laws of 1993 sp. sess. for state-owned agricultural and grazing lands are defined as desired ecological conditions. The standards are not intended to prescribe practices. For this

reason, land managers are encouraged to use an adaptive management approach in selecting and implementing practices that work towards meeting the standards based on the best available science and evaluation tools.

(3) For as long as the chapter 4, Laws of 1993 sp. sess. ecosystem standards remain in effect, they shall be applied through a collaborative process that incorporates the following principles:

(a) The land manager and lessee or permittee shall look at the land together and make every effort to reach agreement on management and resource objectives for the land under consideration;

(b) They will then discuss management options and make every effort to reach agreement on which of the available options will be used to achieve the agreed-upon objectives;

(c) No land manager or owner ever gives up his or her management prerogative;

(d) Efforts will be made to make land management plans economically feasible for landowners, managers, and lessees and to make the land management plan compatible with the lessee's entire operation;

(e) Coordinated resource management planning is encouraged where either multiple ownerships, or management practices, or both, are involved;

(f) The department of fish and wildlife shall consider multiple use, including grazing, on lands owned or managed by the department of fish and wildlife where it is compatible with the management objectives of the land; and

(g) The department shall allow multiple use on lands owned or managed by the department where multiple use can be demonstrated to be compatible with RCW 79.10.100, 79.10.110, and 79.10.120.

(4) The ecosystem standards are to be achieved by applying appropriate land management practices on riparian lands and on the uplands in order to reach the desired ecological conditions.

(5) The legislature urges that state agencies that manage grazing lands make planning and implementation of chapter 163, Laws of 1996, using the coordinated resource management and planning process, a high priority, especially where either multiple ownerships, or multiple use resources objectives, or both, are involved. In all cases, the choice of using the coordinated resource management planning process will be a voluntary decision by all concerned parties including agencies, private landowners, lessees, permittees, and other interests. [2003 c 334 § 378; 1996 c 163 § 1. Formerly RCW 79.01.2955.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Chapter 79.14 RCW**

**MINERAL, COAL, OIL, AND GAS LEASES**

(Formerly: Oil and gas leases on state lands)

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PART 1  
OIL AND GAS

**79.14.010 Definitions.** As used in this chapter, "public lands" means lands and areas belonging to or held in trust by the state, including tide and submerged lands of the Pacific Ocean or any arm thereof and lands of every kind and nature including mineral rights reserved to the state. [2003 c 334 § 471; 1967 c 163 § 6; 1955 c 131 § 1. Prior: 1937 c 161 § 1. Formerly RCW 78.28.280.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**1967 c 163 adopted to implement Amendment 42—Severability—1967 c 163:** See notes following RCW 64.16.005.

**79.14.020 Leases authorized—Terms—Duration.**

The department is authorized to lease public lands for the purpose of prospecting for, developing, and producing oil, gas, or other hydrocarbon substances. Each such lease is to be composed of not more than six hundred forty acres or an entire government surveyed section, except a lease on river bed, lake bed, tide and submerged lands which is to be composed of not more than one thousand nine hundred twenty acres. All leases shall contain such terms and conditions as may be prescribed by the rules adopted by the commissioner in accordance with the provisions of this chapter. Leases may be for an initial term of from five up to ten years and shall be extended for so long thereafter as lessee shall comply with one of the following conditions: (1) Prosecute development on the leased land with the due diligence of a prudent operator upon encountering oil, gas, or other hydrocarbon substances; (2) produce any of said substances from the leased lands; (3) engage in drilling, deepening, repairing, or re-drilling any well thereon; or (4) participate in a unit plan to which the commissioner has consented under RCW 78.52.450. [2003 c 334 § 472; 1986 c 34 § 1; 1985 c 459 § 2; 1955 c 131 § 2. Prior: 1937 c 161 §§ 2, 3; 1927 c 255 §§ 175, 176. Formerly RCW 78.28.290.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1985 c 459:** See note following RCW 79.14.510.

**79.14.030 Rental fees—Minimum royalties.** The department shall require as a prerequisite to the issuing of any lease a rental as set by the board but not less than one dollar and twenty-five cents per acre or such prorated share of the rental per acre as the state's mineral rights ownership for the first year of such lease, payable in advance to the department at the time the lease is awarded and a like rental annually in advance thereafter so long as such lease remains in force. However, the rental shall cease at such time as royalty accrues to the state from production from such lease. Commencing with the lease year beginning on or after oil, gas, or other hydrocarbon substances are first produced in quantities deemed paying quantities by lessee on the land subject to such lease, lessee shall pay a minimum royalty as set by the board but not less than five dollars per acre or fraction thereof or such prorated share of the rental per acre as the state's mineral rights ownership at the expiration of each year. Royalties payable by the lessee shall be the royalties from production as provided for in RCW 79.14.070 or the minimum royalty provided herein, whichever is greater. However, if such a lease is unitized, the minimum royalty shall be payable only on the leased acreage after production is obtained in such paying quantities from such lease. [2003 c 334 § 473; 1985 c 459 § 3; 1980 c 151 § 1; 1955 c 131 § 3. Prior: 1937 c 161 § 4; 1927 c 255 § 176. Formerly RCW 78.28.300.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1985 c 459:** See note following RCW 79.14.510.

**79.14.040 Compensation to owners of private rights and to state for surface damage.** No lessee shall commence any operation upon lands covered by the lease until such lessee has provided for compensation to owners of private rights therein according to law, or in lieu thereof, filed a surety bond with the department in an amount sufficient in the opinion of

the commissioner to cover such compensation until the amount of compensation is determined by agreement, arbitration, or judicial decision and has provided for compensation to the state of Washington for damage to the surface rights of the state in accordance with the rules adopted by the department. [2003 c 334 § 474; 1955 c 131 § 4. Prior: 1937 c 161 § 6; 1927 c 255 § 175. Formerly RCW 78.28.310.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.050 Drilling operations beyond lease term—Lease provisions.** All leases shall provide that if oil, gas or other hydrocarbon substances are not encountered on or before the end of the initial term, the lease shall not terminate if the lessee is then prosecuting drilling operations on the leased lands with due diligence, in which event the same shall remain in force so long as lessee shall keep one string of tools in operation on the leased lands, allowing not to exceed ninety days between the completion of one well and the commencement of the next until such substances are encountered in quantities deemed paying quantities by lessee. All leases shall further provide that if oil, gas or other hydrocarbon substances in paying quantities shall have been discovered on the leased lands prior to the expiration of the initial term, then in the event at any time after the expiration of the initial term production on the leased land shall cease from any cause, the lease shall not terminate provided lessee resumes operations for the drilling of a well or the restoration of production within ninety days from such cessation. The lease shall remain in force during the prosecution of such operations, and if production results therefrom, then so long as production continues. [1985 c 459 § 4; 1955 c 131 § 5. Prior: 1937 c 161 § 7; 1927 c 255 § 180. Formerly RCW 78.28.320.]

**Severability—1985 c 459:** See note following RCW 79.14.510.

**79.14.060 Surrender of lease—Liability.** Every lessee shall have the option of surrendering his lease as to all or any portion or portions of the land covered thereby at any time and shall be relieved of all liability thereunder with respect to the land so surrendered except for monetary payments theretofore accrued and except for physical damage to the premises embraced by his lease which have been occasioned by his operations. [1955 c 131 § 6. Prior: 1937 c 161 §§ 8, 10. Formerly RCW 78.28.330.]

**79.14.070 Royalties.** All oil and gas leases issued pursuant to this chapter shall be upon a royalty of not less than twelve and one-half percent of the gross production of all oil, gas or other hydrocarbons produced and saved from the lands covered by such lease. [1955 c 131 § 7. Prior: 1937 c 161 § 9; 1927 c 255 § 176. Formerly RCW 78.28.340.]

**79.14.080 Leases of land within a geologic structure.** Oil and gas leases shall not be issued on unleased lands which have been classified by the department as being within a known geologic structure of a producing oil or gas field, except as follows: Upon application of any person, the department shall lease in areas not exceeding six hundred forty acres, at public auction, any or all unleased lands within such geologic structure to the person offering the greatest cash bonus therefor at such auction. Notice of the offer of

such lands for lease will be given by publication in a newspaper of general circulation in Olympia, Washington, and in such other publications as the department may authorize. The first publication shall be at least thirty days prior to the date of sale. [2003 c 334 § 475; 1955 c 131 § 8. Prior: 1937 c 161 §§ 5, 11. Formerly RCW 78.28.350.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.090 Cancellation or forfeiture of leases—New leases.** The department is authorized to cancel any lease issued as provided in this section for nonpayment of rentals or royalties or nonperformance by the lessee of any provision or requirement of the lease. However, before any such cancellation is made, the department shall mail to the lessee by registered mail, addressed to the post office address of such lessee shown by the records of the department, a notice of intention to cancel such lease specifying the default for which the lease is subject to cancellation. If lessee shall, within thirty days after the mailing of said notice to the lessee, commence and thereafter diligently and in good faith prosecute the remedying of the default specified in such notice, then no cancellation of the lease shall be entered by the department. Otherwise, the cancellation shall be made and all rights of the lessee under the lease shall automatically terminate, except that lessee shall retain the right to continue its possession and operation of any well or wells in regard to which lessee is not in default. Further, failure to pay rental and royalty required under leases within the time prescribed therein shall automatically and without notice work a forfeiture of such leases and of all rights thereunder. Upon the expiration, forfeiture, or surrender of any lease, no new lease covering the lands or any of them embraced by such expired, forfeited, or surrendered lease, shall be issued for a period of ten days following the date of such expiration, forfeiture, or surrender. If more than one application for a lease covering such lands or any of them shall be made during such ten-day period the department shall issue a lease to such lands or any of them to the person offering the greatest cash bonus for such lease at a public auction to be held at the time and place and in the manner as the department shall adopt by rule. [2003 c 334 § 476; 1955 c 131 § 9. Prior: 1937 c 161 § 12; 1927 c 255 § 179. Formerly RCW 78.28.360.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.100 Cooperative or unit plans—Communization or drilling agreements.** For the purpose of more properly conserving the natural resources of any oil or gas pool, field, or like area, lessees thereon and their representatives may unite with each other, or jointly or separately with others, in collectively adopting and operating under a cooperative or unit plan of development or operation of such pool, field, or like area, or any part thereof, whenever determined and certified by the department to be necessary or advisable in the public interest. The department is authorized, in its discretion, with the consent of the holders of leases involved, in order to conform with the terms and conditions of any such cooperative or unit plan to establish, alter, change, or revoke exploration, drilling, producing, rental, and royalty requirements of such leases with like consent on the part of the lessees, in connection with the institution and operation of any

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such cooperative or unit plan as the department may deem necessary or proper to secure the proper protection of the public interest.

When separate tracts cannot be independently developed and operated in conformity with an established well spacing or development program, any lease or any portion thereof may be pooled with other lands, whether or not owned by the state of Washington under a communization or drilling agreement providing for an apportionment of production or royalties among the separate tracts of land comprising the drilling or spacing unit when determined by the department to be in the public interest, and operations or production pursuant to such an agreement shall be deemed to be operations or production as to each such lease committed thereto.

The term of any lease that has become the subject of any cooperative or unit plan of development or operation of a pool, field, or like area, which plan has the approval of the department, shall continue in force until the termination of such plan, and in the event such plan is terminated prior to the expiration of any such lease, the original term of such lease shall continue. Any lease under this chapter hereinafter committed to any such plan embracing lands that are in part within and in part outside of the area covered by any such plan, shall be segregated in separate leases as to the lands committed and the land not committed as of the effective date of unitization. [2003 c 334 § 477; 1955 c 131 § 10. Prior: 1937 c 161 § 14. Formerly RCW 78.28.370.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.110 Customary provisions in leases.** The department is authorized to insert in any lease issued under the provisions of this chapter such terms as are customary and proper for the protection of the rights of the state and of the lessee and of the owners of the surface of the leased lands not in conflict with the provisions of this chapter. [2003 c 334 § 478; 1955 c 131 § 11. Prior: 1937 c 161 § 15; 1927 c 255 § 178. Formerly RCW 78.28.380.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.120 Rules.** The department is required to adopt and publish, for the information of the public, all reasonable rules necessary for carrying out the provisions of this chapter. The department may amend or rescind any rule adopted under the authority contained in this section. However, no rule or amendment of the same or any order rescinding any rule shall become effective until after thirty days from the adoption of the same by publication in a newspaper of general circulation published at the state capitol and shall take effect and be in force at times specified therein. All rules of the department and all amendments or revocations of existing rules shall be recorded in an appropriate book or books, shall be adequately indexed, and shall be kept in the office of the department and shall constitute a public record. Such rules of the department shall be printed in pamphlet form and furnished to the public free of cost. [2003 c 334 § 479; 1955 c 131 § 12. Prior: 1937 c 161 § 16; 1927 c 255 § 178. Formerly RCW 78.28.390.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.130 Wells to be located minimum distance from boundaries—Exception.** Each lease issued under this chapter shall provide that without the approval of the department, no well shall be drilled on the lands demised thereby in such manner or at such location that the producing interval thereof shall be less than three hundred thirty feet from any of the outer boundaries of the demised lands, except that if the right to oil, gas, or other hydrocarbons underlying adjoining lands be vested in private ownership, such approval shall not be required. [2003 c 334 § 480; 1955 c 131 § 13. Prior: 1937 c 161 § 17. Formerly RCW 78.28.400.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.140 Rights-of-way over public lands—Payment for timber.** Any person granted a lease under the provisions of this chapter shall have a right-of-way over public lands, as provided by law, when necessary, for the drilling, recovering, saving, and marketing of oil, gas, or other hydrocarbons. Before any such right-of-way grant shall become effective, a written application for, and a plat showing the location of such a right-of-way and the land necessary for the well site and drilling operations, with reference to adjoining lands, shall be filed with the department. All timber on the right-of-way and the land necessary for the drilling operation, shall be appraised by the commissioner and paid for in money by the person to whom the lease is granted. [2003 c 334 § 481; 1955 c 131 § 14. Prior: 1937 c 161 § 18. Formerly RCW 78.28.410.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.150 Sales of timber—Rules.** All sales of timber, as prescribed in this chapter, shall be made subject to the right, power, and authority of the department to adopt rules governing the manner of the removal of the merchantable timber upon any lands embraced within any lease with the view of protecting the same and other timber against destruction or injury by fire or from other causes. The rules shall be binding upon the lessee, his or her successors in interest, and shall be enforced by the department. [2003 c 334 § 482; 1955 c 131 § 15. Prior: 1937 c 161 § 19. Formerly RCW 78.28.420.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.160 Development after discovery.** After the discovery of oil, gas or other hydrocarbons in paying quantities, lessee shall proceed to develop the oil, gas or other hydrocarbons in the lands covered thereby through the drilling of such wells as will efficiently extract the oil, gas or other hydrocarbons therefrom and such development shall take into account the productiveness of the producing horizon, the depth at which it occurs, the average cost of wells, the market requirements obtaining at any given time, and the maintenance of proper oil and gas ratios. [1955 c 131 § 16. Prior: 1937 c 161 § 20. Formerly RCW 78.28.430.]

**79.14.170 Spacing and offsetting of wells.** All leases shall contain such terms, conditions, and provisions as will protect the interests of the state with reference to spacing of wells for the purpose of offsetting any wells on privately

owned lands. [1955 c 131 § 17. Prior: 1937 c 161 § 21. Formerly RCW 78.28.440.]

**79.14.180 Lands may be withheld from leasing.** Nothing contained in this chapter shall be construed as requiring the department to offer any tract or tracts of land for lease; but the department shall have power to withhold any tract or tracts from leasing for oil, gas, or other hydrocarbons, if, in its judgment, the best interest of the state will be served by so doing. [2003 c 334 § 483; 1955 c 131 § 18. Prior: 1937 c 161 § 24. Formerly RCW 78.28.450.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.190 Payment of royalty share—Royalty in kind.** The lessee shall pay to the department the market value at the well of the state's royalty share of oil and other hydrocarbons except gas produced and saved and delivered by lessee from the lease. In lieu of receiving payment for the market value of the state's royalty share of oil, the department may elect that such royalty share of oil be delivered in kind at the mouth of the wells into tanks provided by the department. Lessee shall pay to the department the state's royalty share of the sale price received by the lessee for gas produced and saved and sold from the lease. If such gas is not sold but is used by lessee for the manufacture of gasoline or other products, lessee shall pay to the department the market value of the state's royalty share of the residue gas and other products, less a proper allowance for extraction costs. [2003 c 334 § 484; 1955 c 131 § 19. Prior: 1937 c 161 § 25. Formerly RCW 78.28.460.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.200 Prior permits validated—Relinquishment for new leases.** All exploration permits issued by the department prior to June 9, 1955, which have not expired or been legally canceled for nonperformance by the permittees, are hereby declared to be valid and existing contracts with the state of Washington, according to their terms and provisions. The obligation of the state to conform to the terms and provisions of such permits is hereby recognized, and the department is directed to accept and recognize all such permits according to their express terms and provisions. No repeal or amendment made by this chapter shall affect any right acquired under the law as it existed prior to such repeal or amendment, and such right shall be governed by the law in effect at time of its acquisition. Any permit recognized and confirmed by this section may be relinquished to the state by the permittee, and a new lease or, if such permit contains more than six hundred forty acres, new leases in the form provided for in this chapter, shall be issued in lieu of same and without bonus therefor; but the new lease or leases so issued shall be as provided for in this chapter and governed by the applicable provisions of this chapter instead of by the law in effect prior thereto. [2003 c 334 § 485; 1955 c 131 § 20. Prior: 1937 c 161 § 26. Formerly RCW 78.28.470.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.210 Assignments and subleases of leases.** Any oil or gas lease issued under the authority of this chapter may be assigned or subleased as to all or part of the acreage

included therein, subject to final approval by the department, and as to either a divided or undivided interest therein to any person. Any assignment or sublease shall take effect as of the first day of the lease month following the date of filing with the department. However, at the department's discretion, it may disapprove an assignment of a separate zone or deposit under any lease or of a part of a legal subdivision. Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee, any conditions in the assignment or sublease to the contrary notwithstanding. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and upon approval of such assignment by the department, the assignor shall be released and discharged from all obligations thereafter accruing with respect to the assigned lands. [2003 c 334 § 486; 1955 c 131 § 21. Prior: 1937 c 161 § 27. Formerly RCW 78.28.480.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.220 Appeal from rulings of commissioner.** Any applicant for a lease under this chapter, feeling aggrieved by any order, decision, or rule of the commissioner, concerning the same, may appeal therefrom to the superior court of the county wherein such lands are situated, as provided by RCW 79.02.030. [2003 c 334 § 487; 1955 c 131 § 22. Prior: 1937 c 161 § 28. Formerly RCW 78.28.490.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 2 PROSPECTING AND MINING

**79.14.300 Prospecting and mining contracts—Authority.** The department may issue permits and leases for prospecting, and contracts for the mining of valuable minerals and specified materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any public lands belonging to or held in trust by the state, or which have been sold and the minerals thereon reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. [2003 c 334 § 401; 1987 c 20 § 1; 1965 c 56 § 2; 1927 c 255 § 155; RRS § 7797-155. Prior: 1917 c 148 § 1; 1915 c 152 § 1; 1897 c 102 § 1. Formerly RCW 79.01.616, 78.20.010, part, and 78.20.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.310 Prospecting and mining—Public auction of mining contracts.** The department may offer nonrenewable placer mining contracts by public auction for the mining of gold under terms set by the department. In the case of lands known to contain valuable minerals or specified materials in commercially significant quantities, the department may offer mining contracts by public auction. [2003 c 334 § 402; 1987 c 20 § 2. Formerly RCW 79.01.617.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.315 Recreational prospecting permits.** The department may issue permits for recreational mineral prospecting in designated areas containing noneconomic mineral deposits. The term of a permit shall not exceed one year. Des-

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ignated areas, equipment allowed, methods of prospecting, as well as other appropriate permit conditions, shall be set in rules adopted by the department. Fees shall be set by the board of natural resources. [1987 c 20 § 15. Formerly RCW 79.01.651.]

**79.14.320 Department may adopt rules.** The department may adopt rules necessary for carrying out the mineral leasing, contracting, and permitting provisions of RCW 79.14.300 through 79.14.450. Such rules shall be enacted under chapter 34.05 RCW. The department may amend or rescind any rules adopted under this section. The department shall publish these rules in pamphlet form for the information of the public. [2003 c 334 § 403; 1987 c 20 § 3; 1983 c 3 § 200; 1965 c 56 § 3. Formerly RCW 79.01.618.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.330 Prospecting lease—Application fee.** Any person desiring to obtain a lease for mineral prospecting purposes upon any lands in which the mineral rights are owned or administered by the department, shall file in the proper office of the department an application or applications therefor, upon the prescribed form, together with application fees. The department may reject an application for a mineral prospecting lease when the department determines rejection to be in the best interests of the state, and in such case shall inform the applicant of the reason for rejection and refund the application fee. The department may also reject the application and declare the application fee forfeited should the applicant fail to execute the lease. [2003 c 334 § 404; 1987 c 20 § 4; 1965 c 56 § 4; 1927 c 255 § 156; RRS § 7797-156. Prior: 1917 c 148 § 2; 1901 c 151 §§ 1, 2; 1897 c 102 §§ 2, 5. Formerly RCW 79.01.620, 78.20.010, part, and RCW 78.20.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.340 Compensation for loss or damage to surface rights.** Where the surface rights are held by a third party, the lessee shall not exercise the rights reserved by the state upon lands covered by the lessee's lease or contract until the lessee has provided the department with satisfactory evidence of compliance with the requirements of the state's mineral rights reservations. Where the surface rights are held by the state, the lessee shall not exercise its mineral rights upon lands covered by the lessee's lease or contract until the lessee has made satisfactory arrangements with the department to compensate the state for loss or damage to the state's surface rights. [1987 c 20 § 5; 1965 c 56 § 5; 1927 c 255 § 157; RRS § 7797-157. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.624, 78.20.040.]

**79.14.350 Prospecting leases—Term—Rent—Conditions.** Leases for prospecting purposes may be for a term of up to seven years from the date of the lease. The lessee shall pay an annual lease rental as set by the board of natural resources. The annual lease rental shall be paid in advance. The lessee shall not have the right to extract and remove for commercial sale or use from the leased premises any minerals or specified materials found on the premises except upon obtaining a mining contract. The lessee shall perform annual

prospecting work in cost amounts as set by the board of natural resources. The lessee may make payment to the department in lieu of the performance of annual prospecting work for up to three years during the term of the lease. Prospecting work performed must contribute to the mineral evaluation of the leased premises.

The lessee may at any time give notice of intent to terminate the lease if all of the covenants of the lease including reclamation are met. The notice of termination of lease shall be made by giving written notice together with copies of all information obtained from the premises. The lease shall terminate sixty days thereafter if all arrears and sums which are due under the lease up to the time of termination have been paid. [1987 c 20 § 6; 1965 c 56 § 6; 1945 c 103 § 1; 1927 c 255 § 158; RRS § 7797-158. Prior: 1897 c 102 §§ 4, 5. Formerly RCW 79.01.628, 78.20.050.]

**79.14.360 Conversion to mining contract.** The holder of any prospecting lease shall have a preference right to a mining contract on the premises described in the lease if application therefor is made to the department at least one hundred eighty days prior to the expiration of the prospecting lease.

A lessee applying for a mining contract shall furnish plans for development leading toward production. The plans shall address the reclamation of the property. A mining contract shall be for a term of twenty years.

The first year of the contract and each year thereafter, the lessee shall perform development work in cost amounts as set by the board. The lessee may make payment to the department in lieu of development work.

The lessee may at any time give notice of intent to terminate the contract if all of the covenants of the contract including reclamation are met. The notice of termination of contract shall be made by giving written notice together with copies of all information obtained from the premises. The contract shall terminate sixty days thereafter if all arrears and sums which are due under the contract up to the time of termination have been paid.

The lessee shall have sixty days from the termination date of the contract in which to remove improvements, except those necessary for the safety and maintenance of mine workings, from the premises without material damage to the land or subsurface covered by the contract. However, the lessee shall upon written request to the department be granted an extension where forces beyond the control of the lessee prevent removal of the improvements within sixty days.

Any lessee not converting a prospecting lease to a mining contract shall not be entitled to a new prospecting lease on the lease premises for one year from the expiration date of the prior lease. Such lands included in the prospecting lease shall be open to application by any person other than the prior lessee, and the lessee's agents or associates during the year period described above. [2003 c 334 § 405; 1987 c 20 § 7; 1965 c 56 § 7; 1927 c 255 § 159; RRS § 7797-159. Prior: 1901 c 151 § 4. Formerly RCW 79.01.632, 78.20.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.370 Prospecting and mining—Lessee's rights and duties.** Where the surface rights have been sold and the

minerals retained by the state, the state's right of entry to these lands is transferred and assigned to the lessee during the life of the lease or contract. No lessee shall commence any operation upon lands covered by his or her lease or contract until the lessee has complied with RCW 79.14.340. [2003 c 334 § 406; 1987 c 20 § 8; 1965 c 56 § 8. Formerly RCW 79.01.633.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.380 Prospecting and mining—Termination for default.** The department shall terminate and cancel a prospecting lease or mining contract upon failure of the lessee to make payment of the annual rental or royalties or comply with the terms and conditions of the lease or contract upon the date such payments and compliances are due. The lessee shall be notified of such termination and cancellation, said notice to be mailed to the last known address of the lessee. Termination and cancellation shall become effective thirty days from the date of mailing the notice. However, the department may, upon written request from the lessee, grant an extension of time in which to make such payment or comply with the terms and conditions. [2003 c 334 § 407; 1987 c 20 § 9; 1965 c 56 § 9. Formerly RCW 79.01.634.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.390 Prospecting leases and mining contracts—Form, terms, conditions.** Prospecting leases or mining contracts referred to in chapter 79.14 RCW shall be as prescribed by, and in accordance with rules adopted by the department.

The department may include in any mineral prospecting lease or mining contract to be issued under this chapter such terms and conditions as are customary and proper for the protection of the rights of the state and of the lessee not in conflict with this chapter, or rules adopted by the department.

Any lessee shall have the right to contract with others to work or operate the leased premises or any part thereof or to subcontract the same and the use of the land or any part thereof for the purpose of mining for valuable minerals or specified materials, with the same rights and privileges granted to the lessee. Notice of such contracting or subcontracting with others to work or operate the property shall be made in writing to the department. [2003 c 334 § 408; 1987 c 20 § 10; 1965 c 56 § 11; 1927 c 255 § 161; RRS § 7797-161. Prior: 1917 c 148 § 3; 1899 c 147 § 1; 1897 c 102 § 6. Formerly RCW 79.01.640, 78.20.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.400 Prospecting and mining—Reclamation of premises.** At time of termination for any mineral prospecting lease, permit, mining contract, or placer mining contract, the premises shall be reclaimed in accordance with plans approved by the department. [1987 c 20 § 11. Formerly RCW 79.01.642.]

**79.14.410 Prospecting and mining—Minimum royalty.** Mining contracts entered into as provided in chapter 79.14 RCW shall provide for the payment to the state of production royalties as set by the board. A lessee shall pay in advance annually a minimum royalty which shall be set by the board. The minimum royalty shall be allowed as a credit

against production royalties due during the contract year. [2003 c 334 § 409; 1987 c 20 § 12; 1965 c 56 § 12; 1959 c 257 § 38; 1945 c 103 § 2; 1927 c 255 § 162; Rem. Supp. 1945 § 7797-162. Prior: 1917 c 148 § 4; 1901 c 151 § 3; 1897 c 89 § 7. Formerly RCW 79.01.644, 78.20.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.14.420 Mining contracts—Renewal of contract.**

The lessee may apply for the renewal of a mining contract, except placer mining contracts issued pursuant to RCW 79.14.310, to the department within ninety days before the expiration of the contract. Upon receipt of the application, the department shall make the necessary investigation to determine whether the terms of the contract have been complied with, and if the department finds they have been complied with in good faith, the department shall renew the contract. The terms and conditions of the renewal contract shall remain the same except for royalty rates, which shall be determined by reference to then existing law. [2003 c 334 § 410; 1987 c 20 § 13. Formerly RCW 79.01.645.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.14.430 Prospecting and mining—Consolidation.**

The holders of two or more mining contracts may consolidate the contracts under a common management to permit proper operation of large scale developments. Notification of such consolidation shall be made to the department, together with a statement of plans of operation and proposed consolidation. The department may thereafter make examinations and investigations and if it finds that such consolidation is not in the best interest of the state, it shall disapprove such consolidated operation. [2003 c 334 § 411; 1965 c 56 § 13; 1945 c 103 § 3 (adding a new section to 1927 c 255, section 162-1); Rem. Supp. 1945 § 7797-162a. Formerly RCW 79.01.648, 78.20.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.440 Prospecting and mining—Disclosure of information.** Any person designated by the department shall have the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and shall also have the right to examine such books, records, and accounts of the lessee as are directly connected with the determination of royalties on the property under lease from the state but it shall be unlawful for any person so appointed to disclose any information thus obtained to any person other than the departmental officials and employees, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 412; 1965 c 56 § 14. Formerly RCW 79.01.649.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.450 Prospecting and mining—Disposition of materials not covered by lease or contract.** The state shall have the right to sell or otherwise dispose of any surface resource, timber, rock, gravel, sand, silt, coal, or hydrocarbons, except minerals or materials specifically covered by a mineral prospecting lease or mining contract, found upon the land during the period covered by the lease or contract. The state shall also have the right to enter upon such land and

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remove same, and shall not be obliged to withhold from any sale any timber for prospecting or mining purposes. The lessee shall, upon payment to the department, have the right to cut and use timber found on the leased premises for mining purposes as provided in rules adopted by the department. [2003 c 334 § 413; 1987 c 20 § 14; 1965 c 56 § 15. Formerly RCW 79.01.650.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

### PART 3 COAL MINING

#### **79.14.470 Leases and option contracts authorized.**

The department is authorized to execute option contracts and leases for the mining and extraction of coal from any public lands of the state, or to which it may hereafter acquire title, or from any lands sold or leased by the state the minerals of which have been reserved by the state. [2003 c 334 § 414; 1927 c 255 § 163; RRS § 7797-163. Prior: 1925 ex.s. c 155 § 1. Formerly RCW 79.01.652, 78.24.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.480 Application for option contract—Fee.** Any citizen of the United States believing coal to exist upon any of the lands described in RCW 79.14.470 may apply to the department for an option contract for any amount not exceeding one section for prospecting purposes, such application to be made by legal subdivision according to the public land surveys. The applicant shall pay to the department, at the time of filing the application, the sum of one dollar an acre for the lands applied for, but in no case less than fifty dollars. In case of the refusal of the department to execute an option contract for the lands, any remainder of the sum so paid, after deducting the expense incurred by the department in investigating the character of the land, shall be returned to the applicant. [2003 c 334 § 415; 1927 c 255 § 164; RRS § 7797-164. Prior: 1925 ex.s. c 155 § 2. Formerly RCW 79.01.656, 78.24.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.14.490 Investigation and issue of option contract.**

(1) Upon the filing of any such application, the department shall forthwith investigate the character of the lands applied for, and if, from such investigation, it deems it to be in the best interests of the state, it shall enter into an option contract with the applicant.

(2) The holder of any option contract shall be entitled, during the period of one year from the date thereof, to:

(a) Enter upon the lands and carry on such work of exploration, examination, and prospecting for coal as may be necessary to determine the presence of coal upon the lands and the feasibility of mining the same; and

(b) Use such timber found upon the lands and owned by the state as may be necessary for steam purposes and timbering in the examination and prospecting of such lands. However, this provision shall not be construed to require the state to withhold any such timber from sale.

(3) No coal shall be removed from such lands during the period of such option contract except for samples and testing.

(4) At the expiration of the option contract, the applicant shall fill or cover in a substantial manner all prospect holes and shafts, or surround the same with substantial fences, and shall file with the department a report showing in detail the result of the applicant's investigation and prospecting. [2003 c 334 § 416; 1927 c 255 § 165; RRS § 7797-165. Prior: 1925 ex.s. c 155 § 3. Formerly RCW 79.01.660, 78.24.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.500 Damage to surface owner or lessee.** In the case of lands which the state may have sold or leased and reserved the mineral rights therein, if the holder of any option contract or lease is unable to agree with the owner or prior lessee of the lands, the holder shall have a right of action in the superior court of the county in which the land is situated to ascertain and determine the amount of damages which will accrue to such owner or lessee of the land by reason of the entry thereon and prospecting for or mining coal, as the case may be. In the event of any such action, the term of the option contract or lease shall begin thirty days after the entry of the final judgment in such action. [2003 c 334 § 417; 1927 c 255 § 166; RRS § 7797-166. Prior: 1925 ex.s. c 155 § 4. Formerly RCW 79.01.664, 78.24.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.510 Lease—Application, terms, royalties.** At any time during the life of the option contract, the holder thereof may apply to the department for a coal mining lease of the lands included therein, or such portion thereof as the holder may specify, for the purpose of mining and extraction of coal therefrom. Such coal mining lease shall be for such term, not more than twenty years, and in such form as may be prescribed by the department, shall entitle the lessee to mine and sell and dispose of all coal underlying said lands and to occupy and use so much of the surface thereof as may be necessary for bunkers and other outside works, and for railroads, buildings, appliances, and appurtenances in connection with the mining operations. Such lease shall provide for the payment to the state of a royalty, according to the grade of coal, for each ton of two thousand pounds of merchantable coal taken from the lands, as follows: For lignite coal of the class commonly found in Lewis and Thurston counties, not less than ten cents per ton; for subbituminous coal, not less than fifteen cents per ton; for high grade bituminous and coking coals, not less than twenty cents per ton; but such lease shall provide for the payment each year of a minimum royalty of not less than one nor more than ten dollars an acre for the lands covered thereby. However, the department may agree with the lessee that said minimum royalty shall be graduated for the different years of said lease so that a lower minimum royalty shall be paid during the earlier years of the term. The minimum royalty fixed in the lease shall be paid in advance each year, and the lessee, at stated periods during the term of the lease, fixed by the department, shall furnish to the department a written report under oath showing the amount of merchantable coal taken from the land during the period covered by such report and shall remit therewith such sum in excess of the minimum royalty theretofore paid for the current year as may be payable as royalty for the period covered by such report.

The department shall incorporate in every lease such provisions and conditions not inconsistent with the provisions of this chapter and not inconsistent with good coal mining practice as it deems necessary and proper for the protection of the state, and, in addition thereto, the department is empowered to adopt such rules, not inconsistent with this chapter and not inconsistent with good mining practice, governing the manner and methods of mining as in its judgment are necessary and proper. [2003 c 334 § 418; 1985 c 459 § 1; 1927 c 255 § 167; RRS § 7797-167. Prior: 1925 ex.s. c 155 § 5. Formerly RCW 79.01.668, 78.24.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1985 c 459:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 459 § 10.]

**79.14.520 Lease without option contract.** In the case of lands known to contain workable coal, the department may, in its discretion, issue coal mining leases under the provisions of RCW 79.14.510 although no option contract has been theretofore issued for such lands. [2003 c 334 § 419; 1927 c 255 § 168; RRS § 7797-168. Prior: 1925 ex.s. c 155 § 6. Formerly RCW 79.01.672, 78.24.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.530 Confidential information.** The commissioner or any person designated by the commissioner has the right at any time to enter upon the lands and inspect and examine the structures, works, and mines situated thereon, and also has the right to examine such books, records, and accounts of the lessee as are directly connected with the operation of the mine on the property under lease from the state; but it shall be unlawful for the commissioner or any person so appointed to disclose any information thus obtained to any person other than the commissioner or an employee of the department, except the attorney general and prosecuting attorneys of the state. [2003 c 334 § 420; 1927 c 255 § 169; RRS § 7797-169. Prior: 1925 ex.s. c 155 § 7. Formerly RCW 79.01.676, 78.24.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.540 Use and sale of materials from land.** The state shall have the right to sell or otherwise dispose of any timber, stone, or other valuable materials, except coal, found upon the land during the period covered by any option contract, or lease issued under the foregoing provisions, with the right to enter upon such lands and cut and remove the same, and shall not be obliged to withhold from sale any timber for coal mining or prospecting purposes. However, the lessee shall be permitted to use in mining operations any timber found upon the land, first paying therefor to the department the value thereof as fixed by the department. Further, any bill of sale for the removal of timber, stone, or other material given subsequent to the coal lease shall contain provisions preventing any interference with the operations of the coal lease. [2003 c 334 § 421; 1927 c 255 § 170; RRS § 7797-170. Prior: 1925 ex.s. c 155 § 8. Formerly RCW 79.01.680, 78.24.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.550 Suspension of mining—Termination of lease.** Should the lessee for any reason, except strikes or inability to mine or dispose of output without loss, suspend mining operations upon the lands included in a lease, or upon any contiguous lands operated by the lessee in connection therewith, for a period of six months, or should the lessee for any reason suspend mining operations upon the lands included in a lease or in such contiguous lands for a period of twelve months, the department may, at its option, cancel the lease, first giving thirty days' notice in writing to the lessee.

The lessee shall have the right to terminate the lease after thirty days' written notice to the department and the payment of all royalties and rentals then due. [2003 c 334 § 422; 1927 c 255 § 171; RRS § 7797-171. Prior: 1925 ex.s. c 155 § 9. Formerly RCW 79.01.684, 78.24.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.560 Condition of premises on termination.**

Upon the termination of any lease issued under the foregoing provisions, the lessee shall surrender the lands and premises and leave in good order and repair all shafts, slopes, airways, tunnels, and watercourses then in use. Unless the coal therein is exhausted, the lessee shall also, as far as it is reasonably practicable so to do, leave open to the face all main entries then in use so that the work of further development and operation may not be unnecessarily hampered. The lessee shall also leave on the premises all buildings and other structures, but shall have the right to, without damage to such buildings and structures, remove all tracks, machinery, and other personal property. [2003 c 334 § 423; 1927 c 255 § 172; RRS § 7797-172. Prior: 1925 ex.s. c 155 § 10. Formerly RCW 79.01.688, 78.24.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.570 Re-lease—Procedure—Preference rights.**

If at the expiration of any lease for the mining and extraction of coal or any renewal thereof the lessee desires to re-lease the lands covered thereby, the lessee may make application to the department for a re-lease. Such application shall be in writing and under oath, setting forth the extent, character, and value of all improvements, development work, and structures existing upon the land. The department may on the filing of such application cause the lands to be inspected, and if the department deems it for the best interests of the state to re-lease said lands, it shall fix the royalties for the ensuing term in accordance with the foregoing provisions relating to original leases, and issue to the applicant a renewal lease for a further term; such application for a release when received from the lessee, or successor of any lessee, who has in good faith developed and improved the property in a substantial manner during the original lease to be given preference on equal terms against the application of any new applicant. [2003 c 334 § 424; 1927 c 255 § 173; RRS § 7797-173. Prior: 1925 ex.s. c 155 § 11. Formerly RCW 79.01.692, 78.24.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.580 Waste prohibited.** It shall be unlawful for the holder of any coal mining option contract, or any lessee, to commit any waste upon the lands embraced therein, except as may be incident to the work of prospecting or mining by

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the option contract holder or lessee. [2003 c 334 § 425; 1927 c 255 § 174; RRS § 7797-174. Prior: 1925 ex.s. c 155 § 12. Formerly RCW 79.01.696, 78.24.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.14.900 Severability—1955 c 131.** If any provision or section of this chapter shall be adjudicated to be unconstitutional, such adjudication shall not affect the validity of this chapter as a whole or any part thereof not adjudicated unconstitutional. If any provision of this chapter, or the application of such provision to any person or circumstances is held unconstitutional, invalid or unenforceable, the remainder of this chapter or the application of such provision to persons or circumstances other than those as to which it is held unconstitutional, invalid or unenforceable, shall not be affected thereby. [1955 c 131 § 23. Formerly RCW 78.28.900.]

**Chapter 79.15 RCW**

**SALE OF VALUABLE MATERIALS**

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PART 1  
GENERAL PROVISIONS

**79.15.010 Valuable materials sold separately.** (1) Valuable materials situated upon state lands and state forest lands may be sold separate from the land, when in the judgment of the department, it is for the best interest of the state so to sell the same.

(2) Sales of valuable materials from any university lands require:

(a) The consent of the board of regents of the University of Washington; or

(b) Legislative directive.

(3) When application is made for the purchase of any valuable materials, the department shall appraise the value of the valuable materials if the department determines it is in the best interest of the state to sell. No valuable materials shall be sold for less than the appraised value thereof. [2003 c 334 § 331; 2001 c 250 § 3; 1982 1st ex.s. c 21 § 154; 1959 c 257 § 12; 1929 c 220 § 1; 1927 c 255 § 31; RRS § 7797-31. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.124, 79.12.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Forests and forest products: Title 76 RCW.*

**79.15.020 Duties of department.** (1) The department shall exercise general supervision and control over the sale of valuable materials.

(2) The department shall maintain all reports, data, and information in its records pertaining to a proposed sale.

(3) The department may hold a sale in abeyance pending further inspection and report and may cause such further inspection and report.

(4) The department shall determine, based on subsection (2) of this section, and if necessary the information provided under subsection (3) of this section, the terms upon which the proposed sales are consummated. [2003 c 334 § 319.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.030 Rules or procedures for removal of valuable materials sold.** All sales of valuable materials shall be made subject to the right, power, and authority of the department to prescribe rules or procedures governing the manner of the sale and removal of the valuable materials. Such procedures shall be binding when contained within a purchaser's contract for valuable materials and apply to the purchaser's successors in interest and shall be enforced by the department. [2004 c 199 § 213; 2003 c 334 § 339; 2001 c 250 § 5; 1959 c 257 § 15; 1927 c 255 § 40; RRS § 7797-40. Prior: 1915 c 147 § 2; 1909 c 223 § 3; 1907 c 256 § 6; 1901 c 148 § 1; 1899 c 129 § 1; 1897 c 89 § 12; 1895 c 178 § 23. Formerly RCW 79.01.160, 79.12.190.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Forest protection: Chapter 76.04 RCW.*

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**79.15.040 Sale of valuable materials without application or deposit.** The department may cause valuable materials on state lands and state forest lands to be inspected and appraised and offered for sale when authorized by the board without an application having been filed, or deposit made, for the purchase of the same. [2003 c 334 § 341; 1961 c 73 § 2; 1959 c 257 § 17; 1927 c 255 § 42; RRS § 7797-42. Prior: 1915 c 147 § 2. Formerly RCW 79.01.168, 79.12.210.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.045 Who may purchase—Fee.** A person desiring to purchase valuable materials may make application to the department on forms provided by the department and accompanied by the fee provided in RCW 79.02.250. [2003 c 334 § 312.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.050 Type of sale—Direct sales.** (1) All sales of valuable materials exceeding twenty-five thousand dollars in appraised value must be at public auction or by sealed bid to the highest bidder, provided that on public lands granted to the state for educational purposes sealed bids may be accepted for sales of timber or stone only.

(2) A direct sale of valuable materials may be sold to the applicant for cash at full appraised value without notice or advertising. The board must, by resolution, establish the value amount of a direct sale not to exceed twenty-five thousand dollars in appraised sale value, and establish procedures to ensure that competitive market prices and accountability are guaranteed. [2006 c 42 § 1; 2003 c 334 § 353.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.055 Appraisal—Defined.** For the purposes of this chapter, "appraisal" means an estimate of the market value of valuable materials. The estimate must reflect the value based on market conditions at the time of the sale or transfer offering. The appraisal must reflect the department's best effort to establish a reasonable market value for the purpose of setting a minimum bid at auction or transfer. A purchaser of valuable materials may not rely upon the appraisal prepared by the department for purposes of deciding whether to make a purchase from the department. All purchasers are required to make their own independent appraisals. [2004 c 199 § 214; 2003 c 334 § 309; 2001 c 250 § 10. Formerly RCW 79.01.082.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.060 Date of sale limited by time of appraisal—Transfer of authority.** (1) For the sale of valuable materials under this chapter, if the board is required by law to appraise the sale, the board must establish a minimum appraisal value that is valid for a period of one hundred eighty days, or a longer period as may be established by resolution. The board may reestablish the minimum appraisal value at any time. For any valuable materials sales that the board is required by law to appraise, the board may by resolution transfer this authority to the department.

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(2) Where the board has set a minimum appraisal value for a valuable materials sale, the department may set the final appraisal value of valuable materials for auction, which must be equal to or greater than the board's minimum appraisal value. The department may also appraise any valuable materials sale not required by law to be approved by the board. [2003 c 334 § 329.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.070 Time and date of sale.** It is the duty of the department to fix the date, time, and place of sale.

(1) All valuable materials shall have been appraised prior to the date fixed for sale as prescribed in RCW 79.15.060.

(2) No sale may be conducted on any day that is a legal holiday.

(3) Sales must be held between the hours of 10:00 a.m. and 4:00 p.m. If all sales cannot be offered within this time period, the sale must continue on the following day between the hours of 10:00 a.m. and 4:00 p.m.

(4) Sales must take place:

(a) At the department's regional office having jurisdiction over the respective sale; or

(b) On county property designated by the board of county commissioners or county legislative authority of the county in which the whole or majority of valuable materials are situated. [2003 c 334 § 350.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.080 Advertising sales of valuable materials.** (1) Sales, other than direct sales, appraised at an amount not exceeding two hundred fifty thousand dollars, when authorized by the board for sale, shall be advertised by publishing not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property from which the valuable material is to be sold.

(2) Except as provided in RCW 79.15.050, all other proposed sales of valuable materials must be advertised through individual notice of sale and publication of a statewide list of sales.

(a) The notice of sale:

(i) Must specify the place, date, and time of sale, the appraised value thereof, and describe with particularity each parcel of land from which valuable materials are to be sold. The estimated volume will be identified and the terms of sale will be available in the region headquarters and the department's Olympia office;

(ii) May prescribe that the bid deposit required in RCW 79.15.110 be considered an opening bid;

(iii) May be advertised by newspaper or by other means of publishing the information such as on the internet; and

(iv) Must be posted in a conspicuous place in the department's Olympia office and in the region headquarters administering the sale, and in the office of the county auditor of the county where the material is located.

(b) The department shall print a list of all valuable material on public lands that are to be sold. The list should be organized by county and by alphabetical order.

(i) The list should be published in a pamphlet form, issued at least four weeks prior to the date of any sale and provide sale information to prospective buyers.

(ii) The department must retain for free distribution in the Olympia office and the region offices sufficient copies of the pamphlet, to be kept in a conspicuous place, and, when requested to do so, must mail copies of the pamphlet as issued to any requesting applicant.

(iii) The department may seek additional means of publishing the information in the pamphlet, such as on the internet, to increase the number of prospective buyers.

(3) The department is authorized to expend any sum in additional advertising of the sales as it deems necessary. [2006 c 42 § 2; 2003 c 334 § 347.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.090 Advertisement for informational purposes only.** The advertisement of sales is for informational purposes only, and under no circumstances does the information in the notice of sale constitute a warranty that the purchaser will receive the stated values, volumes, or acreage. All purchasers are expected to make their own measurements, evaluations, and appraisals. [2003 c 334 § 345.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.100 Terms and conditions of sale.** (1) Valuable materials may be sold separately from the land as a "lump sum sale" or as a "scale sale."

(a) "Lump sum sale" means any sale offered with a single total price applying to all the material conveyed.

(b) "Scale sale" means any sale offered with per unit prices to be applied to the material conveyed.

(2) Payment for lump sum sales must be made as follows:

(a) Lump sum sales under five thousand dollars appraised value require full payment on the day of sale.

(b) Lump sum sales appraised at over five thousand dollars but under one hundred thousand dollars may require full payment on the day of sale.

(c) Lump sum sales requiring full payment on the day of sale may be paid in cash or by certified check, cashier's check, bank draft, or money order, all payable to the department.

(3) Except for sales paid in full on the day of sale or sales with adequate bid bonds, an initial deposit not to exceed twenty-five percent of the actual or projected purchase price shall be made on the day of sale.

(a) Sales with bid bonds are subject to the day of sale payment and replacement requirements prescribed by RCW 79.15.110.

(b) The initial deposit must be maintained until all contract obligations of the purchaser are satisfied. However, all or a portion of the initial deposit may be applied as the final payment for the valuable materials in the event the department determines that adequate security exists for the performance or fulfillment of any remaining obligations of the purchaser under the sale contract.

(4) Advance payments or other adequate security acceptable to the department is required for valuable materials sold on a scale sale basis or a lump sum sale not requiring full payment on the day of sale.

(a) The purchaser must notify the department before any operation takes place on the sale site.

(b) Upon notification as provided in (a) of this subsection, the department must require advanced payment or may allow purchasers to submit adequate security.

(c) The amount of advanced payments or security must be determined by the department and must at all times equal or exceed the value of timber cut and other valuable materials processed or removed until paid for.

(d) Security may be bank letters of credit, payment bonds, assignments of savings accounts, assignments of certificates of deposit, or other methods acceptable to the department as adequate security.

(5) All valuable material must be removed from the sale area within the period specified in the contract.

(a) The specified period may not exceed five years from date of purchase except for stone, sand, gravel, fill material, or building stone.

(b) The specified period for stone, sand, gravel, fill material, or building stone may not exceed thirty years.

(c) In all cases, any valuable material not removed from the land within the period specified in the contract reverts to the state.

(6) The department may extend a contract beyond the normal termination date specified in the sale contract as the time for removal of valuable materials when, in the department's judgment, the purchaser is acting in good faith and endeavoring to remove the materials. The extension is contingent upon payment of the fees specified below.

(a) The extended time for removal shall not exceed:

(i) Forty years from date of purchase for stone, sand, gravel, fill material, or building stone;

(ii) A total of ten years beyond the original termination date for all other valuable materials.

(b) An extension fee fixed by the department will be charged based on the estimated loss of income per acre to the state resulting from the granting of the extension plus interest on the unpaid portion of the contract. The board must periodically fix and adopt by rule the interest rate, which shall not be less than six percent per annum.

(c) The sale contract shall specify:

(i) The applicable rate of interest as fixed at the day of sale and the maximum extension payment; and

(ii) The method for calculating the unpaid portion of the contract upon which interest is paid.

(d) The minimum extension fee is fifty dollars per extension plus interest on the unpaid portion of the contract.

(e) Moneys received for any extension must be credited to the same fund in the state treasury as was credited the original purchase price of the valuable material sold.

(7) The department may, in addition to any other securities, require a performance security to guarantee compliance with all contract requirements. The security is limited to those types listed in subsection (4) of this section. The value of the performance security will, at all times, equal or exceed the value of work performed or to be performed by the purchaser.

(8) The provisions of this section apply unless otherwise provided by statute. [2004 c 177 § 5; 2003 c 334 § 334.]

**Effective date—2004 c 177:** See note following RCW 84.33.035.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.110 Conduct of sales.** (1) Sales of valuable materials must be conducted under the direction of the department or its authorized representative.

(a) Sales of valuable materials, unless otherwise provided in this chapter, shall be at public auction or by sealed bid to the highest bidder, except that, on public lands granted to the state for educational purposes, sealed bids may be accepted for sales of timber or stone only.

(b) The person conducting the sale is called the auctioneer.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer a bid deposit equal to the amount specified in the notice of sale plus any fees required by law for the issuance of contracts or bill of sale.

(a) The bid deposit must meet the requirements of RCW 79.15.100(3).

(b) The deposit may be in cash, or by certified check, cashier's check, or money order, all payable to the department or by bid guarantee in the form of a bid bond acceptable to the department.

(3) The bid deposit, if prescribed in the notice of sale as authorized in RCW 79.15.100, may be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale.

(4) The successful bidder's deposit will be retained by the auctioneer.

(a) Any difference between the bid deposit and the total amount due including any fees required by law shall be paid on the day of sale. Payments may be by cash, certified check, cashier's check, bank draft, or money order payable to the department.

(b) Any amount of the deposit guaranteed by a bid bond must be paid to the department within ten days of the sale day in cash, certified check, cashier's check, money order, or other acceptable payment method.

(c) Other deposits must be returned to the respective bidders at the conclusion of each sale.

(5) The auctioneer must deliver to the purchaser a memorandum of his or her purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(6) The auctioneer must at once send to the department all payments or bid guarantees received from the purchaser and a copy of the memorandum delivered to the purchaser, together with additional reports of the proceedings as required by the department. [2003 c 334 § 355.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.120 Confirmation of sale.** The department shall enter upon its records a confirmation of sale and issue to the purchaser a bill of sale for valuable materials if the following conditions have been met:

(1) No fewer than ten days have passed since the auctioneer's report has been filed;

(2) No affidavit is filed with the department showing that the interests of the state in the sale were injuriously affected by fraud or collusion;

(3) It appears from the auctioneer's report that:

(a) The sale was fairly conducted; and

(b) The purchaser was the highest bidder and the bid was not less than the appraised value of the material sold;

(4) The department is satisfied that the valuable material sold would not, upon being readvertised and offered for sale, sell for at least ten percent more than the price submitted by the apparent high bidder;

(5) The payment required by law to be made at the time of making the sale has been made; and

(6) The department determines the best interests of the state will be served by confirming the sale. [2003 c 334 § 358.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.130 Bill of sale.** When valuable materials are sold separately from the land and the purchase price is paid in full, the department shall prepare a bill of sale. The bill of sale shall:

(1) State the time period for removing the material;

(2) Be signed by the commissioner and attested by the seal of the commissioner's office upon full payment of the purchase price and fees;

(3) Be issued to the purchaser upon payment of the fee for the bill of sale; and

(4) Be recorded in the department. [2003 c 334 § 362; 2001 c 250 § 9; 1927 c 255 § 58; RRS § 7797-58. Formerly RCW 79.01.232, 79.12.420.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.140 Valuable materials contract—Impracticable to perform/cancellation—Substitute valuable materials.** (1) In the event that the department determines that regulatory requirements or some other circumstance beyond the control of both the department and the purchaser has made a valuable materials contract wholly or partially impracticable to perform, the department may cancel any portion of the contract which could not be performed. In the event of such a cancellation, the purchaser shall not be liable for the purchase price of any portions of the contract so canceled. Market price fluctuations shall not constitute an impracticable situation for valuable materials contracts.

(2) Alternatively, and notwithstanding any other provision in this title, the department may substitute valuable materials from another site in exchange for any valuable materials which the department determines have become impracticable to remove under the original contract. Any substituted valuable materials must belong to the identical trust involved in the original contract, and the substitute materials shall be determined by the department to have an appraised value that is not greater than the valuable materials remaining under the original contract. The substitute valuable materials and site shall remain subject to all applicable permitting requirements and the state environmental policy act, chapter 43.21C RCW, for the activities proposed at that site. In any such substitution, the value of the materials substituted shall be fixed at the purchase price of the original contract regardless of subsequent market changes. Consent of the purchaser shall be required for any substitution under this section. [2003 c 334 § 364; 2001 c 250 § 18. Formerly RCW 79.01.238.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

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**79.15.150 Reoffer.** A sale of valuable materials that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as prescribed in RCW 79.11.130. [2003 c 334 § 351.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 2 DAMAGED TIMBER

**79.15.210 Findings—Damage to timber.** From time to time timber on state land is damaged by events such as fire, wind storms, and flooding. After such events the timber becomes very susceptible to loss of value and quality due to rot and disease. To obtain maximum value for the state, it is important to sell any damaged timber as fast as possible while providing ample protection for the physical environment and recognizing the sensitivity of removing timber from certain locations. [1987 c 126 § 1. Formerly RCW 79.01.790.]

**79.15.220 Sale of damaged valuable materials.** When the department finds valuable materials on state land that are damaged by fire, wind, flood, or from any other cause, it shall determine if the salvage of the damaged valuable materials is in the best interest of the trust for which the land is held. If salvaging the valuable materials is in the best interest of the trust, the department shall proceed to offer the valuable materials for sale. The valuable materials, when offered for sale, must be sold in the most expeditious and efficient manner as determined by the department. In determining if the sale is in the best interest of the trust the department shall consider the net value of the valuable materials and relevant elements of the physical and social environment. [2001 c 250 § 14; 1987 c 126 § 2. Formerly RCW 79.01.795.]

## PART 3 ROCK, GRAVEL, ETC., SALES

**79.15.300 Contracts—Forfeiture—Royalties—Monthly reports.** (1) The department, upon application by any person, may enter into a contract providing for the sale and removal of rock, gravel, sand, and silt located upon state lands or state forest lands, and providing for payment to be made on a royalty basis.

(2) The issuance of a contract shall be made after public auction and shall not be issued for less than the appraised value of the material.

(3) Each application made pursuant to this section shall:

(a) Set forth the estimated quantity and kind of materials desired to be removed; and

(b) Be accompanied by a map or plat showing the area from which the applicant wishes to remove such materials.

(4) The department may in its discretion include in any contract such terms and conditions required to protect the interests of the state.

(5) Every contract shall provide for a right of forfeiture by the state, upon a failure to operate under the contract or pay royalties for periods therein stipulated. The right of forfeiture is exercised by entry of a declaration of forfeiture in the records of the department.

(6) The department may require a bond with a surety company authorized to transact a surety business in this state,

as surety, to secure the performance of the terms and conditions of such contract including the payment of royalties.

(7) The amount of rock, gravel, sand, or silt taken under the contract shall be reported monthly by the purchaser to the department and payment therefor made on the basis of the royalty provided in the contract.

(8) The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any such contract and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of such materials. [2003 c 334 § 335; 1985 c 197 § 1; 1961 c 73 § 11. Formerly RCW 79.01.134.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.320 Road material—Sale to public authorities—Disposition of proceeds.** (1) Any county, city, or town may file with the department an application to purchase any stone, rock, gravel, or sand upon any state lands or state forest lands to be used in the construction, maintenance, or repair of any public street, road, or highway within such county, city, or town.

(2) Applications shall set forth the quantity and kind of material desired to be purchased, the location thereof, and the name, or other designation, and location of the street, road, or highway upon which the material is to be used.

(3) The department is authorized to appraise and sell the material in such a manner and upon such terms as the department deems advisable for not less than the fair market value thereof.

(4) The proceeds of any such sale shall be paid into the state treasury and credited to the fund to which the proceeds of the sale of the land upon which the material is situated would belong. [2003 c 334 § 343; 1982 1st ex.s. c 21 § 155; 1927 c 255 § 44; RRS § 7797-44. Prior: 1923 c 71 § 1; 1917 c 148 § 13. Formerly RCW 79.01.176, 79.12.250.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

#### PART 4 FIREWOOD

**79.15.400 License to remove firewood authorized.** The department may issue licenses to residents of this state to enter upon lands under the administration or jurisdiction of the department for the purpose of removing therefrom, standing or downed timber which is unfit for any purpose except to be used as firewood. [2003 c 334 § 230; 1975 c 10 § 1; 1945 c 97 § 1; Rem. Supp. 1945 § 7797-40a. Formerly RCW 76.20.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.410 Removal only for personal use.** In addition to other matters which may be required to be contained in the application for a license under this chapter the applicant must certify that the wood so removed is to be only for the applicant's own personal use and in his or her own home and that the applicant will not dispose of it to any other person. [2003

c 334 § 231; 1945 c 97 § 2; Rem. Supp. 1945 § 7797-40b. Formerly RCW 76.20.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.420 Issuance of license—Fee.** The application may be made to the department, and if deemed proper, the license may be issued upon the payment of two dollars and fifty cents which shall be paid into the treasury of the state by the officer collecting the same and placed in the resource management cost account or forest development account, as applicable; the license shall be dated as of the date of issuance and authorize the holder thereof to remove between the dates so specified not more than six cords of wood not fit for any use but as firewood for the use of the applicant and his or her family from the premises described in the license under such rules as the department may adopt. [2003 c 334 § 232; 1975 c 10 § 2; 1945 c 97 § 3; Rem. Supp. 1945 § 7797-40c. Formerly RCW 76.20.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.430 Removal of firewood without charge.** Whenever the department determines that it is in the best interest of the state and there will be a benefit to the lands involved or a state program affecting such lands it may designate specific areas and authorize the general public to enter upon lands under its jurisdiction for the purposes of cutting and removing standing or downed timber for use as firewood for the personal use of the person so cutting and removing without a charge under such terms and conditions as it may require. [2003 c 334 § 233; 1975 c 10 § 3. Formerly RCW 76.20.035.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.15.440 Penalty.** Any false statement made in the application or any violation of the provisions of RCW 79.15.400 through 79.15.430 shall constitute a gross misdemeanor and be punishable as such. [2003 c 334 § 234; 1945 c 97 § 4; Rem. Supp. 1945 § 7797-40d. Formerly RCW 76.20.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### PART 5 CONTRACT HARVESTING

**79.15.500 Contract harvesting—Definitions.** The definitions in this section apply throughout RCW 79.15.500 through 79.15.530 and 79.15.540 unless the context clearly requires otherwise.

(1) "Commissioner" means the commissioner of public lands.

(2) "Contract harvesting" means a timber operation occurring on state forest lands, in which the department contracts with a firm or individual to perform all the necessary harvesting work to process trees into logs sorted by department specifications. The department then sells the individual log sorts.

(3) "Department" means the department of natural resources.

(4) "Harvesting costs" are those expenses related to the production of log sorts from a stand of timber. These

expenses typically involve road building, labor for felling, bucking, and yarding, as well as the transporting of sorted logs to the forest product purchasers.

(5) "Net proceeds" means gross proceeds from a contract harvesting sale less harvesting costs.

(6) "Silvicultural treatment" means any vegetative or other treatment applied to a managed forest to improve the conditions of the stand, and may include harvesting, thinning, prescribed burning, and pruning. [2004 c 218 § 8; 2003 c 313 § 2.]

**Effective date—2004 c 218:** See note following RCW 76.06.140.

**Findings—2003 c 313:** "The legislature finds that it is in the best interest of the trust beneficiaries to capture additional revenues while providing for additional environmental protection on timber sales. Further, the legislature finds that contract harvesting is one method to achieve these desired outcomes. Therefore, the legislature directs the department of natural resources to establish and implement contract harvesting where there exists the ability to increase revenues for the beneficiaries of the trusts while obtaining increases in environmental protection." [2003 c 313 § 1.]

**Severability—2003 c 313:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 313 § 15.]

**79.15.510 Contract harvesting—Program established.** (1) The department may establish a contract harvesting program for directly contracting for the removal of timber and other valuable materials from state lands and for conducting silvicultural treatments consistent with RCW 79.15.540.

(2) The contract requirements must be compatible with the office of financial management's guide to public service contracts.

(3) The department may not use contract harvesting for more than ten percent of the total annual volume of timber offered for sale. However, volume removed primarily to address an identified forest health issue under RCW 79.15.540 may not be included in calculating the ten percent annual limit of contract harvesting sales. [2004 c 218 § 6; 2003 c 313 § 3.]

**Effective date—2004 c 218:** See note following RCW 76.06.140.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**79.15.520 Contract harvesting revolving account.** (1) The contract harvesting revolving account is created in the custody of the state treasurer. All receipts from the gross proceeds of the sale of logs from a contract harvesting sale must be deposited into the account. Expenditures from the account may be used only for the payment of harvesting costs incurred on contract harvesting sales and for payment of costs incurred from silvicultural treatments necessary to improve forest health conducted under RCW 79.15.540. Only the commissioner or the commissioner's designee may authorize expenditures from the account. The board of natural resources has oversight of the account, and the commissioner must periodically report to the board of natural resources as to the status of the account, its disbursement, and receipts. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

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(2) When the logs from a contract harvesting sale are sold, the gross proceeds must be deposited into the contract harvesting revolving account. Moneys equal to the harvesting costs must be retained in the account and be deducted from the gross proceeds to determine the net proceeds. The net proceeds from the sale of the logs must be distributed in accordance with RCW 43.30.325(1)(b). The final receipt of gross proceeds on a contract harvesting sale must be retained in the contract harvesting revolving account until all required costs for that sale have been paid. The contract harvesting revolving account is an interest-bearing account and the interest must be credited to the account. The account balance may not exceed one million dollars at the end of each fiscal year. Moneys in excess of one million dollars must be disbursed according to RCW 79.22.040, 79.22.050, and 79.64.040. If the department permanently discontinues the use of contract harvesting sales, any sums remaining in the contract harvesting revolving account must be returned to the resource management cost account and the forest development account in proportion to each account's contribution to the initial balance of the contract harvesting revolving account. [2004 c 218 § 7; 2003 c 313 § 4.]

**Effective date—2004 c 218:** See note following RCW 76.06.140.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**79.15.530 Contract harvesting—Special appraisal practices.** The board of natural resources must determine whether any special appraisal practices are necessary for logs sold by the contract harvesting processes, and if so, must adopt the special appraisal practices or procedures. In its consideration of special appraisal practices, the board of natural resources must consider and adopt procedures to rapidly market and sell any log sorts that failed to receive the required minimum bid at the original auction, which may include allowing the department to set a new appraised value for the unsold sort.

The board of natural resources must establish and adopt policy and procedures by which the department evaluates and selects certified contract harvesters. The procedures must include a method whereby a certified contract harvester may appeal a decision by the department or board of natural resources to not include the certified contract harvester on the list of approved contract harvesters. [2003 c 313 § 5.]

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**79.15.540 Intent—Contract harvesting—State trust forest land with identified forest health deficiencies.** (1) The legislature intends to ensure, to the extent feasible given all applicable trust responsibilities, that trust beneficiaries receive long-term income from timber lands through improved forest conditions and by reducing the threat of forest fire to state trust forest lands.

(2) In order to implement the intent of RCW 76.06.140, the department may initiate contract harvesting timber sales, or other silvicultural treatments when appropriate, in specific areas of state trust forest land where the department has identified forest health deficiencies as enumerated in RCW 76.06.140. All harvesting or silvicultural treatments applied under this section must be tailored to improve the health of

the specific stand, must be consistent with any applicable state forest plans and other management agreements, and must comply with all applicable state and federal laws and regulations regarding the harvest of timber by the department of natural resources.

(3) In utilizing contract harvesting to address forest health issues as outlined in this section, the department shall give priority to silvicultural treatments that assist the department in meeting forest health strategies included in any management or landscape plans that exist for state forests. If such plans are not in place, the department shall prioritize silvicultural treatments for forest health with higher priority given to the protection of public health and safety, public resources as defined in RCW 76.09.020, and the long-term asset value of the trust. [2007 c 109 § 2; 2004 c 218 § 5.]

**Findings—2007 c 109:** "The legislature finds that chapter 218, Laws of 2004 authorized the department of natural resources to utilize contract harvesting for silvicultural treatments to improve forest health on state trust lands, in accordance with RCW 76.06.140 and 79.15.540. The legislature further finds that the use of contract harvesting for silvicultural treatments has proven effective and that continued utilization is important to improve and maintain forest health. Therefore, the legislature finds that it is necessary to remove the expiration date for this authority, set for December 31, 2007, and to continue the use of contract harvesting for silvicultural treatments to improve forest health on state trust lands." [2007 c 109 § 1.]

**Effective date—2004 c 218:** See note following RCW 76.06.140.

## Chapter 79.17 RCW LAND TRANSFERS

### Sections

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## PART 1 EXCHANGES

**79.17.010 Exchange of state lands—Purposes—Conditions.** (1) The department, with the approval of the board, may exchange any state land and any timber thereon for any land of equal value in order to:

- (a) Facilitate the marketing of forest products of state lands;
- (b) Consolidate and block-up state lands;
- (c) Acquire lands having commercial recreational leasing potential;
- (d) Acquire county-owned lands;
- (e) Acquire urban property which has greater income potential or which could be more efficiently managed by the department in exchange for state urban lands as defined in RCW 79.19.100; or

(f) Acquire any other lands when such exchange is determined by the board to be in the best interest of the trust for which the state land is held.

(2) Land exchanged under this section shall not be used to reduce the publicly owned forest land base.

(3) The board shall determine that each land exchange is in the best interest of the trust for which the land is held prior to authorizing the land exchange.

(4) During the biennium ending June 30, 2009, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the resource management cost account to pay for administrative expenses incurred in carrying out an exchange transaction. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(5) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2008 c 328 § 6012. Prior: 2003 1st sp.s. c 25 § 939; 2003 c 334 § 452; 1987 c 113 § 1; 1983 c 261 § 1; 1973 1st ex.s. c 50 § 2; 1961 c 77 § 4; 1957 c 290 § 1. Formerly RCW 79.08.180.]

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Intent—2003 c 334:** See note following RCW 79.02.010.  
*Exchange to block up holdings: RCW 79.17.020, 79.17.060.*

**79.17.020 Exchange of lands to consolidate and block up holdings or obtain lands having commercial recreational leasing potential—Consultation with interested parties.** (1) The board of county commissioners of any county and/or the mayor and city council or city commission of any city or town and/or the board shall have authority to exchange, each with the other, or with the federal forest service, the federal government or any proper agency thereof and/or with any private landowner, county land of any character, land owned by municipalities of any character, and state forest land owned by the state under the jurisdiction of the department, for real property of equal value for the purpose of consolidating and blocking up the respective land holdings of any county, municipality, the federal government, or the state of Washington or for the purpose of obtaining lands having commercial recreational leasing potential.

(2) During the biennium ending June 30, 2009, for the purposes of maintaining working farm and forest landscapes or acquiring natural resource lands at risk of development, the department, with approval of the board of natural resources, may exchange any state land and any timber thereon for any land and proceeds of equal value, when it can be demonstrated that the trust fiduciary obligations can be better fulfilled after an exchange is completed. Proceeds may be in the form of cash or services in order to achieve the purposes established in this section. Any cash received as part of an exchange transaction shall be deposited in the forest development account to pay for administrative expenses incurred in carrying out an exchange transaction. The amount of proceeds received from the exchange partner may not exceed five percent of the total value of the exchange. The receipt of proceeds shall not change the character of the transaction from an exchange to a sale.

(3) Prior to executing an exchange under this section, and in addition to the public notice requirements set forth in RCW 79.17.050, the department shall consult with legislative members, other state and federal agencies, local governments, tribes, local stakeholders, conservation groups, and any other interested parties to identify and address cultural resource issues, and the potential of the state lands proposed for exchange to be used for open space, park, school, or critical habitat purposes. [2008 c 328 § 6013. Prior: 2003 1st sp.s. c 25 § 937; 2003 c 334 § 209; 1973 1st ex.s. c 50 § 1; 1961 c 77 § 1; 1937 c 77 § 1; RRS § 5812-3e. Formerly RCW 76.12.050.]

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.030 University demonstration forest and experiment station.** For the purpose of securing an area suitable for a demonstration forest and forest experiment station for the University of Washington authority is hereby granted the board of regents of the University of Washington and the department with the approval of the board, acting with the advice and approval of the attorney general, to exchange all or any portion of the granted lands of the University of Washington assigned for the support of said university by section 9 of chapter 122 of the act of March 14,

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1893, enacted by the legislature of Washington, being entitled, "An act providing for the location, construction and maintenance of the University of Washington, and making an appropriation therefor, and declaring an emergency," for all or any portion of such lands as may be acquired by the state under and by virtue of chapter 102, Laws of 1913, being: "An act relating to lands granted to the state for common schools and for educational, penal, reformatory, charitable, capitol buildings and other purposes providing for the completion of such grants and the relinquishment of certain granted lands; and making an appropriation," approved March 18, 1913, by exchange with the United States in the Pilchuck-Sultan-Wallace watersheds included within the present boundaries of the Snoqualmie national forest. The board of regents and department with the advice and approval required by this section are hereby authorized to execute such agreements, writings, or relinquishments as are necessary or proper for the purpose of carrying said exchange into effect and such agreements or other writings to be executed in duplicate, one to be filed with the department and one to be delivered to the board of regents. The exchange shall be made upon the basis of equal values to be determined by careful valuation of the areas to be exchanged. [2003 c 334 § 446; 1917 c 66 § 1; RRS § 7848. Formerly RCW 79.08.070.]

**Reviser's note:** 1893 c 122 § 9 referred to herein reads as follows: "That 100,000 acres of the lands granted by section 17 of the enabling act, approved February 22, 1889, for state, charitable, educational, penal and reformatory institutions are hereby assigned for the support of the University of Washington."

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.040 Exchange of property acquired as administrative sites—Purposes.** The department may exchange surplus real property previously acquired by the department as administrative sites. The property may be exchanged for any public or private real property of equal value, to preserve archeological sites on trust lands, to acquire land to be held in natural preserves, to maintain habitats for endangered species, or to acquire or enhance sites to be dedicated for recreational purposes. [2003 c 334 § 453; 1979 c 24 § 1. Formerly RCW 79.08.250.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.050 Public notice—News release—Hearing.** Before a proposed exchange is presented to the board involving an exchange of any lands under the administrative control of the department, the department shall hold a public hearing on the proposal in the county where the state-owned land or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the department shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state-owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state-owned land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands

involved. A summary of the testimony presented at the hearings shall be prepared for the board's consideration when reviewing the department's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [2003 c 334 § 445; 1979 c 54 § 1; 1975 1st ex.s. c 107 § 2. Formerly RCW 79.08.015.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Exchange of state land by parks and recreation commission, procedure: RCW 79A.05.180.*

**79.17.060 Exchange of lands to consolidate and block up holdings—Agreements and deeds by commissioner.** The commissioner shall, with the advice and approval of the attorney general, execute such agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to complete an exchange. [2003 c 334 § 210; 1961 c 77 § 2; 1937 c 77 § 2; RRS § 5812-3f. Formerly RCW 76.12.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.070 Exchange of lands to consolidate and block up holdings—Lands acquired are subject to same laws and administered for same fund as lands exchanged.** Lands acquired by the state of Washington as the result of any exchange shall be held and administered for the benefit of the same fund and subject to the same laws as were the lands exchanged therefor. [2003 c 334 § 211; 1961 c 77 § 3. Formerly RCW 76.12.065.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

PART 2  
PURCHASE OR LEASE OF LAND  
BY SCHOOL DISTRICTS AND INSTITUTIONS  
OF HIGHER EDUCATION

**79.17.100 Application by school district.** Except as otherwise provided in RCW 79.17.110, upon the application of a school district or any institution of higher education for the purchase or lease of lands granted to the state by the United States, the department may offer such land for sale or lease to such school district or institution of higher education in such acreage as it may determine, consideration being given upon application of a school district to school site criteria established by the superintendent of public instruction. However, in the event the department thereafter proposes to offer such land for sale or lease at public auction, such school district or institution of higher education shall have a preference right for six months from notice of such proposal to purchase or lease such land at the appraised value determined by the board. [2006 c 263 § 333; 2003 c 334 § 322.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.110 School districts—Purchase of leased lands with improvements.** Notwithstanding the provisions of RCW 79.11.010 or any other provision of law, any school

district or institution of higher education leasing land granted to the state by the United States and on which land such district or institution has placed improvements as defined in RCW 79.02.010 shall be afforded the opportunity by the department at any time to purchase such land, excepting land over which the department retains management responsibilities, for the purposes of schoolhouse construction and/or necessary supporting facilities or structures at the appraised value thereof less the value that any improvements thereon added to the value of the land itself at the time of the sale thereof. [2003 c 334 § 437; 1985 c 200 § 1; 1982 1st ex.s. c 31 § 1; 1980 c 115 § 8; 1971 ex.s. c 200 § 2. Formerly RCW 79.01.770.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1980 c 115:** See note following RCW 28A.335.090.

**Severability—1971 ex.s. c 200:** See note following RCW 79.11.010.

**79.17.120 School districts—Purchases from school construction fund.** The purchases authorized under RCW 79.17.110 shall be classified as for the construction of common school plant facilities under RCW 28A.525.010 through 28A.525.222 and shall be payable out of the common school construction fund as otherwise provided for in RCW 28A.515.320 if the school district involved was under emergency school construction classification as established by the superintendent of public instruction at any time during the period of its lease of state lands. [2006 c 263 § 334; 2003 c 334 § 438; 1990 c 33 § 596; 1971 ex.s. c 200 § 3. Formerly RCW 79.01.774.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Intent—2003 c 334:** See note following RCW 79.02.010.

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

**Severability—1971 ex.s. c 200:** See note following RCW 79.11.010.

**79.17.130 School districts—Extension of contract period.** In those cases where the purchases, as authorized by RCW 79.17.110 and 79.17.120, have been made on a ten year contract, the board, if it deems it in the best interest of the state, may extend the term of any such contract to not to exceed an additional ten years under such terms and conditions as the board may determine. [2003 c 334 § 439; 1971 ex.s. c 200 § 4. Formerly RCW 79.01.778.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1971 ex.s. c 200:** See note following RCW 79.11.010.

**79.17.140 School districts—Reversion, when.** Notwithstanding any other provisions of law, annually the board shall determine if lands purchased or leased by school districts or institutions of higher education under the provisions of RCW \*79.11.010 and 79.17.110 are being used for school sites. If such land has not been used for school sites for a period of seven years the title to such land shall revert to the original trust for which it was held. [2003 c 334 § 440; 1971 ex.s. c 200 § 5. Formerly RCW 79.01.780.]

**\*Reviser's note:** The reference to RCW 79.11.010 appears to be erroneous. A reference to RCW 79.17.100 was apparently intended.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1971 ex.s. c 200:** See note following RCW 79.11.010.

PART 3  
LAND TRANSFER

**79.17.200 Real property—Transfer or disposal without public auction.** (1) For the purposes of this section, "public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; and any Indian tribe recognized as such by the federal government.

(2) With the approval of the board of natural resources, the department of natural resources may directly transfer or dispose of real property, without public auction, in the following circumstances:

(a) Transfers in lieu of condemnations;  
(b) Transfers to public agencies; and  
(c) Transfers to resolve trespass and property ownership disputes.

(3) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust. [1992 c 167 § 2. Formerly RCW 79.01.009.]

**79.17.210 Real property asset base—Natural resources real property replacement account.** (1) The legislature finds that the department has a need to maintain the real property asset base it manages and needs an accounting mechanism to complete transactions without reducing the real property asset base.

(2) The natural resources real property replacement account is created in the state treasury. This account shall consist of funds transferred or paid for the disposal or transfer of real property by the department under RCW 79.17.200. The funds in this account shall be used solely for the acquisition of replacement real property and may be spent only when, and as, authorized by legislative appropriation. [2003 c 334 § 118; 1992 c 167 § 1. Formerly RCW 43.30.265.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.17.220 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 4.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

Chapter 79.19 RCW  
LAND BANK

Sections

79.19.010	Legislative finding.
79.19.020	Land bank—Created—Purchase of property authorized.
79.19.030	Exchange or sale of property held in land bank.
79.19.040	Management of property held in land bank.
79.19.050	Appropriation of funds from forest development account or resource management cost account—Use of income.
79.19.060	Reimbursement for costs and expenses.
79.19.070	Land bank technical advisory committee.
79.19.080	Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands.

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79.19.090	Exchange of urban land for land bank land—Notification of affected public agencies.
79.19.100	Urban lands—Cooperative planning, development.
79.19.110	Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.
79.19.900	Severability—1984 c 222.
79.19.901	Effective date—1984 c 222.

**79.19.010 Legislative finding.** The legislature finds that from time to time it may be desirable for the department to sell state lands which have low potential for natural resource management or low income-generating potential or which, because of geographic location or other factors, are inefficient for the department to manage. However, it is also important to acquire lands for long-term management to replace those sold so that the publicly owned land base will not be depleted and the publicly owned forest land base will not be reduced. The purpose of this chapter is to provide a means to facilitate such sales and purchases so that the diversity of public uses on the trust lands will be maintained. In making the determinations, the department shall comply with local land use plans and applicable growth management principles. [2003 c 334 § 525; 1984 c 222 § 1; 1977 ex.s. c 109 § 1. Formerly RCW 79.66.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.020 Land bank—Created—Purchase of property authorized.** The department, with the approval of the board, may purchase property at fair market value to be held in a land bank, which is hereby created within the department. Property so purchased shall be property which would be desirable for addition to the public lands of the state because of the potential for natural resource or income production of the property. The total acreage held in the land bank shall not exceed one thousand five hundred acres. [2003 c 334 § 526; 1984 c 222 § 2; 1977 ex.s. c 109 § 2. Formerly RCW 79.66.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.030 Exchange or sale of property held in land bank.** The department, with the approval of the board, may:

(1) Exchange property held in the land bank for any other lands of equal value administered by the department, including any lands held in trust.

(2) Exchange property held in the land bank for property of equal or greater value which is owned publicly or privately, and which has greater potential for natural resource or income production or which could be more efficiently managed by the department, however, no power of eminent domain is hereby granted to the department; and

(3) Sell property held in the land bank in the manner provided by law for the sale of state lands without any requirement of platting and to use the proceeds to acquire property for the land bank which has greater potential for natural resource or income production or which would be more efficiently managed by the department. [2004 c 199 § 215; 2003 c 334 § 527; 1984 c 222 § 3; 1977 ex.s. c 109 § 3. Formerly RCW 79.66.030.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.040 Management of property held in land bank.** The department may manage the property held in the land bank as provided in RCW 79.10.030. However, the properties or interest in such properties shall not be withdrawn, exchanged, transferred, or sold without first obtaining payment of the fair market value of the property or interest therein or obtaining property of equal value in exchange. [2003 c 334 § 528; 1984 c 222 § 4; 1977 ex.s. c 109 § 4. Formerly RCW 79.66.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.050 Appropriation of funds from forest development account or resource management cost account—Use of income.** The legislature may authorize appropriation of funds from the forest development account or the resource management cost account for the purposes of this chapter. Income from the sale or management of property in the land bank shall be returned as a recovered expense to the forest development account or the resource management cost account and may be used to acquire property under RCW 79.19.020. [2003 c 334 § 529; 1984 c 222 § 5; 1977 ex.s. c 109 § 5. Formerly RCW 79.66.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Forest development account:* RCW 79.64.100.

*Resource management cost account:* RCW 79.64.020.

**79.19.060 Reimbursement for costs and expenses.** The department shall be reimbursed for actual costs and expenses incurred in managing and administering the land bank program under this chapter from the forest development account or the resource management cost account in an amount not to exceed the limits provided in RCW 79.64.040. Reimbursement from proceeds of sales shall be limited to marketing costs provided in RCW 79.10.030. [2003 c 334 § 530; 1984 c 222 § 6. Formerly RCW 79.66.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.070 Land bank technical advisory committee.** (1) There is created a land bank technical advisory committee, consisting of three members. Membership shall consist of: One member qualified by experience and training in matters pertaining to land use planning and real estate appointed by the commissioner of public lands, one member qualified by experience and training in public trust matters appointed by the superintendent of public instruction, and one member qualified by experience and training in financial matters appointed by the state treasurer.

(2) The technical advisory committee shall provide professional advice and counsel to the board of natural resources regarding land bank sales, purchases, and exchanges involving urban property.

(3) Members of the technical advisory committee shall be appointed for five-year terms and shall serve until a successor is appointed. In the case of a vacancy the vacancy shall be filled by the appointing authority. The initial term of the appointee of the commissioner shall expire in three years. The initial term of the appointee of the superintendent shall expire in four years. The initial term of the appointee of the treasurer shall expire in five years. All terms expire December 31.

(4) Members of the technical advisory committee shall be reimbursed for travel expenses incurred in the performance of their duties under RCW 43.03.050 and 43.03.060. [1984 c 222 § 7. Formerly RCW 79.66.070.]

**79.19.080 Identification of trust lands expected to convert to commercial, residential, or industrial uses—Hearing—Notice—Designation as urban lands.** Periodically, at intervals to be determined by the board, the department shall identify trust lands which are expected to convert to commercial, residential, or industrial uses within ten years. The department shall adhere to existing local comprehensive plans, zoning classifications, and duly adopted local policies when making this identification and determining the fair market value of the property.

The department shall hold a public hearing on the proposal in the county where the state land is located. At least fifteen days but not more than thirty days before the hearing, the department shall publish a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the trust land is located. At the same time that the published notice is given, the department shall give written notice of the hearings to the departments of fish and wildlife and general administration, to the parks and recreation commission, and to the county, city, or town in which the property is situated. The department shall disseminate a news release pertaining to the hearing among printed and electronic media in the area where the trust land is located. The public notice and news release also shall identify trust lands in the area which are expected to convert to commercial, residential, or industrial uses within ten years.

A summary of the testimony presented at the hearings shall be prepared for the board's consideration. The board shall designate trust lands which are expected to convert to commercial, residential, or industrial uses as urban land. Descriptions of lands designated by the board shall be made available to the county and city or town in which the land is situated and for public inspection and copying at the department's administrative office in Olympia, Washington and at each area office.

The hearing and notice requirements of this section apply to those trust lands which have been identified by the department prior to July 1, 1984, as being expected to convert to commercial, residential, or industrial uses within the next ten years, and which have not been sold or exchanged prior to July 1, 1984. [2003 c 334 § 531; 1994 c 264 § 60; 1988 c 36 § 53; 1984 c 222 § 8. Formerly RCW 79.66.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.090 Exchange of urban land for land bank land—Notification of affected public agencies.** If the department determines to exchange urban land for land bank land, public agencies defined in RCW 79.17.200 that may benefit from owning the property shall be notified in writing of the determination. The public agencies have sixty days from the date of notice by the department to submit an application to purchase the land and shall be afforded an opportu-

nity of up to one year, as determined by the board, to purchase the land from the land bank at fair market value directly without public auction as authorized under RCW 79.17.200. The board, if it deems it in the best interest of the state, may extend the period under terms and conditions as the board determines. If competing applications are received from governmental entities, the board shall select the application which results in the highest monetary value. [2003 c 334 § 532; 1993 c 265 § 1; 1984 c 222 § 9. Formerly RCW 79.66.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.100 Urban lands—Cooperative planning, development.** The purpose of this section is to foster cooperative planning among the state, the department, and local governments as to state-owned lands under the department's jurisdiction situated in urban areas.

At least once a year, prior to finalizing the department's urban land leasing action plan, the department and applicable local governments shall meet to review state and local plans and to coordinate planning in areas where urban lands are located. The department and local governments may enter into formal agreements for the purpose of planning the appropriate development of these state-owned urban lands.

The department shall contact those local governments which have planning, zoning, and land-use regulation authority over areas where urban lands under its jurisdiction are located so as to facilitate these annual or other meetings.

"Urban lands" as used in this section means those areas which within ten years are expected to be intensively used for locations of buildings or structures, and usually have urban governmental services.

"Local government" as used in this section means counties, cities, and towns having planning and land-use regulation authority. [2003 c 334 § 441; 1979 ex.s. c 56 § 1. Formerly RCW 79.01.784.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.110 Lands for commercial, industrial, or residential use—Payment of in-lieu of property tax—Distribution.** Lands purchased by the department for commercial, industrial, or residential use shall be subject to payment of in-lieu of real property tax for the period in which they are held in the land bank. The in-lieu payment shall be equal to the property taxes which would otherwise be paid if the land remained subject to the tax. Payment shall be made at the end of the calendar year to the county in which the land is located. If a parcel is not held in the land bank for the entire year, the in-lieu payment shall be reduced proportionately to reflect only that period of time in which the land was held in the land bank. The county treasurer shall distribute the in-lieu payments proportionately in accordance with RCW 84.56.230 as though such moneys were receipts from ad valorem property taxes. [2003 c 334 § 533; 1984 c 222 § 10. Formerly RCW 79.66.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.19.900 Severability—1984 c 222.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

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provision to other persons or circumstances is not affected. [1984 c 222 § 15. Formerly RCW 79.66.900.]

**79.19.901 Effective date—1984 c 222.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1984. [1984 c 222 § 16. Formerly RCW 79.66.901.]

## Chapter 79.22 RCW

### ACQUISITION, MANAGEMENT, AND DISPOSITION OF STATE FOREST LANDS

#### Sections

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#### PART 1 GENERAL PROVISIONS

**79.22.010 Powers of department—Acquisition of land for reforestation—Taxes, cancellation.** The department has the power to accept gifts and bequests of money or other property, made in its own name, or made in the name of the state, to promote generally the interests of reforestation or for a specific named purpose in connection with reforestation, and to acquire in the name of the state, by purchase or gift, any lands which by reason of their location, topography, or geological formation, are chiefly valuable for purpose of developing and growing timber, and to designate such lands and any lands of the same character belonging to the state as state forest lands; and may acquire by gift or purchase any lands of the same character. The department has the power to seed, plant, and develop forests on any lands, purchased, acquired, or designated by it as state forest lands, and shall furnish such care and fire protection for such lands as it shall deem advisable. Upon approval of the board of county commissioners of the county in which the land is located such gift or donation of land may be accepted subject to delinquent general taxes thereon, and upon such acceptance of such gift or donation subject to such taxes, the department shall record the deed of conveyance thereof and file with the assessor and treasurer of the county wherein such land is situated, written

notice of acquisition of such land, and that all delinquent general taxes thereon, except state taxes, shall be canceled, and the county treasurer shall thereupon proceed to make such cancellation in the records of the county treasurer. Thereafter, such lands shall be held in trust, protected, managed, and administered upon, and the proceeds therefrom disposed of, under RCW 79.22.040. [2003 c 334 § 205; 1988 c 128 § 23; 1937 c 172 § 1; 1929 c 117 § 1; 1923 c 154 § 3; RRS § 5812-3. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.22.020 Acquisition of forest land—Requisites.**

The department shall take such steps as it deems advisable for locating and acquiring lands suitable for state forests and reforestation. Acquisitions made pursuant to this section shall be at no more than fair market value. No lands shall ever be acquired by the department except upon the approval of the title by the attorney general and on a conveyance being made to the state of Washington by good and sufficient deed. No forest lands shall be designated, purchased, or acquired by the department unless the area so designated or the area to be acquired shall, in the judgment of the department, be of sufficient acreage and so located that it can be economically administered for forest development purposes. [2000 c 148 § 1; 1988 c 128 § 28; 1923 c 154 § 4; RRS § 5812-4. Prior: 1921 c 169 § 1, part. Formerly RCW 76.12.080.]

**79.22.030 Record of proceedings, etc.** The department shall keep in its office in a permanent bound volume a record of all forest lands acquired by the state and any lands owned by the state and designated as such by the department. The record shall show the date and from whom said lands were acquired; amount and method of payment therefor; the forest within which said lands are embraced; the legal description of such lands; the amount of money expended, if any, and the date thereof, for seeding, planting, maintenance, or care for such lands; the amount, date, and source of any income derived from such land; and such other information and data as may be required by the department. [2003 c 334 § 223; 1988 c 128 § 34; 1923 c 154 § 9; RRS § 5812-9. Formerly RCW 76.12.155, 43.12.140.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.22.040 Deed of county land to department.** If any land acquired by a county through foreclosure of tax liens, or otherwise, comes within the classification of land described in RCW 79.22.010 and can be used as state forest land and if the department deems such land necessary for the purposes of this chapter, the county shall, upon demand by the department, deed such land to the department and the land shall become a part of the state forest lands.

Such land shall be held in trust and administered and protected by the department in the same manner as other state forest lands.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys derived subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 206; 2003 c 313 § 6; 1997 c 370 § 1; 1991 c 363 § 151; 1988 c 128 § 24; 1981 2nd ex.s. c 4 § 4; 1971 ex.s. c 224 § 1; 1969

c 110 § 1; 1957 c 167 § 1; 1951 c 91 § 1; 1935 c 126 § 1; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3b); RRS § 5812-36. Formerly RCW 76.12.030.]

**Reviser's note:** This section was amended by 2003 c 313 § 6 and by 2003 c 334 § 206, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**79.22.050 Sales and leases of timber, timber land, or products thereon.** Except as provided in RCW 79.22.060, all land, acquired or designated by the department as state forest land, shall be forever reserved from sale, but the valuable materials thereon may be sold or the land may be leased in the same manner and for the same purposes as is authorized for state lands if the department finds such sale or lease to be in the best interests of the state and approves the terms and conditions thereof.

In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale. [2003 c 334 § 220; 2003 c 313 § 7; 2000 c 148 § 2; 1998 c 71 § 2. Prior: 1988 c 128 § 32; 1988 c 70 § 1; 1980 c 154 § 11; 1971 ex.s. c 123 § 4; 1955 c 116 § 1; 1953 c 21 § 1; 1923 c 154 § 7; RRS § 5812-7. Formerly RCW 76.12.120.]

**Reviser's note:** This section was amended by 2003 c 313 § 7 and by 2003 c 334 § 220, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter 82.45 RCW digest.

*Christmas trees—Cutting, breaking, removing:* RCW 79.02.340 and 79.02.350.

**79.22.060 Transfer, disposal of lands without public auction—Requirements.** (1) With the approval of the board, the department may directly transfer or dispose of state forest lands without public auction, if such lands consist of ten contiguous acres or less, or have a value of twenty-five thousand dollars or less. Such disposal may only occur in the following circumstances:

(a) Transfers in lieu of condemnation; and  
(b) Transfers to resolve trespass and property ownership disputes.

(2) Real property to be transferred or disposed of under this section shall be transferred or disposed of only after appraisal and for at least fair market value, and only if such transaction is in the best interest of the state or affected trust.

(3) The proceeds from real property transferred or disposed of under this section shall be deposited into the park land trust revolving fund and be solely used to buy replacement land within the same county as the property transferred

or disposed. [2003 c 334 § 221; 2000 c 148 § 3. Formerly RCW 76.12.125.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.22.070 Forest and land management—Rules—**

**Penalty.** (1) State forest lands shall be logged, protected, and cared for in such manner as to ensure natural reforestation of such lands, and to that end the department shall have power, and it shall be its duty to adopt rules, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules, or amendments thereto, shall be adopted by the department under chapter 34.05 RCW.

(2)(a) Except as provided in (b) of this subsection, any violation of any rule adopted by the department under the authority of this section is a gross misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 334 § 222; 2003 c 53 § 369; 2000 c 11 § 10; 1988 c 128 § 33; 1987 c 380 § 17; 1927 c 288 § 3, part (adding a new section to 1923 c 154 § 3a); RRS § 5812-3a. Prior: 1921 c 169 § 2. Formerly RCW 76.12.140.]

**Reviser's note:** This section was amended by 2003 c 53 § 369 and by 2003 c 334 § 222, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—2003 c 334:** See note following RCW 79.02.010.

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

**Effective date—Severability—1987 c 380:** See RCW 7.84.900 and 7.84.901.

**79.22.080 Utility bonds.** For the purpose of acquiring and paying for lands for state forests and reforestation as herein provided the department may issue utility bonds of the state of Washington as may hereafter be authorized by the legislature. The bonds shall be known as state forest utility bonds. The principal or interest of the bonds shall not be a general obligation of the state, but shall be payable only from the forest development account. The department may issue the bonds in exchange for lands selected by it in accordance with RCW 79.64.100 and this chapter, or may sell the bonds in such a manner as it deems advisable, and with the proceeds purchase and acquire such lands. Any of the bonds issued in exchange and payment for any particular tract of lands may be made a first and prior lien against the particular land for which they are exchanged, and upon failure to pay the bonds and interest thereon according to their terms, the lien of the bonds may be foreclosed by appropriate court action. [2003 c 334 § 217; 2000 c 11 § 8; 1988 c 128 § 29; 1937 c 104 § 1; 1923 c 154 § 5; RRS § 5812-5. Formerly RCW 76.12.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.22.090 Bonds—Purchase price of land limited—**

**Retirement of bonds.** For the purpose of acquiring, seeding, reforestation, and administering land for forests and of carrying out RCW 79.64.100 and the provisions of this chapter,

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the department is authorized to issue and dispose of utility bonds of the state of Washington in an amount not to exceed one hundred thousand dollars in principal during the biennium expiring March 31, 1951. However, no sum in excess of one dollar per acre shall ever be paid or allowed either in cash, bonds, or otherwise, for any lands suitable for forest growth, but devoid of such, nor shall any sum in excess of three dollars per acre be paid or allowed either in cash, bonds, or otherwise, for any lands adequately restocked with young growth.

Any utility bonds issued under the provisions of this section may be retired from time to time, whenever there is sufficient money in the forest development account, said bonds to be retired at the discretion of the department either in the order of issuance, or by first retiring bonds with the highest rate of interest. [2003 c 334 § 218; 2000 c 11 § 9; 1988 c 128 § 30; 1949 c 80 § 1; 1947 c 66 § 1; 1945 c 13 § 1; 1943 c 123 § 1; 1941 c 43 § 1; 1939 c 106 § 1; 1937 c 104 § 2; 1935 c 126 § 2; 1933 c 117 § 1; Rem. Supp. 1949 § 5812-11. Formerly RCW 76.12.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.22.100 Reacquisition of lands from federal gov-**

**ernment.** Whenever any forest land which shall have been acquired by any county through the foreclosure of tax liens, or otherwise, and which shall have been acquired by the federal government either from said county or from the state holding said lands in trust, and shall be available for reacquisition, the board and the board of county commissioners of any such county are authorized to enter into an agreement for the reacquisition of such lands as state forest lands in trust for such county. Such agreement shall provide for the price and manner of such reacquisition. The board is authorized to provide in such agreement for the advance of funds available to it for such purpose from the forest development account, all or any part of the price for such reacquisition so agreed upon, which advance shall be repaid at such time and in such manner as provided in the agreement, solely from any distribution to be made to said county under the provisions of RCW 79.22.040; that the title to said lands shall be retained by the state free from any trust until the state shall have been fully reimbursed for all funds advanced in connection with such reacquisition; and that in the event of the failure of the county to repay such advance in the manner provided, the said forest lands shall be retained by the state to be administered and/or disposed of in the same manner as other state forest lands free and clear of any trust interest therein by said county. Such county shall make provisions for the reimbursement of the various funds from any moneys derived from such lands so acquired, or any other county trust forest board lands which are distributable in a like manner, for any sums withheld from funds for other areas which would have been distributed thereto from time to time but for such agreement. [2003 c 334 § 208; 1959 c 87 § 1. Formerly RCW 76.12.035.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.22.110 Reconveyance to county in certain cases.**

Whenever any county shall have acquired by tax foreclosure, or otherwise, lands within the classification of RCW 79.22.010 and shall have thereafter contracted to sell such

lands to bona fide purchasers before the same may have been selected as forest lands by the department, and has heretofore deeded or shall hereafter deed because of inadvertence or oversight such lands to the state or to the department to be held under RCW 79.22.040 or any amendment thereof; the department upon being furnished with a certified copy of such contract of sale on file in such county and a certificate of the county treasurer showing said contract to be in good standing in every particular and that all due payments and taxes have been made thereon, and upon receipt of a certified copy of a resolution of the board of county commissioners of such county requesting the reconveyance to the county of such lands, is hereby authorized to reconvey such lands to such county by quitclaim deed executed by the department. Such reconveyance of lands hereafter so acquired shall be made within one year from the conveyance thereof to the state or department. [2003 c 334 § 212; 1988 c 128 § 27; 1941 c 84 § 1; Rem. Supp. 1941 § 5812-3g. Formerly RCW 76.12.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.22.120 Reconveyance to county of certain leased lands.** If the board of natural resources determines that any forest lands deeded to the board or the state pursuant to this chapter, which are leased to any county for uses which have as one permitted use a sanitary landfill and/or transfer station, are no longer appropriate for management by the board, the board may reconvey all of the lands included within any such lease to that county. Reconveyance shall be by quitclaim deed executed by the chairman of the board. Upon execution of such deed, full legal and equitable title to such lands shall be vested in that county, and any leases on such lands shall terminate. A county that receives any such reconveyed lands shall indemnify and hold the state of Washington harmless from any liability or expense arising out of the reconveyed lands. [1991 c 10 § 1. Formerly RCW 76.12.067.]

**79.22.130 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 5.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

PART 2  
TRANSFERS OF STATE FOREST LANDS  
FOR PUBLIC PARK PURPOSES

**79.22.300 Procedure—Reconveyance back when use ceases.** Whenever the board of county commissioners of any county shall determine that state forest lands, that were acquired from such county by the state pursuant to RCW 79.22.040 and that are under the administration of the department, are needed by the county for public park use in accordance with the county and the state outdoor recreation plans, the board of county commissioners may file an application with the board for the transfer of such state forest lands.

Upon the filing of an application by the board of county commissioners, the department shall cause notice of the impending transfer to be given in the manner provided by RCW 42.30.060. If the department determines that the proposed use is in accordance with the state outdoor recreation

plan, it shall reconvey said state forest lands to the requesting county to have and to hold for so long as the state forest lands are developed, maintained, and used for the proposed public park purpose. This reconveyance may contain conditions to allow the department to coordinate the management of any adjacent public lands with the proposed park activity to encourage maximum multiple use management and may reserve rights-of-way needed to manage other public lands in the area. The application shall be denied if the department finds that the proposed use is not in accord with the state outdoor recreation plan. If the land is not, or ceases to be, used for public park purposes the land shall be conveyed back to the department upon request of the department. [2004 c 199 § 216; 2003 c 334 § 213; 1983 c 3 § 195; 1969 ex.s. c 47 § 1. Formerly RCW 76.12.072.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.22.310 Timber resource management.** The timber resources on any such state forest land transferred to the counties under RCW 79.22.300 shall be managed by the department to the extent that this is consistent with park purposes and meets with the approval of the board of county commissioners. Whenever the department does manage the timber resources of such lands, it will do so in accordance with the general statutes relative to the management of all other state forest lands. [2003 c 334 § 214; 1969 ex.s. c 47 § 2. Formerly RCW 76.12.073.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.22.320 Lands transferred by deed.** Under provisions mutually agreeable to the board of county commissioners and the board, lands approved for transfer to a county for public park purposes under the provisions of RCW 79.22.300 shall be transferred to the county by deed. [2003 c 334 § 215; 1969 ex.s. c 47 § 3. Formerly RCW 76.12.074.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.22.330 Provisions cumulative and nonexclusive.** The provisions of RCW 79.22.300 through 79.22.330 shall be cumulative and nonexclusive and shall not repeal any other related statutory procedure established by law. [2003 c 334 § 216; 1969 ex.s. c 47 § 4. Formerly RCW 76.12.075.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Chapter 79.24 RCW  
CAPITOL BUILDING LANDS**

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- 79.24.020 Use of funds restricted.
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*State capitol committee: Chapter 43.34 RCW.*

GENERAL

**79.24.010 Designation of lands—Sale, manner, consent of board.** All lands granted to the state by the federal government for the purpose of erecting public buildings at the state capitol shall be known and designated as "Capitol Building Lands". None of such lands, nor the timber or other materials thereon, shall hereafter be sold without the consent of the board of natural resources and only in the manner as

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provided for public lands and materials thereon. [1959 c 257 § 42; 1909 c 69 § 2; RRS § 7898.]

**79.24.020 Use of funds restricted.** All funds arising from the sale of lands granted to the state of Washington for the purpose of erecting public buildings at the state capital shall be held intact for the purpose for which they were granted. Lands when selected and assigned to said grant shall not be transferred to any other grant, nor shall the moneys derived from said lands be applied to any other purpose than for the erection of buildings at the state capital. [1893 c 83 § 1; RRS § 7896.]

**79.24.030 Employment of assistants—Payment of expenses.** The board of natural resources and the department of natural resources may employ such cruisers, draughtsmen, engineers, architects or other assistants as may be necessary for the best interests of the state in carrying out the provisions of RCW 79.24.010 through 79.24.085, and all expenses incurred by the board and department, and all claims against the capitol building construction account shall be audited by the department and presented in vouchers to the state treasurer, who shall draw a warrant therefor against the capitol building construction account as herein provided or out of any appropriation made for such purpose. [1988 c 128 § 62; 1985 c 57 § 76; 1973 c 106 § 37; 1959 c 257 § 43; 1911 c 59 § 12; 1909 c 69 § 7; RRS § 7903.]

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

**79.24.060 Disposition of proceeds of sale—Publication of notice of proposals or bids.** The proceeds of such sale of capitol building lands, or the timber or other materials shall be paid into the capitol building construction account which is hereby established in the state treasury to be used as in \*this act provided. All contracts for the construction of capitol buildings shall be let after notice for proposals or bids have been advertised for at least four consecutive weeks in at least three newspapers of general circulation throughout the state. [1985 c 57 § 77; 1959 c 257 § 44; 1911 c 59 § 10; 1909 c 69 § 5; RRS § 7901.]

**\*Reviser’s note:** "This act" first appears in 1909 c 69 codified as RCW 79.24.010 and 79.24.030 through 79.24.085.

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

**79.24.085 Disposition of money from sales.** All sums of money received from sales shall be paid into the capitol building construction account in the state treasury, and are hereby appropriated for the purposes of \*this act. [1985 c 57 § 78; 1959 c 257 § 46; 1909 c 69 § 8; RRS § 7904.]

**\*Reviser’s note:** For "this act," see note following RCW 79.24.060.

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

**79.24.087 Capitol grant revenue to capitol building construction account.** All revenues received from leases and sales of lands, timber and other products on the surface or beneath the surface of the lands granted to the state of Washington by the United States pursuant to an act of Congress approved February 22, 1889, for capitol building purposes, shall be paid into the "capitol building construction account". Available revenues in this account shall first be pledged to

state capitol public and historic facilities as defined under RCW 79.24.710. [2005 c 330 § 7; 1923 c 12 § 1; RRS § 7921-1. Formerly RCW 43.34.060.]

### DESCHUTES BASIN

**79.24.100 Bond issue authorized.** The state capitol committee may issue coupon or registered bonds of the state of Washington in an amount not exceeding one million dollars. The bonds shall bear interest at a rate not to exceed five percent per annum, both principal and interest to be payable only from the capitol building construction fund from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes. [1947 c 186 § 1; Rem. Supp. 1947 § 7921-10.]

*Capitol building construction fund abolished and moneys transferred to capitol building construction account: RCW 43.79.330 through 43.79.334.*

*State capitol committee: Chapter 43.34 RCW.*

**79.24.110 Sale of bonds—Price—Investment of funds in.** Such bonds may be sold in such manner and in such amount, in such denominations, and at such times as the capitol committee shall determine, at the best price obtainable, but not for a sum so low as to make the net interest return to the purchaser exceed five percent per annum as computed by standard tables upon such sums; or the state treasurer may invest surplus cash in the accident fund in such bonds at par, at such rate of interest, not exceeding five percent as may be agreed upon between the treasurer and the state capitol committee, and the state finance committee may invest any surplus cash in the general fund, not otherwise appropriated, in such bonds at par at such rate of interest, not exceeding five percent, as may be agreed upon between the state finance committee and the state capitol committee. [1947 c 186 § 2; Rem. Supp. 1947 § 7921-11.]

*Accident fund: RCW 51.44.010.*

*State finance committee: Chapter 43.33 RCW.*

*State treasurer: Chapter 43.08 RCW.*

**79.24.120 Life of bonds—Payment of interest.** Bonds issued under RCW 79.24.100 through 79.24.160 shall be payable in such manner, at such place or places, and at such time or times, not longer than twenty years from their date; with the option of paying any or all of said bonds at any interest paying date, as shall be fixed by the capitol committee, and the interest on the bonds shall be payable semiannually. [1947 c 186 § 3; Rem. Supp. 1947 § 7921-12.]

**79.24.130 Signatures—Registration of bonds.** The bonds shall be signed by the governor and state auditor under the seal of the state, and any coupons attached thereto shall be signed by the same officers, whose signatures thereupon may be printed facsimile. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York, as to principal alone, or as to both principal and interest, under

such regulations as the state capitol committee may prescribe. [1947 c 186 § 4; Rem. Supp. 1947 § 7921-13.]

**79.24.140 Proceeds to capitol building construction account.** The proceeds from the sale of the bonds hereby authorized shall be paid into the \*capitol building construction fund. [1947 c 186 § 5; Rem. Supp. 1947 § 7921-14.]

*\*Reviser's note:* For "capitol building construction fund," see note following RCW 79.24.100.

**79.24.150 Bonds as security and legal investment.** Bonds authorized by RCW 79.24.100 through 79.24.160 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.100 through 79.24.160. [1947 c 186 § 6; Rem. Supp. 1947 § 7921-15.]

**79.24.160 Use of proceeds specified.** Proceeds of the bonds issued hereunder shall be expended by the state capitol committee in the completion of the Deschutes Basin project adjacent to the state capitol grounds. The project shall embrace: (1) The acquisition by purchase or condemnation of necessary lands or easements; (2) the construction of a dam or weir along the line of Fifth Avenue in the city of Olympia and a parkway and railroad over the same; (3) the construction of a parkway on the west bank of the Deschutes Basin from the Pacific highway at the Deschutes River to a connection with the Olympic highway; (4) the construction of a parkway from the vicinity of Ninth Avenue and Columbia Street in the city of Olympia around the south side of the north Deschutes Basin, using the existing railroad causeway, to a road along Percival Creek and connecting with the Olympic highway; (5) the preservation of the precipitous banks surrounding the basin by the acquisition of easements or other rights whereby the cutting of trees and the building of structures on the banks can be controlled; (6) the construction by dredging of varying level areas at the foot of the bluffs for access to water and to provide for boating and other recreational areas; and (7) such other undertakings as, in the judgment of the committee, are necessary to the completion of the project.

In connection with the establishment of parkways, causeways, streets, and highways, or the relocation thereof, and the rerouting of railroads to effectuate the general plan of the basin project, the committee shall at all times cooperate with the department of transportation, the proper authorities of the city of Olympia, and the railroad companies which may be involved in the rerouting of railway lines. [1984 c 7 § 370; 1947 c 186 § 7; Rem. Supp. 1947 § 7921-16.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

PARKING FACILITIES

**79.24.300 Parking facilities authorized—Rental.** The state capitol committee may construct parking facilities for the state capitol adequate to provide parking space for automobiles, said parking facilities to be either of a single level, multiple level, or both, and to be either on one site or more than one site and located either on or in close proximity to the capitol grounds, though not necessarily contiguous thereto. The state capitol committee may select such lands as are necessary therefor and acquire them by purchase or condemnation. As an aid to such selection the committee may cause location, topographical, economic, traffic, and other surveys to be conducted, and for this purpose may utilize the services of existing state agencies, may employ personnel, or may contract for the services of any person, firm or corporation. In selecting the location and plans for the construction of the parking facilities the committee shall consider recommendations of the director of general administration.

Space in parking facilities may be rented to the officers and employees of the state on a monthly basis at a rental to be determined by the director of general administration. The state shall not sell gasoline, oil, or any other commodities or perform any services for any vehicles or equipment other than state equipment. [1977 c 75 § 90; 1965 c 129 § 1; 1955 c 293 § 1.]

**79.24.310 Number and location of facilities.** The state capitol committee may construct any two of the following three facilities: (1) A two story parking facility south of the transportation and public lands building in the existing parking area; (2) multiple level but not to exceed three story parking facility adjacent to the new office building; (3) multiple level but not to exceed three story parking facility adjacent to the new office building. [1955 c 293 § 2.]

**79.24.320 Appropriations—Parking facilities, laboratories.** There is appropriated to the state capitol committee from the \*capitol building construction fund for the fiscal biennium ending June 30, 1957, the sum of seven hundred thousand dollars for the purposes of RCW 79.24.300, 79.24.310 and 79.24.320. Of this sum five hundred thousand dollars is to be used for parking purposes as outlined above and the remaining two hundred thousand dollars of this sum are to be used to complete the fisheries and health laboratories in the new office building on the contingency that it is necessary for the fisheries and health departments to move to Olympia. [1955 c 293 § 3.]

\*Reviser's note: For "capitol building construction fund," see note following RCW 79.24.100.

**79.24.330 Purchase of land for parking facilities authorized.** For use in the construction thereon of parking facilities in close proximity to the capitol grounds, the state capitol committee is authorized to purchase, at a price not in excess of one hundred thousand dollars, the following real estate situated in the city of Olympia, Thurston county, state of Washington, and more particularly described as: Lots two, three, six, and seven, block eight, P.D. Moore's addition to the town of Olympia, according to the plat thereof recorded

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in volume 1 of plats, page 32, records of said county. [1957 c 257 § 1.]

**79.24.340 Purchase of land for parking facilities authorized—Construction of one-level facility.** After purchase of the said real estate the state capitol committee shall construct thereon one-level parking facilities suitable for as large a number of automobiles as may reasonably be accommodated thereon. [1957 c 257 § 2.]

SYLVESTER PARK

**79.24.400 Sylvester Park—Grant authorized.** The city of Olympia may grant to the state of Washington its right, title and interest in that public square situated therein and bounded by Capitol Way, Legion Way, Washington Street and East Seventh Street, and commonly known as Sylvester Park, and such conveyance shall in all respects supersede the terms and effect of any prior conveyance or agreement concerning this property. [1955 c 216 § 1.]

**79.24.410 Sylvester Park—Subsurface parking facility.** The state capitol committee may accept such grant on behalf of the state. Upon receipt from the city of Olympia of the conveyance authorized by RCW 79.24.400, the state capitol committee may lease the premises thereby conveyed, to any person, firm, or corporation for the purpose of constructing, operating and maintaining a garage and parking facility underneath the surface of said property.

The lease shall be for a term of not to exceed twenty-five years and by its terms shall require the lessee to restore and maintain the condition of the surface of the property so as to be available and suitable for use as a public park. The lease shall further provide that all improvements to the property shall become the property of the state upon termination of the lease, and may provide such further terms as the capitol committee may deem to be advantageous. [1955 c 216 § 2.]

ACCESS TO CAPITOL GROUNDS

**79.24.450 Access to capitol grounds on described route authorized.** The state capitol committee may construct a suitable access to the capitol grounds by way of fourteenth and fifteenth streets in the city of Olympia, and for the purpose may acquire, by purchase or condemnation, such lands along the said streets and between Capitol Way and Cherry Street in the city of Olympia, and construct thereon such improvements as the state capitol committee may deem proper for the purposes of such access. [1957 c 258 § 1.]

EAST CAPITOL SITE

**79.24.500 Property described.** The state capitol committee shall proceed as rapidly as their resources permit to acquire title to the following described property for development as state capitol grounds:

That area bounded as follows: Commencing at a point beginning at the southwest corner of Capitol Way and 15th Avenue and proceeding westerly to the present easterly boundary of the capitol grounds on the west; thence proceed-

ing northerly along said easterly boundary of the capitol grounds; thence proceeding easterly along the boundary of the present capitol grounds to a point at the corner of Capitol Way and 14th Avenue; thence proceeding southerly to the point of beginning; also that area bounded by Capitol Way on the west, 11th Avenue on the north, Jefferson Street on the east, and 16th Avenue (Maple Park) on the south; also that area bounded by Jefferson Street on the west, 14th Avenue on the north, Cherry Street on the east and 14th Avenue (Interstate No. 5 access) on the south; also that area bounded by 14th Avenue (Interstate No. 5 access) on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, 16th Avenue on the south, and Jefferson Street on the west; also that area bounded by 15th Avenue on the north, the westerly boundary of the Oregon-Washington Railroad & Navigation Co. right-of-way on the east, and 14th Avenue (Interstate No. 5 access) on the south and west; all in the city of Olympia, county of Thurston, state of Washington, or any such portion or portions of the above described areas as may be required for present or future expansion of the facilities of the state capitol. [1967 ex.s. c 43 § 1; 1961 c 167 § 1.]

**79.24.510 Area designated as the east capitol site.**

The area described in RCW 79.24.500 shall be known as the east capitol site, and upon acquisition shall become part of the state capitol grounds. [1961 c 167 § 2.]

**79.24.520 Acquisition of property authorized—Means—Other state agencies to assist committee in executing chapter.** The state capitol committee may acquire such property by gift, exchange, purchase, option to purchase, condemnation, or any other means of acquisition not expressly prohibited by law. All other state agencies shall aid and assist the state capitol committee in carrying out the provisions of RCW 79.24.500 through 79.24.600. [1961 c 167 § 3.]

**79.24.530 Department of general administration to design and develop site and buildings—Approval of capitol committee.** The department of general administration shall develop, amend and modify an overall plan for the design and establishment of state capitol buildings and grounds on the east capitol site in accordance with current and prospective requisites of a state capitol befitting the state of Washington. The overall plan, amendments and modifications thereto shall be subject to the approval of the state capitol committee. [1961 c 167 § 4.]

**79.24.540 State agencies may buy land and construct buildings thereon—Requirements.** State agencies which are authorized by law to acquire land and construct buildings, whether from appropriated funds or from funds not subject to appropriation by the legislature, may buy land in the east capitol site and construct buildings thereon so long as the location, design and construction meet the requirements established by the department of general administration and approved by the state capitol committee. [1961 c 167 § 5.]

**79.24.550 State buildings to be constructed only on capitol grounds—Exception.** No state agency shall undertake construction of buildings in Thurston county except upon the state capitol grounds: PROVIDED, That the state capitol committee may authorize exceptions upon a finding by the state capitol committee that appropriate locations on the capitol grounds or east capitol site are unavailable. [1961 c 167 § 6.]

**79.24.560 Department of general administration to rent, lease or use properties.** The department of general administration shall have the power to rent, lease, or otherwise use any of the properties acquired in the east capitol site. [1961 c 167 § 7.]

**79.24.570 Use of proceeds from site.** All moneys received by the department of general administration from the management of the east capitol site, excepting (1) funds otherwise dedicated prior to April 28, 1967, (2) parking and rental charges and fines which are required to be deposited in other accounts, and (3) reimbursements of service and other utility charges made to the department of general administration, shall be deposited in the capitol purchase and development account of the state general fund. [2000 c 11 § 24; 1969 ex.s. c 273 § 11; 1963 c 157 § 1; 1961 c 167 § 8.]

**79.24.590 Use of private real estate and rights in site declared public use.** The use of the private real estate, rights, and interests in the east capitol site is hereby declared to be a public use. [1961 c 167 § 10.]

**79.24.600 Severability—1961 c 167.** If any provision of RCW 79.24.500 through 79.24.590, or its application to any person or circumstance is held invalid, the remainder of RCW 79.24.500 through 79.24.590, or the application of the provision to other persons or circumstances is not affected. [1961 c 167 § 11.]

STATE BUILDINGS AND PARKING FACILITIES—  
1969 ACT

**79.24.650 Committee duties enumerated.** The state capitol committee shall provide for the construction, remodeling, and furnishing of capitol office buildings, parking facilities, governor's mansion, and such other buildings and facilities as are determined by the state capitol committee to be necessary to provide space for the legislature by way of offices, committee rooms, hearing rooms, and work rooms, and to provide executive office space and housing for the governor, and to provide executive office space for other elective officials and such other state agencies as may be necessary, and to pay for all costs and expenses in issuing the bonds and to pay interest thereon during construction of the facilities for which the bonds were issued and six months thereafter. [1969 ex.s. c 272 § 1.]

**79.24.652 Bonds authorized—Amount—Interest and maturity—Payable from certain revenues.** In addition to any authority previously granted, the state capitol committee is authorized and directed to issue coupon or registered reve-

nue bonds of the state in an amount not to exceed fifteen million dollars. The bonds may be sold in such manner and amounts, and in such denominations, at such times, at such price and shall bear interest at such rates and mature at such times as the state capitol committee shall determine by resolution. Both principal and interest shall be payable only from revenues hereafter received from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress approved February 22, 1889, for capitol building purposes and from any parking revenues derived from state capitol parking facilities. [1969 ex.s. c 272 § 2.]

**79.24.654 Maturities—Covenants—Section's provisions as contract with bond holders—Where payable.** Bonds issued under RCW 79.24.650 through 79.24.668 shall mature at such time or times, and include such provisions for optional redemption, premiums, coverage, guarantees, and other covenants as in the opinion of the state capitol committee may be necessary. In issuing such bonds and including such provisions, the state capitol committee shall act for the state and all officers, departments and agencies thereof affected by such provisions, and the state and such other officers, departments and agencies shall adhere to and be bound by such covenants. As long as any of such bonds shall be outstanding, neither the state, nor any of its officers, departments, agencies or instrumentalities, shall divert any of the proceeds and revenues actually pledged to secure the payment of the bonds and interest thereon, and the provisions of this section shall restrict and limit the powers of the legislature of the state of Washington in respect to the matters herein mentioned as long as the bonds are outstanding and unpaid and shall constitute a contract to that effect for the benefit of the holders of all such bonds. The principal and interest of said bonds shall be payable at the office of the state treasurer, or at the office of the fiscal agent of the state in New York City at the option of the holder of any such bond or bonds. [1969 ex.s. c 272 § 3.]

**79.24.656 Signatures—Registration.** The bonds shall be signed by the governor and state treasurer under the seal of the state which may be printed or engraved in the border of such bonds. The signature of the governor may be a facsimile printed upon the bonds and any coupons attached thereto shall be signed with the facsimile signature of said officials. Any of such bonds may be registered in the name of the holder upon presentation to the state treasurer, or at the fiscal agency of the state in New York City, as to principal alone, or as to both principal and interest, under such regulations as the treasurer may prescribe. [1969 ex.s. c 272 § 4.]

**79.24.658 Payment of principal and interest—State building and parking bond redemption fund—Reserve—Owner's remedies—Disposition of proceeds of sale—Nondebt-limit revenue bond retirement account.** For the purpose of paying the principal and interest of the bonds as the bonds become due, or as the bonds become callable at the option of the capitol committee, there is created a fund to be denominated the "state building and parking bond redemp-

tion fund". While any of the bonds remain outstanding and unpaid, it shall be the duty of the capitol committee on or before June 30th of each year to determine the amount that will be required for the redemption of bonds and the payment of interest during the next fiscal year, and certify the amount to the state treasurer in writing. The state treasurer shall forthwith and thereafter during that fiscal year and at least fifteen days prior to each interest and principal payment date deposit into the state building and parking bond redemption fund all receipts from any parking facilities and to the extent necessary from receipts from leases and contracts of sale heretofore or hereafter made of lands, timber, and other products from the surface or beneath the surface of the lands granted to the state by the United States pursuant to the act of congress until the amount certified to the treasurer by the capitol committee has accrued to the state building and parking bond redemption fund. Nothing in RCW 79.24.650 through 79.24.668 shall prohibit the use of such receipts from leases and contracts of sale for any other lawfully authorized purpose when not required for the redemption and payment of interest and meeting the covenant requirements of the bonds authorized herein.

In addition to certifying and providing for the annual amounts required to pay the principal and interest of the bonds, the capitol committee may, under such terms and conditions and at such times and in such amounts as may be found necessary to insure the sale of the bonds, provide for additional payments into the state building and parking bond redemption fund to be held as a reserve to secure the payment of the principal and interest of such bonds.

The owner and holder of any of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the deposit and payment of funds as directed herein.

The proceeds from the sale of the bonds hereby authorized shall be paid into the general fund—state building construction account.

If a nondebt-limit revenue bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the nondebt-limit revenue bond retirement account shall be used for the purposes of this chapter in lieu of the state building and parking bond redemption fund. [1997 c 456 § 28; 1969 ex.s. c 272 § 5.]

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**79.24.660 Bonds as security and legal investment.** Bonds authorized by RCW 79.24.650 through 79.24.668 shall be accepted by the state, counties, cities, towns, school districts, and other political subdivisions as security for the deposit of any of their funds in any banking institution. Any officer of this state, or any county, city, town, school district, or other political subdivision may invest surplus funds, which he is authorized to invest in securities, and where such authorization is not limited or restricted as to the class of securities in which he may invest, in bonds issued under RCW 79.24.650 through 79.24.668. [1969 ex.s. c 272 § 6.]

**79.24.662 Use of bond proceeds.** Proceeds of the bonds issued hereunder shall be expended by the state capitol committee for the purposes enumerated in RCW 79.24.650. [1969 ex.s. c 272 § 7.]

**79.24.664 Appropriation.** There is appropriated to the department of general administration from the general fund—state building construction account the sum of fifteen million dollars or so much thereof as may be necessary to accomplish the purposes set forth in RCW 79.24.650. [1969 ex.s. c 272 § 8.]

**79.24.666 State capitol committee to act upon advice of legislative committee—State capitol committee powers.** The state capitol committee shall perform the foregoing in accordance with law and after consultation with and advice of such committee of the senate and house of representatives as the legislature may appoint for this purpose. The state capitol committee shall have power to do all acts and things necessary or convenient to carry out the purposes of RCW 79.24.650 through 79.24.668 subject to and in accordance with the provisions of RCW 79.24.650 through 79.24.668 and chapters 43.19 and 79.24 RCW. [1969 ex.s. c 272 § 9.]

**79.24.668 Severability—1969 ex.s. c 272.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1969 ex.s. c 272 § 11.]

#### STATE CAPITOL PUBLIC AND HISTORIC FACILITIES

**79.24.700 Findings.** The legislature finds that the historic facilities of the Washington state capitol are the most important public facilities in the state. They are a source of beauty and pride, a resource for celebrating our heritage and democratic ideals, and an exceptional educational resource. The public and historic facilities of the state capitol campus should be managed and maintained to the highest standards of excellence, model the best of historic preservation practice, and maximize opportunities for public access and enjoyment. The purpose of chapter 330, Laws of 2005 is to provide authority and direction for the care and stewardship of the public and historic facilities of the state capitol, to facilitate public access, use, and enjoyment of these assets, and to carefully preserve them for the benefit of future generations. [2005 c 330 § 1.]

**79.24.710 Properties identified as "state capitol public and historic facilities."** For the purposes of RCW 79.24.720, 79.24.730, 43.01.090, 43.19.500, and 79.24.087, "state capitol public and historic facilities" includes:

(1) The east, west and north capitol campus grounds, Sylvester park, Heritage park, Marathon park, Centennial park, the Deschutes river basin commonly known as Capitol lake, the interpretive center, Deschutes parkway, and the landscape, memorials, artwork, fountains, streets, sidewalks, lighting, and infrastructure in each of these areas not including state-owned aquatic lands in these areas managed by the department of natural resources under \*RCW 79.90.450;

(2) The public spaces and the historic interior and exterior elements of the following buildings: The visitor center, the Governor's mansion, the legislative building, the John L. O'Brien building, the Cherberg building, the Newhouse building, the Pritchard building, the temple of justice, the insurance building, the Dolliver building, capitol court, and the old capitol buildings, including the historic state-owned furnishings and works of art commissioned for or original to these buildings; and

(3) Other facilities or elements of facilities as determined by the state capitol committee, in consultation with the department of general administration. [2005 c 330 § 2.]

**\*Reviser's note:** RCW 79.90.450 was recodified as RCW 79.105.010 pursuant to 2005 c 155 § 1003.

**79.24.720 Department of general administration's responsibilities.** The department of general administration is responsible for the stewardship, preservation, operation, and maintenance of the public and historic facilities of the state capitol, subject to the policy direction of the state capitol committee and the legislative buildings committee as created in chapter . . . (\*House Bill No. 1301), Laws of 2005, and the guidance of the capitol campus design advisory committee. In administering this responsibility, the department shall:

(1) Apply the United States secretary of the interior's standards for the treatment of historic properties;

(2) Seek to balance the functional requirements of state government operations with public access and the long-term preservation needs of the properties themselves; and

(3) Consult with the capitol furnishings preservation committee, the state historic preservation officer, the state arts commission, and the state facilities accessibility advisory committee in fulfilling the responsibilities provided for in this section. [2005 c 330 § 3.]

**\*Reviser's note:** House Bill No. 1301 failed to become law.

**79.24.730 Funding/grants for stewardship of state capitol public and historic facilities.** (1) To provide for responsible stewardship of the state capitol public and historic facilities, funding for:

(a) Maintenance and operational needs shall be authorized in the state's omnibus appropriations act and funded by the general administration services account as provided under RCW 43.19.500;

(b) Development and preservation needs shall be authorized in the state's capital budget. To the extent revenue is available, the capitol building construction account under RCW 79.24.087 shall fund capital budget needs. If capitol building construction account funds are not available, the state building construction account funds may be authorized for this purpose.

(2) The department of general administration may seek grants, gifts, or donations to support the stewardship of state capitol public and historic facilities. The department may:

(a) Purchase historic state capitol furnishings or artifacts; or

(b) sell historic state capitol furnishings and artifacts that have been designated as state surplus by the capitol furnishings preservation committee under RCW 27.48.040(6). Funds generated from grants, gifts, donations, or sales for omnibus appropriations act needs shall be deposited into the general administration services account. Funds generated for

capital budget needs shall be deposited into the capitol building construction account. [2005 c 330 § 4.]

### Chapter 79.36 RCW

## EASEMENTS OVER PUBLIC LANDS

### Sections

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*Diking district right-of-way: RCW 85.05.080.*

*Flood control district right-of-way: Chapter 86.09 RCW.*

*Reclamation district right-of-way: RCW 89.30.223.*

#### PART 1 ACQUISITION

**79.36.310 Acquisition of property interests for access authorized.** Whenever the department finds that it is in the best interests of the state of Washington to acquire any property or use of a road in private ownership to afford access to state timber and other valuable material for the purpose of developing, caring for, or selling the same, the acquisition of such property, or use thereof, is hereby declared to be necessary for the public use of the state of Washington, and the department is authorized to acquire such property or the use of such roads by gift, purchase, exchange, or condemnation, and subject to all of the terms and conditions of such gift, purchase, exchange, or decree of condemnation to maintain such

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property or roads as part of the department's land management road system. [2003 c 334 § 226; 1963 c 140 § 1; 1945 c 239 § 1; Rem. Supp. 1945 § 5823-30. Formerly RCW 76.16.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Eminent domain: State Constitution Art. 1 § 16; chapter 8.04 RCW.*

*State lands subject to easements for removal of materials: RCW 79.36.370 and 79.36.590.*

#### **79.36.320 Condemnation—Duty of attorney general.**

The attorney general of the state of Washington is hereby required and authorized to condemn said property interests found to be necessary for the public purposes of the state of Washington, as provided in RCW 79.36.310, and upon being furnished with a certified copy of the resolution of the department, describing said property interests found to be necessary for the purposes set forth in RCW 79.36.310, the attorney general shall immediately take steps to acquire said property interests by exercising the state's right of eminent domain under the provisions of chapter 8.04 RCW, and in any condemnation action herein authorized, the resolution so describing the property interests found to be necessary for the purposes set forth above shall, in the absence of a showing of bad faith, arbitrary, capricious, or fraudulent action, be conclusive as to the public use and real necessity for the acquisition of said property interests for a public purpose, and said property interests shall be awarded to the state without the necessity of either pleading or proving that the department was unable to agree with the owner or owners of said private property interest for its purchase. Any condemnation action herein authorized shall have precedence over all actions, except criminal actions, and shall be summarily tried and disposed of. [2003 c 334 § 227; 1963 c 140 § 2; 1945 c 239 § 2; Rem. Supp. 1945 § 5823-31. Formerly RCW 76.16.020.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.330 Disposal of property interests acquired.** In the event the department should determine that the property interests acquired under the authority of this chapter are no longer necessary for the purposes for which they were acquired, the department shall dispose of the same in the following manner, when in the discretion of the department it is to the best interests of the state of Washington to do so, except that property purchased with educational funds or held in trust for educational purposes shall be sold only in the same manner as are state lands:

(1) Where the state property necessitating the acquisition of private property interests for access purposes under authority of this chapter is sold or exchanged, the acquired property interests may be sold or exchanged as an appurtenance of the state property when it is determined by the department that sale or exchange of the state property and acquired property interests as one parcel is in the best interests of the state.

(2) If the acquired property interests are not sold or exchanged as provided in subsection (1) of this section, the department shall notify the person or persons from whom the property interest was acquired, stating that the property interests are to be sold, and that the person or persons shall have the right to purchase the same at the appraised price. The

notice shall be given by registered letter or certified mail, return receipt requested, mailed to the last known address of the person or persons. If the address of the person or persons is unknown, the notice shall be published twice in an official newspaper of general circulation in the county where the lands or a portion thereof is located. The second notice shall be published not less than ten nor more than thirty days after the notice is first published. The person or persons shall have thirty days after receipt of the registered letter or five days after the last date of publication, as the case may be, to notify the department, in writing, of their intent to purchase the offered property interest. The purchaser shall include with his or her notice of intention to purchase, cash payment, certified check, or money order in an amount not less than one-third of the appraised price. No instrument conveying property interests shall issue from the department until the full price of the property is received by the department. All costs of publication required under this section shall be added to the appraised price and collected by the department upon sale of the property interests.

(3) If the property interests are not sold or exchanged as provided in subsections (1) and (2) of this section, the department shall notify the owners of land abutting the property interests in the same manner as provided in subsection (2) of this section and their notice of intent to purchase shall be given in the manner and in accordance with the same time limits as are set forth in subsection (2) of this section. However, if more than one abutting owner gives notice of intent to purchase the property interests, the department shall apportion them in relation to the lineal footage bordering each side of the property interests to be sold, and apportion the costs to the interested purchasers in relation thereto. Further, no sale is authorized by this section unless the department is satisfied that the amounts to be received from the several purchasers will equal or exceed the appraised price of the entire parcel plus any costs of publishing notices.

(4) If no sale or exchange is consummated as provided in subsections (1) through (3) of this section, the department shall sell the properties in the same manner as state lands are sold.

(5) Any disposal of property interests authorized by this chapter shall be subject to any existing rights previously granted by the department. [2004 c 199 § 217; 2003 c 334 § 228; 1963 c 140 § 3; 1945 c 239 § 3; Rem. Supp. 1945 § 5823-32. Formerly RCW 76.16.030.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.340 Acquisition—Payment.** The department in acquiring any property interests under the provisions of this chapter, either by purchase or condemnation, is hereby authorized to pay for the same out of any moneys available to the department for this purpose. [2003 c 334 § 229; 1963 c 140 § 4; 1945 c 239 § 4; Rem. Supp. 1945 § 5823-33. Formerly RCW 76.16.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

## PART 2 GRANTING

**79.36.350 Application for right-of-way.** Any person, firm, or corporation engaged in the business of logging or lumbering, quarrying, mining or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right-of-way for the purpose of transporting or moving timber, minerals, stone, sand, gravel, or other valuable materials from other lands, over and across any state lands, or tide or shore lands belonging to the state, or any such lands sold or leased by the state since the fifteenth day of June, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for such right-of-way, accompanied by a plat showing the location of the right-of-way applied for with references to the boundaries of the government section in which the lands over and across which such right-of-way is desired are located. Upon the filing of such application and plat, the department shall cause the lands embraced within the right-of-way applied for, to be inspected, and all timber thereon, and all damages to the lands affected which may be caused by the use of such right-of-way, to be appraised, and shall notify the applicant of the appraised value of such timber and such appraisal of damages. Upon the payment to the department of the amount of the appraised value of timber and damages, the department shall issue in duplicate a right-of-way certificate setting forth the terms and conditions upon which such right-of-way is granted, as provided in the preceding sections, and providing that whenever such right-of-way shall cease to be used for the purpose for which it was granted, or shall not be used in accordance with such terms and conditions, it shall be deemed forfeited. One copy of such certificate shall be filed in the office of the department and one copy delivered to the applicant. [2003 c 334 § 383; 1927 c 255 § 83; RRS § 7797-83. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.332, 79.36.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Similar enactment:* RCW 79.36.650.

**79.36.355 Grant of easements and rights in public land.** The department may grant to any person such easements and rights in public lands, not otherwise provided in law, as the applicant applying therefor may acquire in privately owned lands. No grant shall be made under this section until such time as the full market value of the estate or interest granted together with damages to all remaining property of the state of Washington has been ascertained and safely secured to the state. [2004 c 199 § 218; 2003 c 334 § 396; 1982 1st ex.s. c 21 § 175; 1961 c 73 § 12. Formerly RCW 79.01.414.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.36.360 Condemnation proceedings involving state land.** See RCW 8.28.010.

**79.36.370 Lands subject to easements for removal of valuable materials.** All state lands granted, sold or leased since the fifteenth day of June, 1911, or hereafter granted, sold or leased, containing timber, minerals, stone, sand, gravel, or other valuable materials, or when other state lands contiguous or in proximity thereto contain any such valuable materials, shall be subject to the right of the state, or any grantee or lessee thereof who has acquired such other lands, or any such valuable materials thereon, since the fifteenth day of June, 1911, or hereafter acquiring such other lands or valuable materials thereon, to acquire the right-of-way over such lands so granted, sold or leased, for private railroads, skid roads, flumes, canals, watercourses or other easements for the purpose of, and to be used in, transporting and moving such valuable materials from such other lands, over and across the lands so granted or leased, upon the state, or its grantee or lessee, paying to the owner of lands so granted or sold, or the lessee of the lands so leased, reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad company seeking to condemn private property. [1982 1st ex.s. c 21 § 167; 1927 c 255 § 78; RRS § 7797-78. Prior: 1911 c 109 § 1. Formerly RCW 79.01.312, 79.36.010.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Railroads, eminent domain:* RCW 81.36.010 and 81.53.180.

*Similar enactment:* RCW 79.36.590.

*State lands, eminent domain:* RCW 8.28.010.

**79.36.380 Private easement subject to common user.** Every grant, deed, conveyance, contract to purchase or lease made since June 15, 1911, or hereafter made to any person, firm, or corporation, for a right-of-way for a private railroad, skid road, canal, flume, watercourse, or other easement, over or across any public lands for the purpose of, and to be used in, transporting and moving timber, minerals, stone, sand, gravel, or other valuable materials of the land, shall be subject to the right of the state, or any grantee or lessee thereof, or other person who has acquired since June 15, 1911, or shall hereafter acquire, any lands containing valuable materials contiguous to, or in proximity to, such right-of-way, or who has so acquired or shall hereafter acquire such valuable materials situated upon public lands or contiguous to, or in proximity to, such right-of-way, of having such valuable materials transported or moved over such private railroad, skid road, flume, canal, watercourse, or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation, or for the use of such private railroad, skid road, flume, canal, watercourse, or other easement, and upon complying with just, reasonable and proper rules and regulations relating to such transportation or use, which rates, rules, and regulations, shall be under the supervision and control of the utilities and transportation commission. [2004 c 199 § 219; 1982 1st ex.s. c 21 § 168; 1927 c 255 § 79; RRS § 7797-79. Prior: 1911 c 109 § 2. Formerly RCW 79.01.316, 79.36.020.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

(2008 Ed.)

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Similar enactment:* RCW 79.36.600.

*Washington utilities and transportation commission:* Chapter 80.01 RCW.

**79.36.390 Reasonable facilities and service for transportation must be furnished.** Any person, firm, or corporation, having acquired such right-of-way or easement since June 15, 1911, or hereafter acquiring such right-of-way or easement over any public lands for the purpose of transporting or moving timber, mineral, stone, sand, gravel, or other valuable materials, and engaged in such business thereon, shall accord to the state, or any grantee or lessee thereof, having since June 15, 1911, acquired, or hereafter acquiring, from the state, any public lands containing timber, mineral, stone, sand, gravel, or other valuable materials, contiguous to or in proximity to such right-of-way or easement, or any person, firm, or corporation, having since June 15, 1911, acquired, or hereafter acquiring, the timber, mineral, stone, sand, gravel, or other valuable materials upon any public lands contiguous to or in proximity to the lands over which such right-of-way or easement is operated, proper and reasonable facilities and service for transporting and moving such valuable materials, under reasonable rules and regulations and upon payment of just and reasonable charges therefor, or, if such right-of-way or other easement is not then in use, shall accord the use of such right-of-way or easement for transporting and moving such valuable materials, under reasonable rules and regulations and upon the payment of just and reasonable charges therefor. [2004 c 199 § 220; 1982 1st ex.s. c 21 § 169; 1927 c 255 § 80; RRS § 7797-80. Prior: 1911 c 109 § 3. Formerly RCW 79.01.320, 79.36.030.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Similar enactment:* RCW 79.36.610.

**79.36.400 Duty of utilities and transportation commission.** Should the owner or operator of any private railroad, skid road, flume, canal, watercourse or other easement operating over lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, as in the previous sections provided, fail to agree with the state, or any grantee thereof, as to the reasonable and proper rules, regulations and charges, concerning the transportation of timber, mineral, stone, sand, gravel or other valuable materials, from lands contiguous to, or in proximity to, the lands over which such private railroad, skid road, flume, canal, watercourse or other easement, is operated, for transporting or moving such valuable materials, the state, or such person, firm or corporation, owning and desiring to have such valuable materials transported or moved, may apply to the state utilities and transportation commission and have the reasonableness of the rules and regulations and charges inquired into, and it shall be the duty of the utilities and transportation commission to inquire into the same and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate or inquire into the reasonableness of rules, regulations and charges made by railroad companies, and it is authorized and empowered to make any such order as it

would make in an inquiry against a railroad company, and in case such private railroad, skid road, flume, canal, watercourse or easement, is not then in use, may make such reasonable, proper and just rules and regulations concerning the use thereof for the purposes aforesaid as may be just and proper, and such order shall have the same force and effect, and be binding upon the parties to such hearing, as though such hearing and order was made affecting a common carrier railroad. [1983 c 4 § 6; 1927 c 255 § 81; RRS § 7797-81. Prior: 1911 c 109 § 4. Formerly RCW 79.01.324, 79.36.040.]

*Similar enactment: RCW 79.36.630.*

*Transportation, general regulations: Chapter 81.04 RCW.*

**79.36.410 Penalty for violation of orders.** In case any person, firm or corporation, owning or operating any private railroad, skid road, flume, canal, watercourse or other easement, over and across any state lands, or any lands acquired since the fifteenth day of June, 1911, or hereafter acquired, from the state, subject to the provisions of the preceding sections, shall violate or fail to comply with any rule, regulation or order made by the utilities and transportation commission, after an inquiry and hearing as provided in the preceding section, such person, firm or corporation, shall be subject to a penalty of not to exceed one thousand dollars for each and every violation thereof, and in addition thereto such right-of-way, private road, skid road, flume, canal, watercourse or other easement and all improvements and structures on such right-of-way, and connected therewith, shall revert to the state or to the owner of the land over which such right-of-way is located, and may be recovered in an action instituted in any court of competent jurisdiction. [1982 1st ex.s. c 21 § 170; 1927 c 255 § 82; RRS § 7797-82. Prior: 1911 c 109 § 5. Formerly RCW 79.01.328, 79.36.050.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Similar enactment: RCW 79.36.640.*

**79.36.430 Forfeiture for nonuse.** Any such right-of-way heretofore granted which has never been used, or has ceased to be used for the purpose for which it was granted, for a period of two years, shall be deemed forfeited. The forfeiture of any such right-of-way heretofore granted, or granted under the provisions of the preceding sections, shall be rendered effective by the mailing of a notice of such forfeiture to the grantee thereof at his or her last known post office address and by stamping a copy of such certificate, or other record of the grant, in the office of the department with the word "canceled", and the date of such cancellation. [2003 c 334 § 384; 1927 c 255 § 84; RRS § 7797-84. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.01.336, 79.36.070.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Similar enactment: RCW 79.36.650.*

**79.36.440 Right-of-way for public roads.** Any county or city or the United States of America or state agency desiring to locate, establish, and construct a road or street over and across any state lands of the state of Washington shall by resolution of the board of county commissioners of such county, or city council or other governing body of such county, or proper

agency of the United States of America, or state agency, cause to be filed in the office of the department a petition for a right-of-way for such road or street, setting forth the reasons for the establishment thereof, accompanied by a duly attested copy of a plat made by the county or city engineer or proper agency of the United States of America, or state agency, showing the location of the proposed road or street with reference to the legal subdivisions, or lots and blocks of the official plat, or the lands, over and across which such right-of-way is desired, the amount of land to be taken and the amount of land remaining in each portion of each legal subdivision or lot or block bisected by such proposed road or street.

Upon the filing of such petition and plat the department, if deemed for the best interest of the state to grant the petition, shall cause the land proposed to be taken to be inspected and shall appraise the value of the land and valuable materials thereon and notify the petitioner of such appraised value.

If there are no valuable materials on the proposed right-of-way, or upon the payment of the appraised value of the land and valuable materials thereon, to the department in cash, or by certified check drawn upon any bank in this state, or money order, except for all rights-of-way granted to the department on which the valuable materials, if any, shall be sold at public auction or by sealed bid, the department may approve the plat filed with the petition and file and enter the same in the records of its office, and such approval and record shall constitute a grant of such right-of-way from the state. [2003 c 334 § 385; 2001 c 250 § 12; 1982 1st ex.s. c 21 § 171; 1961 c 73 § 5; 1945 c 145 § 1; 1927 c 255 § 85; Rem. Supp. 1945 § 7797-85. Prior: 1917 c 148 § 9; 1903 c 20 § 1; 1897 c 89 § 35; 1895 c 178 § 46. Formerly RCW 79.01.340, 79.36.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.36.450 Railroad right-of-way.** A right-of-way through, over and across any state lands not held under a contract of sale, is hereby granted to any railroad company organized under the laws of this state, or any state or territory of the United States, or under any act of congress of the United States, to any extent not exceeding fifty feet on either side of the center line of any railroad now constructed, or hereafter to be constructed, and for such greater width as is required for excavations, embankments, depots, station grounds, passing tracks or borrow pits, which extra width shall not in any case exceed two hundred feet on either side of said right-of-way. [1927 c 255 § 86; RRS § 7797-86. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.344, 79.36.090.]

*Railroad rights-of-way: Chapter 81.52 RCW.*

**79.36.460 Railroad right-of-way—Procedure to acquire.** In order to obtain the benefits of RCW 79.36.450, any railroad company hereafter constructing, or proposing to construct, a railroad, shall file with the department a copy of its articles of incorporation, due proof of organization thereunder, a map or maps, accompanied by the field notes of the survey, showing the location of the line of said railroad, the width of the right-of-way and extra widths, if any, and shall

pay to the department as hereinafter provided the amount of the appraised value of the lands included within the right-of-way, and extra widths if any are required, and the damages to any lands affected by the right-of-way or extra widths. [2003 c 334 § 386; 1927 c 255 § 87; RRS § 7797-87. Prior: 1907 c 104 § 1; 1901 c 173 § 1. Formerly RCW 79.01.348, 79.36.100.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.36.470 Railroad right-of-way—Appraisal.**

All state lands over which a right-of-way of any railroad to be hereafter constructed, shall be located, shall be appraised in the same manner as in the case of applications for the purchase of state lands, fixing the appraised value per acre for each lot or block, quarter section or subdivision thereof, less the improvements, if any, and the damages to any state lands affected by such right-of-way, shall be appraised in like manner, and the appraisal shall be recorded and the evidence or report upon which the same is based shall be preserved of record, in the office of the department, and the department shall send notice to the railroad company applying for the right-of-way that such appraisal has been made. [2003 c 334 § 387; 1927 c 255 § 88; RRS § 7797-88. Prior: 1901 c 173 §§ 2, 5. Formerly RCW 79.01.352, 79.36.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### **79.36.480 Railroad right-of-way—Improvements—Appraisal.**

Should any improvements, made by anyone not holding adversely to the state at the time of making such improvements or made in good faith by a lessee of the state whose lease had not been canceled or was not subject to cancellation for any cause, or made upon the land by mistake, be upon any of such lands at the time of the appraisal, the same shall be separately appraised, together with the damage and waste done to said lands, or to adjacent lands, by the use and occupancy of the same, and after deducting from the amount of the appraisal for improvements the amount of such damage and waste, the balance shall be regarded as the value of said improvements, and the railroad company, if not the owner of such improvements, shall deposit with the department the value of the same, as shown by the appraisal, within thirty days next following the date thereof. The department shall hold such moneys for a period of three months, and unless a demand and proof of ownership of such improvements shall be made upon the department within said period of three months, the same shall be deemed forfeited to the state and deposited with the state treasurer and paid into the general fund. If two or more persons shall file claims of ownership of said improvements, within said period of three months, with the department, the department shall hold such moneys until the claimants agree or a certified copy of the judgment decreeing the ownership of said improvements shall be filed with the department. When notice of agreement or a certified copy of a judgment has been so filed, the department shall pay over to the owner of the improvements the money so deposited. [2003 c 334 § 388; 1927 c 255 § 89; RRS § 7797-89. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.356, 79.36.120.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.490 Railroad right-of-way—Release or payment of damages.** When the construction or proposed construction of said railroad affects the value of improvements on state lands not situated on the right-of-way or extra widths, the applicant for said right-of-way shall file with the department a valid release of damages duly executed by the owner or owners of such improvements, or a certified copy of a judgment of a court of competent jurisdiction, showing that compensation for the damages resulting to such owner or owners, as ascertained in accordance with existing law, has been made or paid into the registry of such court. [2003 c 334 § 389; 1927 c 255 § 90; RRS § 7797-90. Prior: 1915 c 147 § 13; 1901 c 173 § 4. Formerly RCW 79.01.360, 79.36.130.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.500 Railroad right-of-way—Certificate.** Upon full payment of the appraised value of any right-of-way for a railroad and of damages to state lands affected, the department shall issue to the railroad company applying for such right-of-way a certificate in such form as the department may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right-of-way shall be subject to the easement described in the certificate. [2003 c 334 § 390; 1927 c 255 § 91; RRS § 7797-91. Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formerly RCW 79.01.364, 79.36.140.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.510 Utility pipe lines, transmission lines, etc.** A right-of-way through, over, and across any state lands or state forest lands, may be granted to any municipal or private corporation, company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, any telephone line, ditch, flume, or pipe line for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [1982 1st ex.s. c 21 § 172; 1961 c 73 § 6; 1945 c 147 § 1; 1927 c 255 § 96; Rem. Supp. 1945 § 7797-96. Prior: 1925 c 6 § 1; 1921 c 148 § 1; 1919 c 97 § 1; 1909 c 188 § 1. Formerly RCW 79.01.384, 79.36.150.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.36.520 Utility pipe lines, transmission lines, etc.—Procedure to acquire.** In order to obtain the benefits of the grant made in RCW 79.36.510, the municipal or private corporation or company, association, individual, or the United States of America, constructing or proposing to construct, or which has heretofore constructed, such telephone line, ditch, flume, pipe line, or transmission line, shall file, with the department, a map, accompanied by the field notes of the survey and location of such telephone line, ditch, flume, pipe line, or transmission line, and shall make payment therefor as provided in RCW 79.36.530. The land within the right-of-way shall be limited to an amount necessary for the construction of said telephone line, ditch, flume, pipe line, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same, and the grant shall

include the right to cut all standing timber, and/or reproduction within said right-of-way. The grant shall also include the right to cut trees marked as danger trees by the applicant outside of the right-of-way, which shall be dangerous to the operation and maintenance of the telephone line, ditch, flume, pipe line, or transmission line upon full payment of the appraised value thereof. [2003 c 334 § 391; 1961 c 73 § 7; 1959 c 257 § 35; 1945 c 147 § 2; 1927 c 255 § 97; Rem. Supp. 1945 § 7797-97. Prior: 1921 c 148 § 2; 1919 c 97 § 2; 1909 c 188 § 2. Formerly RCW 79.01.388, 79.36.160.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.530 Utility pipe lines—Appraisal—Certificate—Reversion.** Upon the filing of the plat and field notes, as provided in RCW 79.36.520, the land applied for and the valuable materials on the right-of-way applied for, and the marked danger trees to be felled off the right-of-way, if any, and the improvements included in the right-of-way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of the valuable materials and improvements, if any, the department shall issue to the applicant a certificate of the grant of such right-of-way stating the terms and conditions thereof and shall enter the same in the abstracts and records in its office, and thereafter any sale or lease of the lands affected by such right-of-way shall be subject to the easement of such right-of-way. Should the corporation, company, association, individual, state agency, political subdivision of the state, or the United States of America, securing such right-of-way ever abandon the use of the same for a period of sixty months or longer for the purposes for which it was granted, the right-of-way shall revert to the state, or the state's grantee. [2003 c 334 § 392; 2001 c 250 § 13; 1961 c 73 § 8; 1959 c 257 § 36; 1945 c 147 § 3; 1927 c 255 § 98; Rem. Supp. 1945 § 7797-98. Prior: 1909 c 188 § 3. Formerly RCW 79.01.392, 79.36.170.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.540 Right-of-way for irrigation, diking, and drainage purposes.** A right-of-way through, over and across any state lands is hereby granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any association, individual, or the United States of America, constructing or proposing to construct an irrigation ditch or pipe line for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [1982 1st ex.s. c 21 § 173; 1945 c 147 § 4; 1927 c 255 § 99; Rem. Supp. 1945 § 7797-99. Prior: 1917 c 148 § 6; 1907 c 161 § 1. Formerly RCW 79.01.396, 79.36.180.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.36.550 Right-of-way for irrigation, diking, and drainage purposes—Procedure to acquire.** In order to obtain the benefits of the grant provided for in RCW 79.36.540, the irrigation district, irrigation company, associ-

ation, individual, or the United States of America, constructing or proposing to construct such irrigation ditch or pipe line for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipe line, dike, or drainage ditch, and shall pay to the state as hereinafter provided, the amount of the appraised value of the said lands used for or included within such right-of-way. The land within said right-of-way shall be limited to an amount necessary for the construction of the irrigation ditch, pipe line, dike, or drainage ditch for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the same. [2003 c 334 § 393; 1945 c 147 § 5; 1927 c 255 § 100; Rem. Supp. 1945 § 7797-100. Prior: 1917 c 148 § 7; 1907 c 161 § 2. Formerly RCW 79.01.400, 79.36.190.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.560 Right-of-way for irrigation, diking, and drainage purposes—Appraisal—Certificate.** Upon the filing of the plat and field notes as provided in RCW 79.36.550, the lands included within the right-of-way applied for shall be appraised as in the case of an application to purchase such lands, at the full market value thereof. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right-of-way, and enter the same in the records in its office and thereafter any sale or lease by the state of the lands affected by such right-of-way shall be subject thereto. [2003 c 334 § 394; 1927 c 255 § 101; RRS § 7797-101. Prior: 1907 c 161 § 3. Formerly RCW 79.01.404, 79.36.200.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.570 Grant of overflow rights.** The department shall have the power to grant to any person or corporation the right, privilege, and authority to perpetually back and hold water upon or over any state lands, and overflow such lands and inundate the same, whenever the department shall deem it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use, but no such rights shall be granted until the value of the lands to be overflowed and any damages to adjoining lands of the state, appraised as in the case of an application to purchase such lands, shall have been paid by the person or corporation seeking the grant, and if the construction or erection of any such water power plant, reservoir, or works for impounding water for the purposes heretofore specified, shall not be commenced and diligently prosecuted and completed within such time as the department may prescribe at the time of the grant, the same may be forfeited by the department by serving written notice of such forfeiture upon the person or corporation to whom the grant was made, but the department, for good cause shown to its satisfaction, may extend the time within which such work shall be completed. [2003 c 334 § 395; 1982 1st ex.s. c 21 § 174; 1927 c 255 § 102; RRS § 7797-102. Prior: 1915 c 147 §§ 10, 11; 1907 c 125 §§ 1, 2. Formerly RCW 79.01.408, 79.36.210.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

*Operating agencies:* Chapter 43.52 RCW.

**79.36.580 Construction of foregoing sections.** The foregoing sections relating to the acquiring of rights-of-way and overflow rights through, over and across lands belonging to the state, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under control of the state, or rights-of-way or other rights thereover, by condemnation proceedings. [1927 c 255 § 103; RRS § 7797-103. Formerly RCW 79.01.412, 79.36.220.]

*Railroad rights-of-way:* Chapter 81.52 RCW.

**79.36.590 Easement reserved in later grants.** All state lands hereafter granted, sold or leased shall be subject to the right of the state, or any grantee or lessee or successor in interest thereof hereafter acquiring other state lands, or acquiring the timber, stone, mineral or other natural products thereon, or the manufactured products thereof to acquire the right-of-way over such lands so granted, for logging and/or lumbering railroads, private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of and to be used in the transporting and moving of such timber, stone, mineral or other natural products thereon, and the manufactured products thereof from such state land, and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products over and across the lands so granted or leased, upon the state or its grantee or successor in interest thereof, paying to the owner of the lands so granted, sold, or leased reasonable compensation therefor. In case the parties interested cannot agree upon the damages incurred, the same shall be ascertained and assessed in the same manner as damages are ascertained and assessed against a railroad seeking to condemn private property. [1927 c 312 § 1; RRS § 8107-1. Prior: 1911 c 109 § 1. Formerly RCW 79.36.230.]

**Severability—1927 c 312:** "If any section, subdivision, sentence or clause in this act shall be held invalid or unconstitutional, such adjudication shall not affect the validity of the act as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional." [1927 c 312 § 8.] This applies to RCW 79.36.230 through 79.36.290.

*Railroads, eminent domain:* RCW 81.36.010 and 81.53.180.

*Similar enactment:* RCW 79.36.370.

**79.36.600 Private easement over state lands.** Every grant, deed, conveyance, lease or contract hereafter made to any person, firm or corporation over and across any state lands for the purpose of right-of-way for any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse or other easement to be used in the hauling of timber, stone, mineral or other natural products of the land and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products, shall be subject to the right of the state, or any grantee or successor in interest thereof, owning or hereafter acquiring from the state any timber, stone, mineral, or other natural products, or any state lands containing valuable tim-

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ber, stone, mineral or other natural products of the land, or having such timber, stone, mineral or other natural products, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products transported or moved over such railroad, skid road, flume, canal, watercourse or other easement, after the same is or has been put in operation, upon paying therefor just and reasonable rates for transportation or for the use of such railroad, skid road, flume, canal, watercourse or other easement, and upon complying with just, reasonable and proper rules affecting such transportation, which rates, rules and regulations shall be under the supervision and control of the utilities and transportation commission of the state of Washington. [1983 c 4 § 7; 1927 c 312 § 2; RRS § 8107-2. Prior: 1911 c 109 § 2. Formerly RCW 79.36.240.]

*Similar enactment:* RCW 79.36.380.

**79.36.610 Easement over public lands subject to common user.** Any person, firm or corporation hereafter acquiring the right-of-way or other easement over state lands or over any tide or shore lands belonging to the state, or over and across any navigable water or stream for the purpose of transporting or moving timber, stone, mineral, or other natural products of the lands, and the manufactured products thereof and engaged in such business thereon, shall accord to the state or any grantee or successor in interest thereof hereafter acquiring state lands containing valuable timber, stone, mineral or other natural products of the land, or any person, firm or corporation hereafter acquiring the timber, stone, mineral or other natural products situate upon state lands, or the manufactured products thereof proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral and other natural products of the land, and the manufactured products thereof and all necessary machinery, supplies or materials to be used in transporting, cutting, manufacturing, mining or quarrying any or all of such products under reasonable rules and regulations upon payment of just and reasonable charges therefor, or, if such right-of-way or other easement is not then in use to have the right to use such right-of-way or easement for transporting and moving such products under such reasonable rules and regulations and upon payment of just and reasonable charges therefor. [1927 c 312 § 3; RRS § 8107-3. Prior: 1911 c 109 § 3. Formerly RCW 79.36.250.]

*Similar enactment:* RCW 79.36.390.

**79.36.620 Reservations in grants and leases.** Whenever any person, firm, or corporation shall hereafter purchase, lease, or acquire any state lands, or any easement or interest therein, or any timber, stone, mineral, or other natural products thereon, or the manufactured products thereof the purchase, lease, or grant shall be subject to the condition or reservation that such person, firm, or corporation, or their successors in interest, shall, whenever any of the timber, stone, mineral, or other natural products on said lands or the manufactured products thereof are removed, by any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, owned, leased, or operated

by such person, firm, or corporation, or their successors in interest, accord to any other person, firm, or corporation, or their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any other lands, owned or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products, and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and that any conveyance, lease, or mortgage of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, shall be subject to the right of the person, firm, or corporation, or their successors in interest, having the right to remove timber, stone, mineral, or other natural products or the manufactured products thereof from such other state lands, to be accorded such proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such other timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products under reasonable rules and upon payment of just and reasonable charges therefor; and such purchase, lease, or grant from the state shall also be subject to the condition or reservation that whenever any of the timber, stone, mineral, or other natural products on such lands or the manufactured products thereof are about to be removed, by means of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, not owned, controlled, or operated by the person, firm, or corporation owning or having the right to remove, and about to remove such timber, stone, mineral, or other natural products or the manufactured products thereof shall exact and require from the owners and operators of such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement, which shall be binding upon the successors in interest of such owners and operators, an agreement and promise, as a part of the contract for removal, and by virtue of RCW 79.36.590 through 79.36.650 there shall be deemed to be a part of any such express or implied contract for removal, an agreement, and promise that such owners and operators, and their successors in interest, shall accord to any person, firm, or corporation and their successors in interest, having the right to remove any timber, stone, mineral, or other natural products or the manufactured products thereof from any lands, owned, or formerly owned by the state, proper and reasonable facilities and service, including physical connection therewith, for the transportation and moving of such timber, stone, mineral, and other natural products and the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products and under reasonable rules and upon payment of just and reasonable charges therefor. [2003 c 334 § 495; 1927 c 312 § 4; RRS § 8107-4. Formerly RCW 79.36.260.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.36.630 Duty of utilities and transportation commission.** Should the owner or operator of any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement operating over lands hereafter acquired from the state, as in RCW 79.36.590 through 79.36.650 set out, fail to agree with the state or with any subsequent grantee or successor in interest thereof as to the reasonable and proper rules and charges concerning the transportation of timber, stone, mineral, or other natural products of the land, or the manufactured products thereof and all necessary machinery, supplies, or materials to be used in transporting, cutting, manufacturing, mining, or quarrying any or all of such products for carrying and transporting such products or for the use of the railroad, skid road, flume, canal, watercourse, or other easement in transporting such products, the state or such person, firm, or corporation owning and desiring to ship such products may apply to the utilities and transportation commission and have the reasonableness of the rules and charges inquired into and it shall be the duty of the utilities and transportation commission to inquire into the same in the same manner, and it is hereby given the same power and authority to investigate the same as it is now authorized to investigate and inquire into the rules and charges made by railroads and is authorized and empowered to make such order as it would make in an inquiry against a railroad, and in case such logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement is not then in use, may adopt such reasonable, proper, and just rules concerning the use thereof for the purposes aforesaid as may be just and proper and such order shall have the same force and effect and shall be binding upon the parties to such hearing as though such hearing and order was made affecting a railroad. [2003 c 334 § 496; 1983 c 4 § 8; 1927 c 312 § 5; RRS § 8107-5. Prior: 1911 c 109 § 4. Formerly RCW 79.36.270.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Similar enactment:* RCW 79.36.400.

**79.36.640 Penalty for violating utilities and transportation commission's order.** In case any person, firm, or corporation owning and/or operating any logging and/or lumbering railroad, private railroad, skid road, flume, canal, watercourse, or other easement subject to the provisions of RCW 79.36.590 through 79.36.650 shall fail to comply with any rule or order made by the utilities and transportation commission, after an inquiry as provided for in RCW 79.36.630, each person, firm, or corporation shall be subject to a penalty not exceeding one thousand dollars, and in addition thereto, the right-of-way over state lands theretofore granted to such person, firm, or corporation, and all improvements and structures on such right-of-way and connected therewith, shall revert to the state of Washington, and may be recovered by it in an action instituted in any court of competent jurisdiction, unless such state lands have been sold. [2003 c 334 § 497; 1983 c 4 § 9; 1927 c 312 § 7; RRS § 8107-7. Prior: 1911 c 109 § 5. Formerly RCW 79.36.280.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Similar enactment:* RCW 79.36.410.

**79.36.650 Applications—Appraisal—Certificate—Forfeiture—Fee.** Any person, firm, or corporation shall have a right-of-way over public lands, subject to the provisions of RCW 79.36.590 through 79.36.650, when necessary, for the purpose of hauling or removing timber, stone, mineral, or other natural products or the manufactured products thereof of the land. Before, however, any such right-of-way grant shall become effective, a written application for and a plat showing the location of such right-of-way, with reference to the adjoining lands, shall be filed with the department, and all timber on the right-of-way, together with the damages to the land, shall be appraised and paid for in cash by the person, firm, or corporation applying for such right-of-way. The department shall then cause to be issued in duplicate to such person, firm, or corporation a right-of-way certificate setting forth the conditions and terms upon which the right-of-way is granted. Whenever the right-of-way shall cease to be used, for a period of two years, for the purpose for which it was granted, it shall be deemed forfeited, and the right-of-way certificate shall contain such a provision. However, any right-of-way for logging purposes heretofore issued which has never been used, or has ceased to be used, for a period of two years, for the purpose of which it was granted, shall be deemed forfeited and shall be canceled upon the records of the department. One copy of each certificate shall be filed with the department and one copy delivered to the applicant. The forfeiture of the right-of-way, as herein provided, shall be rendered effective by the mailing of notice of such a forfeiture to the grantee thereof to his or her last known post office address and by stamping the copy of the certificate in the department canceled and the date of such cancellation. For the issuance of such a certificate the same fee shall be charged as provided in the case of certificates for railroad rights-of-way. [2003 c 334 § 498; 1988 c 128 § 65; 1927 c 312 § 6; RRS § 8107-6. Prior: 1921 c 55 § 1; 1915 c 147 § 12; 1897 c 89 § 34; 1895 c 178 § 45. Formerly RCW 79.36.290.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

*Certificates for railroad rights-of-way:* RCW 79.36.500.

*Fees, generally:* RCW 79.02.240.

*Similar enactment:* RCW 79.36.350 and 79.36.430.

## Chapter 79.38 RCW ACCESS ROADS

### Sections

79.38.010	Acquisition of property for access to public lands.
79.38.020	Exchange of easement rights.
79.38.030	Use of roads by purchasers of valuable materials.
79.38.040	Permits for use of roads.
79.38.050	Access road revolving fund.
79.38.060	Use of moneys not deposited in revolving fund.
79.38.070	Department-county agreements for improvement of access roads.
79.38.900	Severability—1961 c 44.

**79.38.010 Acquisition of property for access to public lands.** In addition to any authority otherwise granted by law, the department shall have the authority to acquire lands, interests in lands, and other property for the purpose of affording access by road to public lands from any public

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highway. [2004 c 199 § 221; 2003 c 334 § 499; 1961 c 44 § 1.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.020 Exchange of easement rights.** To facilitate the carrying out of the purpose of this chapter, the department may:

(1) Grant easements, rights-of-way, and permits to cross public lands to any person in exchange for similar rights over lands not under its jurisdiction;

(2) Enter into agreements with any person or agency relating to purchase, construction, reconstruction, maintenance, repair, regulation, and use of access roads or public roads used to provide access to public lands;

(3) Dispose, by sale, exchange, or otherwise, of any interest in an access road in the event it determines such interest is no longer necessary for the purposes of this chapter. [2004 c 199 § 222; 1981 c 204 § 1; 1961 c 44 § 2.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**79.38.030 Use of roads by purchasers of valuable materials.** Purchasers of valuable materials from public lands may use access roads or public roads for the removal of such materials where the rights acquired by the state will permit, but use shall be subject to the right of the department:

(1) To impose reasonable terms for the use, construction, reconstruction, maintenance, and repair of such access roads; and

(2) To impose reasonable charges for the use of such access roads or public roads which have been constructed or reconstructed through funding by the department. [2004 c 199 § 223; 2003 c 334 § 500; 1981 c 204 § 2; 1961 c 44 § 3.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.040 Permits for use of roads.** Whenever the department finds that it is for the best interest of the state and where the rights acquired by the state will permit, the department may grant permits for the use of access roads to any person. Any permit issued under the authority of this section shall be subject to reasonable regulation by the department. Such regulation shall include, but is not limited to, the following matters:

(1) Requirements for construction, reconstruction, maintenance, and repair;

(2) Limitations as to extent and time of use;

(3) Provision for revocation at the discretion of the department; and

(4) Charges for use. [2003 c 334 § 501; 1961 c 44 § 4.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.050 Access road revolving fund.** The department shall create, maintain, and administer a revolving fund, to be known as the access road revolving fund in which shall be deposited all moneys received by it from users of access roads as payment for costs incurred or to be incurred in main-

taining, repairing, and reconstructing access roads, or public roads used to provide access to public lands. The department may use moneys in the fund for the purposes for which they were obtained without appropriation by the legislature. [2004 c 199 § 224; 2003 c 334 § 502; 1981 c 204 § 3; 1961 c 44 § 5.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.060 Use of moneys not deposited in revolving fund.** All moneys received by the department from users of access roads that are not deposited in the access road revolving fund shall be paid as follows:

(1) To reimburse the state fund or account from which expenditures have been made for the acquisition, construction, or improvement of the access road or public road, and upon full reimbursement, then

(2) To the funds or accounts for which the public lands, to which access is provided, are pledged by law or constitutional provision, in which case the department shall make an equitable apportionment between funds and accounts so that no fund or account shall benefit at the expense of another. [2004 c 199 § 225; 2003 c 334 § 503; 1981 c 204 § 4; 1961 c 44 § 6.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.070 Department-county agreements for improvement of access roads.** The department may enter into agreements with the county to:

(1) Identify public roads used to provide access to state forest lands in need of improvement;

(2) Establish a time schedule for the improvements;

(3) Advance payments to the county to fund the road improvements. However, no more than fifty percent of the access road revolving fund shall be eligible for use as advance payments to counties. The department shall assess the fund on January 1st and July 1st of each year to determine the amount that may be used as advance payments to counties for road improvements; and

(4) Determine the equitable distribution, if any, of costs of such improvements between the county and the state through negotiation of terms and conditions of any resulting repayment to the fund or funds financing the improvements. [2003 c 334 § 224; 1981 c 204 § 5. Formerly RCW 76.12.180.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.38.900 Severability—1961 c 44.** If any provisions of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1961 c 44 § 7.]

## Chapter 79.44 RCW ASSESSMENTS AND CHARGES AGAINST LANDS OF THE STATE

### Sections

79.44.003	"Assessing district" defined.
79.44.004	"Assessment" defined.
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79.44.040	Notice to state of intention to improve, or impose assessment—Consent—Notice to port commission.
79.44.050	Certification of roll—Penalties, interest.
79.44.060	Payment procedure—Lands not subject to lien, exception.
79.44.070	Enforcement against lessee or contract holder.
79.44.080	Foreclosure against leasehold or contract interest—Cancellation of lease or contract.
79.44.090	Payment by state after forfeiture of lease or contract.
79.44.095	Assessments paid by state to be added to purchase price of land.
79.44.100	Assignment of lease or contract to purchaser at foreclosure sale.
79.44.120	When assessments need not be added in certain cases.
79.44.130	Local provisions superseded.
79.44.140	Application of chapter—Eminent domain assessments.
79.44.190	Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments.
79.44.900	Severability—1963 c 20.

*Diking, drainage and sewerage improvement district assessments: RCW 85.08.370.*

*Diking and drainage district assessments: RCW 85.05.390.*

*Flood control district assessments: RCW 86.09.523, 86.09.526, 86.09.529.*

*Intercounty diking and drainage district assessments: RCW 85.24.275.*

*Irrigation district assessments: RCW 87.03.025.*

*Special benefit assessments for farm and agricultural land or timber land: RCW 84.34.300 through 84.34.390.*

**79.44.003 "Assessing district" defined.** As used in this chapter "assessing district" means:

- (1) Incorporated cities and towns;
- (2) Diking districts;
- (3) Drainage districts;
- (4) Port districts;
- (5) Irrigation districts;
- (6) Water-sewer districts;
- (7) Counties; and
- (8) Any municipal corporation or public agency having power to levy local improvement or other assessments, rates, or charges which by statute are expressly made applicable to lands of the state. [1999 c 153 § 68; 1989 c 243 § 13; 1971 ex.s. c 234 § 14; 1963 c 20 § 1.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**79.44.004 "Assessment" defined.** As used in this chapter, "assessment" shall mean any assessment, rate or charge levied, assessed, imposed, or charged by any assessing district as defined in RCW 79.44.003, and which assessments, rates or charges by statute are expressly made applicable to lands of the state. [1989 c 243 § 16.]

**79.44.010 Lands subject to local assessments.** All lands, including school lands, granted lands, escheated lands, or other lands, held or owned by the state of Washington in fee simple (in trust or otherwise), situated within the limits of any assessing district in this state, may be assessed and

charged for the cost of local or other improvements specially benefiting such lands which may be ordered by the proper authorities of any such assessing district and may be assessed by any irrigation district to the same extent as private lands within the district are assessed: PROVIDED, That the leasehold, contractual, or possessory interest of any person, firm, association, or private or municipal corporation in any such lands shall be charged and assessed in the proportional amount such leasehold, contractual, or possessory interest is benefited: PROVIDED, FURTHER, That no lands of the state shall be included within an irrigation district except as provided in RCW 87.03.025 and 89.12.090. [1982 1st ex.s. c 21 § 178; 1963 c 20 § 2; 1919 c 164 § 1; RRS § 8125. Cf. 1909 c 154 §§ 1, 4.]

**Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21:** See RCW 79.135.900 through 79.135.904.

**79.44.020 State to be charged its proportion of cost—Construction of chapter.** In all local improvement assessment districts in any assessing district in this state, property in such district, held or owned by the state shall be assessed and charged for its proportion of the cost of such local improvements in the same manner as other property in such district, it being the intention of this chapter that the state shall bear its just and equitable proportion of the cost of local improvements specially benefiting lands of the state. However, none of the provisions of this chapter shall have the effect, or be construed to have the effect, to alter or modify in any particular any existing lease of any lands or property owned by the state, or release or discharge any lessee of any such lands or property from any of the obligations, covenants, or conditions of the contract under which any such lands or property are leased or held by any such lessee. [2003 c 334 § 506; 1963 c 20 § 3; 1919 c 164 § 2; RRS § 8126. Cf. 1909 c 154 § 5.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.44.030 Apportioning cost on leaseholds.** Where lands of the state are under lease, the proportionate amounts to be assessed against the leasehold interest, and the fee simple interest of the state, shall be fixed with reference to the life of the improvement and the period for which the lease has yet to run. [2003 c 334 § 507; 1919 c 164 § 3; RRS § 8127. Cf. 1909 c 154 § 3; 1907 c 74 § 3.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.44.040 Notice to state of intention to improve, or impose assessment—Consent—Notice to port commission.** Notice of the intention to make such improvement, or impose any assessment, together with the estimate of the amount to be charged to each lot, tract or parcel of land, or other property owned by the state to be assessed, shall be forwarded by registered or certified mail to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over such lands at least thirty days prior to the date fixed for hearing on the resolution or petition initiating the assessment. Such assessing district, shall not have jurisdiction to order such improvement as to the interest of the state in harbor areas and state tidelands until the written consent of the commissioner of public lands

to the making of such improvement shall have been obtained, unless other means be provided for paying that portion of the cost which would otherwise be levied on the interest of the state of Washington in and to those tidelands, and nothing herein shall prevent the city from assessing the proportionate cost of the improvement against any leasehold, contractual, or possessory interest in and to any tideland or harbor area owned by the state: PROVIDED, HOWEVER, That in the case of tidelands and harbor areas within the boundaries of any port district, notice of intention to make such improvement shall also be forwarded to the commissioners of the port district. [2002 c 260 § 2; 1989 c 243 § 14; 1979 c 151 § 177; 1963 c 20 § 4; 1919 c 164 § 4; RRS § 8128. Cf. 1909 c 154 § 6.]

**79.44.050 Certification of roll—Penalties, interest.**

Upon the approval and confirmation of the assessment roll ordered by the proper authorities of any assessing district, the treasurer of such assessing district shall certify and forward to the chief administrative officer of the agency of state government occupying, using, or having jurisdiction over the lands, a statement of all the lots or parcels of land held or owned by the state and charged on such assessment roll, separately describing each such lot or parcel of the state's land, with the amount of the local assessment charged against it, or the proportionate amount assessed against the fee simple interest of the state, in case the land has been leased. The chief administrative officer upon receipt of such statement shall cause a proper record to be made in his office of the cost of such assessment upon the lands occupied, used, or under the jurisdiction of his agency.

No penalty shall be provided or enforced against the state, and the interest upon such assessments shall be computed and paid at the rate paid by other property situated in the same assessing district. [2002 c 260 § 3; 1989 c 243 § 15; 1979 c 151 § 178; 1963 c 20 § 5; 1933 c 108 § 1; 1919 c 164 § 5; RRS § 8129. Cf. 1909 c 154 § 6; 1907 c 74 §§ 1, 2, 4, 5.]

**79.44.060 Payment procedure—Lands not subject to lien, exception.** When the chief administrative officer of an agency of state government is satisfied that an assessing district has complied with all the conditions precedent to the levy of assessments for district purposes, pursuant to this chapter against lands occupied, used, or under the jurisdiction of the officer's agency, he or she shall pay them, together with any interest thereon from any funds specifically appropriated to the agency therefor or from any funds of the agency which under existing law have been or are required to be expended to pay assessments on a current basis. In all other cases, the chief administrative officer shall certify to the director of financial management that the assessment is one properly chargeable to the state. The director of financial management shall pay such assessments from funds available or appropriated for this purpose.

Except as provided in RCW 79.44.190 no lands of the state shall be subject to a lien for unpaid assessments, nor shall the interest of the state in any land be sold for unpaid assessments where assessment liens attached to the lands prior to state ownership. [2003 c 334 § 508; 1979 c 151 §

179; 1971 ex.s. c 116 § 2; 1963 c 20 § 6; 1947 c 205 § 1; Rem. Supp. 1947 § 8136a.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.44.070 Enforcement against lessee or contract holder.** When any assessing district has made or caused to be made an assessment against such leasehold, contractual, or possessory interest for any such local improvement, the treasurer of that assessing district shall immediately give notice to the chief administrative officer of the agency having jurisdiction over the lands. The assessment shall become a lien against the leasehold, contractual, or possessory interest in the same manner as the assessments on other property, and its collection may be enforced against such interests as provided by law for the enforcement of other local improvement assessments: PROVIDED, That the assessment shall not be made payable in installments unless the owner of such leasehold, contractual, or possessory interest shall first file with such treasurer a satisfactory bond guaranteeing the payment of such installments as they become due. [2002 c 260 § 4; 1979 c 151 § 180; 1963 c 20 § 7; 1919 c 164 § 6; RRS § 8130. Cf. 1909 c 154 § 2.]

**79.44.080 Foreclosure against leasehold or contract interest—Cancellation of lease or contract.** Whenever any assessing district shall have foreclosed the lien of any such delinquent assessments, as provided by law, and shall have obtained title to such leasehold, contractual, or possessory interest, the chief administrative officer of the agency having jurisdiction over the lands shall be notified by registered or certified mail of such action and furnished a statement of all assessments against such leasehold, contractual, or possessory interest, and the chief administrative officer shall cause the amount of such assessments to be paid as provided in RCW 79.44.060, and upon the receipt of an assignment from such assessing district, the chief administrative officer shall cancel such lease or contract: PROVIDED, HOWEVER, That unless the assessing district making the local improvement and levying the special assessment shall have used due diligence in the foreclosure thereof, the chief administrative officer shall not be required to pay any sum in excess of what they deem to be the special benefits accruing to the state's reversionary interest in the property: AND PROVIDED FURTHER, That if such delinquent assessment or installment shall be against a leasehold interest in fresh water harbor areas within a port district, the chief administrative officer shall notify the commissioners of that port district of the receipt of such assignment, and the commissioners shall forthwith cancel such lease. [2002 c 260 § 5; 1979 c 151 § 181; 1963 c 20 § 8; 1919 c 164 § 7; RRS § 8131.]

**79.44.090 Payment by state after forfeiture of lease or contract.** If by reason of default in the payment of rentals or installments, or other causes, the state shall cancel any lease or contract against which assessments have been levied as herein provided, the chief administrative officer of the agency having jurisdiction over the lands shall cause such assessments or installments as shall fall due subsequent to the cancellation of said contract or leasehold interest to be paid as provided in RCW 79.44.060, the same as if the assessments

or installments thereof had been levied on the state's interest in said lands. [1963 c 20 § 9; 1919 c 164 § 8; RRS § 8132.]

**79.44.095 Assessments paid by state to be added to purchase price of land.** When any land, other than lands occupied and used in connection with state institutions, owned or held by the state within incorporated cities, towns, diking, drainage or port districts in this state, against which local improvement assessments have been paid, as herein provided for, is offered for sale, there shall be added to the appraised value of such land, as provided by law, such portion of the local improvement assessment paid by the state as shall be deemed to represent the value added to such lands by such improvement for the purpose of sale, which amount so added shall be paid by the purchaser in cash at the time of the sale of said land, in addition to the amounts otherwise due to the state for said land, and no deed shall ever be executed until such local improvement assessments have been paid, and nothing herein shall be construed as canceling any unpaid assessments on the land so sold by the state, but such land shall be sold subject to all assessments unpaid at the time of sale. [1919 c 164 § 9; RRS § 8133. Cf. 1909 c 154 § 7.]

*Assessments paid to be added to purchase price of land: RCW 79.11.320.*

**79.44.100 Assignment of lease or contract to purchaser at foreclosure sale.** Whenever any such tide, state, school, granted or other lands situated within the limits of any assessing district, has been included within any local improvement district by such assessing district, and the contract, leasehold or other interest of any individual has been sold to satisfy the lien of such assessment for local improvement, the purchaser of such interest at such sale shall be entitled to receive from the state of Washington, on demand, an assignment of the contract, leasehold or other interest purchased by him, and shall assume, subject to the terms and conditions of the contract or lease, the payment to the state of the amount of the balance which his predecessor in interest was obligated to pay. [1963 c 20 § 10; 1919 c 164 § 10; RRS § 8134. Cf. 1909 c 154 § 10.]

**79.44.120 When assessments need not be added in certain cases.** Whenever any state school, granted, tide, or other public lands of the state shall have been charged with local improvement assessments under any local improvement assessment district in any incorporated city, town, irrigation, diking, drainage, port, weed, or pest district, or any other district now authorized by law to levy assessments against lands of the state, where such assessments are required under existing statutes to be returned to the fund of the state treasury from which the assessments were originally paid, the department may, and is hereby authorized, to sell such lands for their appraised valuation without regard to such assessments, anything to the contrary in the existing statutes notwithstanding. However, nothing in this section shall be construed to alter in any way any existing statute providing for the method of procedure in levying assessments against lands of the state in any of such local improvement assessment districts. [2003 c 334 § 509; 1937 c 80 § 1; RRS § 7797-192a.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.44.130 Local provisions superseded.** The provisions of this chapter shall apply to all assessing districts as herein defined, any charter or ordinance provisions to the contrary notwithstanding. [1963 c 20 § 11; 1919 c 164 § 11; RRS § 8135. Cf. 1909 c 154 § 8.]

**79.44.140 Application of chapter—Eminent domain assessments.** The provisions of this chapter shall apply to all local improvements initiated after June 11, 1919, including assessments to pay the cost and expense of taking and damaging property by the power of eminent domain, as provided by law: PROVIDED, That in case of eminent domain assessments, it shall not be necessary to forward notice of the intention to make such improvement, but the eminent domain commissioners, authorized to make such assessment, shall, at the time of filing the assessment roll with the court in the manner provided by law, forward by registered or certified mail to the chief administrative officer of the agency using, occupying or having jurisdiction over the lands a notice of such assessment, and of the day fixed by the court for the hearing thereof: PROVIDED, That no assessment against the state's interest in tidelands or harbor areas shall be binding against the state if the commissioner of public lands shall file a disapproval of the same in court before judgment confirming the roll. [2002 c 260 § 6; 1979 c 151 § 182; 1963 c 20 § 12; 1919 c 164 § 12; RRS § 8136.]

**79.44.190 Acquisition of property by state or political subdivision which is subject to unpaid assessments or delinquencies—Payment of lien or installments.** When real property subject to an unpaid special assessment for a local improvement levied by any political subdivision of the state authorized to form local improvement or utility local improvement districts is acquired by purchase or condemnation by the state or any political subdivision thereof, including but not limited to any special purpose district, the property so acquired shall continue to be subject to the assessment lien.

An assessment lien or installment thereof, delinquent at the time of such acquisition shall be paid at the time of acquisition, and the amount thereof, including any accrued interest and delinquent penalties, shall be withheld from the purchase price or condemnation award by the public body acquiring the property and shall be paid immediately to the county, city, or town treasurer, whichever is applicable, in payment of and discharge of such delinquent installment lien.

Any installment or installments not delinquent at the time of acquisition shall become due and payable in such year and at such date as said installment would have become due if such property had not been so acquired: PROVIDED, That where such property is acquired by the state of Washington, the balance of the assessment shall be paid in full at the time of acquisition.

For the purpose of this section, the "time of acquisition" shall mean the date of completion of the sale, date of condemnation verdict, date of the order of immediate possession and use pursuant to RCW 8.04.090, or the date of judgment, if not tried to a jury. [1971 ex.s. c 116 § 1.]

**79.44.900 Severability—1963 c 20.** If any provision of this act, or its application to any person or circumstance is (2008 Ed.)

held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1963 c 20 § 16.]

**Chapter 79.64 RCW**

**FUNDS FOR MANAGING AND ADMINISTERING LANDS**

Sections

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STATE LANDS**

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**PART 1  
STATE LANDS**

**79.64.010 Definitions.** As used in this chapter, "rule" means rule as that term is defined by RCW 34.05.010. [2003 c 334 § 519; 1967 ex.s. c 63 § 1; 1961 c 178 § 1.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.64.020 Resource management cost account—Use.** A resource management cost account in the state treasury is created to be used solely for the purpose of defraying the costs and expenses necessarily incurred by the department in managing and administering state lands and aquatic lands and the making and administering of leases, sales, contracts, licenses, permits, easements, and rights-of-way as authorized under the provisions of this title. Appropriations from the resource management cost account to the department shall be expended for no other purposes. Funds in the resource management cost account may be appropriated or transferred by the legislature for the benefit of all of the trusts from which the funds were derived. For the 2007-2009 biennium, moneys in the account may be used for the purposes identified in section 3044, chapter 328, Laws of 2008. [2008 c 328 § 6004; 2004 c 199 § 226; 2003 c 334 § 520; 1993 c 460 § 1; 1985 c 57 § 80; 1981 c 4 § 2; 1961 c 178 § 2.]

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1993 c 460:** "This act shall take effect July 1, 1994." [1993 c 460 § 3.]

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

**Severability—1981 c 4:** See note following RCW 28A.515.320.

**79.64.030 Expenditures of certain funds in the resource management cost account to be for trust lands—Use for other lands—Repayment—Ordinary cost not deductible from sale proceeds—Accounting.** Funds in the resource management cost account from the moneys received from leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting school lands, university lands, scientific school lands, normal school lands, capitol building lands, or institutional lands shall be pooled and expended by the department solely for the purpose of defraying the costs and expenses necessarily incurred in managing and administering all of the trust lands enumerated in this section. Such funds may be used for similar costs and expenses in managing and administering other lands managed by the department provided that such expenditures that have been or may be made on such other lands shall be repaid to the resource management cost account together with interest at a rate determined by the board.

Costs and expenses necessarily incurred in managing and administering agricultural college lands shall not be deducted from proceeds received from the sale of such lands or from the sale of resources that are part of the lands. Costs and expenses incurred in managing and administering agricultural college trust lands shall be funded by appropriation under RCW 79.64.090.

An accounting shall be made annually of the accrued expenditures from the pooled trust funds in the account. In the event the accounting determines that expenditures have been made from moneys received from trust lands for the benefit of other lands, such expenditure shall be considered a debt and an encumbrance against the property benefitted, including state forest lands. The results of the accounting shall be reported to the legislature at the next regular session. The state treasurer is authorized, upon request of the department, to transfer funds between the forest development account and the resource management cost account solely for purpose of repaying loans pursuant to this section. [2003 c 334 § 521; 2001 c 250 § 15; 1999 c 279 § 1; 1993 c 460 § 2; 1988 c 70 § 4; 1977 ex.s. c 159 § 2; 1961 c 178 § 3.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1999 c 279:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 279 § 4.]

**Effective date—1993 c 460:** See note following RCW 79.64.020.

*Forest development account: RCW 79.64.100.*

**79.64.040 Deductions from proceeds of all transactions authorized—Limitations.** (1) The board shall determine the amount deemed necessary in order to achieve the purposes of this chapter and shall provide by rule for the deduction of this amount from the moneys received from all leases, sales, contracts, licenses, permits, easements, and rights-of-way issued by the department and affecting state lands and aquatic lands, provided that no deduction shall be made from the proceeds from agricultural college lands.

(2) Moneys received as deposits from successful bidders, advance payments, and security under RCW 79.15.100, 79.15.080, and 79.11.150 prior to December 1, 1981, which

have not been subjected to deduction under this section are not subject to deduction under this section.

(3) Except as otherwise provided in subsection (5) of this section, the deductions authorized under this section shall not exceed twenty-five percent of the moneys received by the department in connection with any one transaction pertaining to state lands and aquatic lands other than second-class tide and shore lands and the beds of navigable waters, and fifty percent of the moneys received by the department pertaining to second-class tide and shore lands and the beds of navigable waters.

(4) In the event that the department sells logs using the contract harvesting process described in RCW 79.15.500 through 79.15.530, the moneys received subject to this section are the net proceeds from the contract harvesting sale.

(5) During the 2007-2009 fiscal biennium, the twenty-five percent limitation on deductions set in subsection (3) of this section may be increased up to thirty percent by the board, provided the total amount deducted does not exceed the total appropriations in the operating and capital budgets for the fiscal period. At the end of the fiscal period, any amounts deducted in excess of the appropriations shall be transferred to the appropriate beneficiary distribution accounts. [2007 c 522 § 958; 2005 c 518 § 945; 2004 c 199 § 227. Prior: 2003 c 334 § 522; 2003 c 313 § 8; 2001 c 250 § 16; 1999 c 279 § 2; 1981 2nd ex.s. c 4 § 3; 1971 ex.s. c 224 § 2; 1967 ex.s. c 63 § 2; 1961 c 178 § 4.]

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Effective date—1999 c 279:** See note following RCW 79.64.030.

**Deductions authorized relating to common school lands—Temporary discontinued deductions for common school construction fund—1983 1st ex.s. c 17:** "(1) The deductions authorized in RCW 79.64.040 relating to common school lands may be increased by the board of natural resources to one hundred percent after temporary discontinued deductions result in a transfer to the common school construction fund in the amount of approximately fourteen million dollars or so much thereof as may be necessary to maintain a positive cash balance in the common school construction fund. The increased deductions shall continue until the additional amounts received from the increased rate equal the amounts of the deductions that were discontinued or transferred under subsection (2) of this section. Thereafter the deductions shall be as otherwise provided for in RCW 79.64.040.

(2) If the discontinued deductions will not result in a transfer of fourteen million dollars or so much thereof as may be necessary to maintain a positive balance in the common school construction fund in the biennium ending June 30, 1983, the state treasurer shall transfer the difference from the resource management cost account to the common school construction fund." [1983 1st ex.s. c 17 § 3.]

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**79.64.050 Deductions to be paid into resource management cost account.** All deductions from moneys received made in accordance with RCW 79.64.040 shall be paid into the resource management cost account and the balance shall be paid into the state treasury to the credit of the fund otherwise entitled to the proceeds. [2003 c 334 § 523; 2001 c 250 § 17; 1961 c 178 § 5.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.64.060 Rules relating to account.** The board shall adopt such rules as it deems necessary and proper for the purpose of carrying out the provisions of RCW 79.64.010 through 79.64.070. [1983 c 3 § 203; 1961 c 178 § 6.]

**79.64.070 Severability—1961 c 178.** If any provision of RCW 79.64.010 through 79.64.070, or its application to any person or circumstance is held invalid, the remainder of RCW 79.64.010 through 79.64.070, or the application of the provision to other persons or circumstances is not affected. [1983 c 3 § 204; 1961 c 178 § 7.]

**79.64.090 Agricultural college trust management account—Creation.** The agricultural college trust management account is created in the state treasury. To this account shall be deposited such funds as the legislature directs or appropriates. Moneys in the agricultural college trust management account may be spent only after appropriation. Expenditures from this account may be used only for the costs of managing the assets of the agricultural school trust. [2003 c 334 § 524; 1999 c 279 § 3.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1999 c 279:** See note following RCW 79.64.030.

## PART 2 STATE FOREST LANDS

**79.64.100 Forest development account.** There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the forest development account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department under RCW 79.22.080 and 79.22.090 and the provisions of this chapter, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.10.320, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. [2003 c 334 § 219; 2000 2nd sp.s. c 1 § 915; 1999 sp.s. c 13 § 18; 1998 c 347 § 55; 1988 c 128 § 31; 1985 c 57 § 75; 1977 ex.s. c 159 § 1; 1959 c 314 § 1; 1951 c 149 § 1; 1933 c 118 § 2; 1923 c 154 § 6; RRS § 5812-6. Formerly RCW 76.12.110.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 77.85.005.

**Effective date—1998 c 347:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government (2008 Ed.)

ernment and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 347 § 56.]

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

**79.64.110 Revenue distribution.** Any moneys derived from the lease of state forest lands or from the sale of valuable materials, oils, gases, coal, minerals, or fossils from those lands, must be distributed as follows:

(1) State forest lands acquired through RCW 79.22.040 or by exchange for lands acquired through RCW 79.22.040:

(a) The expense incurred by the state for administration, reforestation, and protection, not to exceed twenty-five percent, which rate of percentage shall be determined by the board, must be returned to the forest development account in the state general fund.

(b) Any balance remaining must be paid to the county in which the land is located to be paid, distributed, and prorated, except as otherwise provided in this section, to the various funds in the same manner as general taxes are paid and distributed during the year of payment.

(c) Any balance remaining, paid to a county with a population of less than sixteen thousand, must first be applied to the reduction of any indebtedness existing in the current expense fund of the county during the year of payment.

(d) With regard to moneys remaining under this subsection (1), within seven working days of receipt of these moneys, the department shall certify to the state treasurer the amounts to be distributed to the counties. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date.

(2) State forest lands acquired through RCW 79.22.010 or by exchange for lands acquired through RCW 79.22.010, except as provided in RCW 79.64.120:

(a) Fifty percent shall be placed in the forest development account.

(b) Fifty percent shall be prorated and distributed to the state general fund, to be dedicated for the benefit of the public schools, and the county in which the land is located according to the relative proportions of tax levies of all taxing districts in the county. The portion to be distributed to the state general fund shall be based on the regular school levy rate under RCW 84.52.065 and the levy rate for any maintenance and operation special school levies. With regard to the portion to be distributed to the counties, the department shall certify to the state treasurer the amounts to be distributed within seven working days of receipt of the money. The state treasurer shall distribute funds to the counties four times per month, with no more than ten days between each payment date. The money distributed to the county must be paid, distributed, and prorated to the various other funds in the same manner as general taxes are paid and distributed during the year of payment.

(3) A school district may transfer amounts deposited in its debt service fund pursuant to this section into its capital projects fund as authorized in RCW 28A.320.330. [2007 c 503 § 1; 2003 c 334 § 207.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.64.120 Retirement of interfund loans—Transfer of timber cutting rights on state forest lands acquired under RCW 79.22.010 to the federal land grant trusts—**

**Distribution of revenue from timber management activities.** (1) The department is authorized to:

(a) Determine the total present account balance with interest of the interfund loans made by the resource management cost account to the forest development account in accordance with generally accepted accounting principles;

(b) Subject to approval of the board, effectuate a transfer of timber cutting rights on state forest lands acquired under RCW 79.22.010 to the federal land grant trusts in such proportion that each trust receives full and fair market value for the interfund loans and is fully repaid or so much thereof as possible within distribution constraints described in subsection (2) of this section.

(2) After the effective date of the transfer authorized by subsection (1)(b) of this section and until the exercise of the cutting rights on the timber transferred has been fully satisfied, the distribution of revenue from timber management activities on state forest lands acquired under RCW 79.22.010 on which cutting rights have been transferred shall be as follows:

(a) As determined by the board, an amount no greater than thirty-three and three-tenths percent to be distributed to the federal land grant trust accounts and resource management cost account as directed by RCW 79.64.040 and 79.64.050;

(b) As determined by the board, an amount not less than sixteen and seven-tenths percent to the forest development account;

(c) Fifty percent to be distributed as provided in RCW 79.64.110. [2003 c 334 § 463; 1988 c 70 § 3. Formerly RCW 79.12.035.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—1988 c 70 § 3:** "The purpose of RCW 79.12.035 is to provide a means to retire interfund loans authorized by RCW 79.64.030 from the resource management cost account to the forest development account. The resource management cost account is an asset of the federal land grant trusts. Section 3 of this act is intended to authorize a process by which the interfund loans may be repaid such that the federal land grant trusts will receive full fair market value without disruption in income to counties and the state general fund from management activities on state forest lands managed pursuant to chapter 79.12 RCW." [1988 c 70 § 2.]

## Chapter 79.70 RCW

### NATURAL AREA PRESERVES

#### Sections

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79.70.030	Powers of department.
79.70.040	Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves.
79.70.060	Legislative findings—Natural heritage resources.
79.70.070	Natural heritage advisory council.
79.70.080	Council duties.
79.70.090	Dedication of property as natural area.
79.70.100	Public hearing—Establishment of boundary.
79.70.110	Important bird areas.
79.70.120	Important bird area—Recognition requirements.
79.70.130	Distribution of amount in lieu of real property taxes, weed control assessment.
79.70.900	Construction—1972 ex.s. c 119.

**79.70.010 Purpose.** The purpose of this chapter is to establish a state system of natural area preserves and a means

whereby the preservation of these aquatic and land areas can be accomplished.

All areas within the state, except those which are expressly dedicated by law for preservation and protection in their natural condition, are subject to alteration by human activity. Natural lands, together with the plants and animals living thereon in natural ecological systems, are valuable for the purposes of scientific research, teaching, as habitats of rare and vanishing species, as places of natural historic and natural interest and scenic beauty, and as living museums of the original heritage of the state.

It is, therefore, the public policy of the state of Washington to secure for the people of present and future generations the benefit of an enduring resource of natural areas by establishing a system of natural area preserves, and to provide for the protection of these natural areas. [1972 ex.s. c 119 § 1.]

**79.70.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of natural resources.

(2) "Natural areas" and "natural area preserves" include such public or private areas of land or water which have retained their natural character, although not necessarily completely natural and undisturbed, or which are important in preserving rare or vanishing flora, fauna, geological, natural historical or similar features of scientific or educational value and which are acquired or voluntarily registered or dedicated by the owner under this chapter.

(3) "Public lands" and "state lands" have the meaning set out in RCW 79.02.010.

(4) "Council" means the natural heritage advisory council as established in RCW 79.70.070.

(5) "Commissioner" means the commissioner of public lands.

(6) "Important bird area" means those areas jointly identified by the natural heritage program and a qualifying nonprofit organization using internationally recognized scientific criteria. These areas have been found to be necessary to conserve populations of wild waterfowl, upland game birds, songbirds, and other birds native to and migrating through Washington, and contain the habitats that birds are dependent upon for breeding, migration, shelter, and sustenance.

(7) "Instrument of dedication" means any written document intended to convey an interest in real property pursuant to chapter 64.04 RCW.

(8) "Natural heritage resources" means the plant community types, aquatic types, unique geologic types, and special plant and animal species and their critical habitat as defined in the natural heritage plan established under RCW 79.70.030.

(9) "Plan" means the natural heritage plan as established under RCW 79.70.030.

(10) "Program" means the natural heritage program as established under RCW 79.70.030.

(11) "Qualifying nonprofit organization" means a national nonprofit organization, or a branch of a national nonprofit organization, that conserves and restores natural ecosystems, focusing on birds, other wildlife, and their habitat.

(12) "Register" means the Washington register of natural area preserves as established under RCW 79.70.030. [2004 c 180 § 4; 2003 c 334 § 548; 1981 c 189 § 1; 1972 ex.s. c 119 § 2.]

**Intent—2004 c 180:** See note following RCW 79.70.110.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.70.030 Powers of department.** In order to set aside, preserve, and protect natural areas within the state, the department is authorized, in addition to any other powers, to:

(1) Establish the criteria for selection, acquisition, management, protection, and use of such natural areas, including:

(a) Limiting public access to natural area preserves consistent with the purposes of this chapter. Where appropriate, and on a case-by-case basis, a buffer zone with an increased low level of public access may be created around the environmentally sensitive areas;

(b) Developing a management plan for each designated natural area preserve. The plan must identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan must specify the types of management activities and public uses that are permitted, consistent with the purposes of this chapter. The department must make the plans available for review and comment by the public, and state, tribal, and local agencies, prior to final approval;

(2) Cooperate or contract with any federal, state, or local governmental agency, private organizations, or individuals in carrying out the purpose of this chapter;

(3) Consistent with the plan, acquire by gift, devise, purchase, grant, dedication, or means other than eminent domain, the fee or any lesser right or interest in real property which shall be held and managed as a natural area;

(4) Acquire by gift, devise, grant, or donation any personal property to be used in the acquisition and/or management of natural areas;

(5) Inventory existing public, state, and private lands in cooperation with the council to assess possible natural areas to be preserved within the state;

(6) Maintain a natural heritage program to provide assistance in the selection and nomination of areas containing natural heritage resources for registration or dedication. The program shall maintain a classification of natural heritage resources, an inventory of their locations, and a data bank for such information. The department shall cooperate with the department of fish and wildlife in the selection and nomination of areas from the data bank that relate to critical wildlife habitats. Information from the data bank shall be made available to public and private agencies and individuals for environmental assessment and proprietary land management purposes. Usage of the classification, inventory, or data bank of natural heritage resources for any purpose inconsistent with the natural heritage program is not authorized;

(7) Prepare a natural heritage plan which shall govern the natural heritage program in the conduct of activities to create and manage a system of natural areas that includes natural resources conservation areas, and may include areas designated under the research natural area program on federal lands in the state;

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(a) The plan shall list the natural heritage resources to be considered for registration and shall provide criteria for the selection and approval of natural areas under this chapter;

(b) The department shall provide opportunities for input, comment, and review to the public, other public agencies, and private groups with special interests in natural heritage resources during preparation of the plan;

(c) Upon approval by the council and adoption by the department, the plan shall be updated and submitted biennially to the appropriate committees of the legislature for their information and review. The plan shall take effect ninety days after the adjournment of the legislative session in which it is submitted unless the reviewing committees suggest changes or reject the plan; and

(8) Maintain a state register of natural areas containing significant natural heritage resources to be called the Washington register of natural area preserves. Selection of natural areas for registration shall be in accordance with criteria listed in the natural heritage plan and accomplished through voluntary agreement between the owner of the natural area and the department. No privately owned lands may be proposed to the council for registration without prior notice to the owner or registered without voluntary consent of the owner. No state or local governmental agency may require such consent as a condition of any permit or approval of or settlement of any civil or criminal proceeding or to penalize any landowner in any way for failure to give, or for withdrawal of, such consent.

(a) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) and chapter 34.05 RCW relating to voluntary natural area registration.

(b) After approval by the council, the department may place sites onto the register or remove sites from the register.

(c) The responsibility for management of registered natural area preserves shall be with the preserve owner. A voluntary management agreement may be developed between the department and the owners of the sites on the register.

(d) Any public agency may register lands under provisions of this chapter. [2003 c 334 § 549; 2002 c 284 § 1; 1994 c 264 § 61; 1988 c 36 § 54; 1981 c 189 § 3; 1972 ex.s. c 119 § 3.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.70.040 Powers as to transactions involving public lands deemed natural areas—Alienation of lands designated natural area preserves.** The department is further authorized to purchase, lease, set aside, or exchange any public lands which are deemed to be natural areas: PROVIDED, That the appropriate state land trust receives the fair market value for any interests that are disposed of: PROVIDED, FURTHER, That such transactions are approved by the board of natural resources.

An area consisting of public land designated as a natural area preserve shall be held in trust and shall not be alienated except to another public use upon a finding by the department of natural resources of imperative and unavoidable public necessity. [2004 c 199 § 228; 1972 ex.s. c 119 § 4.]

**Part headings not law—2004 c 199:** See note following RCW 79.02.010.

**79.70.060 Legislative findings—Natural heritage resources.** The legislature finds:

(1) That it is necessary to establish a process and means for public and private sector cooperation in the development of a system of natural areas. Private and public landowners should be encouraged to participate in a program of natural area establishment which will benefit all citizens of the state;

(2) That there is a need for a systematic and accessible means for providing information concerning the locations of the state's natural heritage resources; and

(3) That the natural heritage advisory council should utilize a specific framework for natural heritage resource conservation decision making through a classification, inventory, priority establishment, acquisition, and management process known as the natural heritage program. Future natural areas should avoid unnecessary duplication of already protected natural heritage resources including those which may already be protected in existing publicly owned or privately dedicated lands such as nature preserves, natural areas, natural resources conservation areas, parks, or wilderness. [2002 c 284 § 2; 1981 c 189 § 2.]

**79.70.070 Natural heritage advisory council.** (1) The natural heritage advisory council is hereby established. The council shall consist of fifteen members, ten of whom shall be chosen as follows and who shall elect from the council's membership a chairperson:

(a) Five individuals, appointed by the commissioner, who shall be recognized experts in the ecology of natural areas and represent the public, academic, and private sectors. Desirable fields of expertise are biological and geological sciences; and

(b) Five individuals, appointed by the commissioner, who shall be selected from the various regions of the state. At least one member shall be or represent a private forest landowner and at least one member shall be or represent a private agricultural landowner.

(2) Members appointed under subsection (1) of this section shall serve for terms of four years.

(3) In addition to the members appointed by the commissioner, the director of the department of fish and wildlife, the director of the department of ecology, the supervisor of the department of natural resources, the director of the state parks and recreation commission, and the director of the recreation and conservation office, or an authorized representative of each agency officer, shall serve as ex officio, nonvoting members of the council.

(4) Any vacancy on the council shall be filled by appointment for the unexpired term by the commissioner.

(5) In order to provide for staggered terms, of the initial members of the council:

- (a) Three shall serve for a term of two years;
- (b) Three shall serve for a term of three years; and
- (c) Three shall serve for a term of four years.

(6) Members of the natural preserves advisory committee serving on July 26, 1981, shall serve as members of the council until the commissioner appoints a successor to each. The successor appointment shall be specifically designated to replace a member of the natural preserves advisory committee until all members of that committee have been replaced.

A member of the natural preserves advisory committee is eligible for appointment to the council if otherwise qualified.

(7) Members of the council shall serve without compensation. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 as now or hereafter amended. [2007 c 241 § 24; 1998 c 50 § 1; 1994 c 264 § 62; 1988 c 36 § 55; 1981 c 189 § 4.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79.70.080 Council duties.** (1) The council shall:

(a) Meet at least annually and more frequently at the request of the chairperson;

(b) Recommend policy for the natural heritage program through the review and approval of the natural heritage plan;

(c) Advise the department, the department of fish and wildlife, the state parks and recreation commission, and other state agencies managing state-owned land or natural resources regarding areas under their respective jurisdictions which are appropriate for natural area registration or dedication;

(d) Advise the department of rules and regulations that the council considers necessary in carrying out this chapter;

(e) Review and approve area nominations by the department or other agencies for registration and review and comment on legal documents for the voluntary dedication of such areas;

(f) Recommend whether new areas proposed for protection be established as natural area preserves, natural resources conservation areas, a combination of both, or by some other protected status; and

(g) Review and comment on management plans proposed for individual natural area preserves.

(2) From time to time, the council shall identify areas from the natural heritage data bank which qualify for registration. Priority shall be based on the natural heritage plan and shall generally be given to those resources which are rarest, most threatened, or under-represented in the heritage conservation system on a statewide basis. After qualifying areas have been identified, the department shall advise the owners of such areas of the opportunities for acquisition or voluntary registration or dedication. [2002 c 284 § 3; 1994 c 264 § 63; 1988 c 36 § 56; 1981 c 189 § 5.]

**79.70.090 Dedication of property as natural area.** (1)

The owner of a registered natural area, whether a private individual or an organization, may voluntarily agree to dedicate the area as a natural area by executing with the state an instrument of dedication in a form approved by the council. The instrument of dedication shall be effective upon its recording in the real property records of the appropriate county or counties in which the natural area is located. The county assessor in computing assessed valuation shall take into consideration any reductions in property values and/or highest and best use which result from natural area dedication.

(2) A public agency owning or managing a registered natural area preserve may dedicate lands under the provisions of this chapter.

(3) The department shall adopt rules as authorized by RCW 43.12.065 and 79.70.030(1) relating to voluntary natural area dedication and defining:

(a) The types of real property interests that may be transferred;

(b) Real property transfer methods and the types of consideration of payment possible;

(c) Additional dedication provisions, such as natural area management, custody, use, and rights and privileges retained by the owner; and

(d) Procedures for terminating dedication arrangements. [2003 c 334 § 550; 1981 c 189 § 6.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.70.100 Public hearing—Establishment of boundary.** The department shall hold a public hearing in the county where the majority of the land in a proposed natural area preserve is located prior to establishing the boundary. [1998 c 50 § 2.]

**79.70.110 Important bird areas.** (1) The program may use information collected by a qualifying nonprofit organization to recognize important bird areas. The program should, to the greatest extent possible, coordinate with and use internationally agreed-upon, scientific criteria and protocols developed by a qualifying nonprofit organization to officially recognize these sites throughout Washington. Prior to using information collected by a qualifying nonprofit organization, the program must verify that the information was collected by individuals trained in scientific data collection, wildlife biology, or ornithology.

(2) When the program recognizes an important bird area, that information will be included in the program's data bank. An important bird area shall not be designated as a natural area or a natural area preserve unless that area satisfies the substantive and procedural requirements for becoming a natural area or natural area preserve under this chapter.

(3) The qualifying nonprofit organization that collected the information used to recognize important bird areas should be available to work with interested landowners, businesses, and state and local governments to identify ways to maintain or enhance the important bird areas.

(4) The recognition of private property as an important bird area under this chapter, or the inclusion of private property in the program's data bank, does not confer nor imply any rights of access or trespass onto the important bird area without full knowledge and consent of the owner pursuant to any state statutory and common laws dealing with trespass and access to private property.

(5) Recognition of an important bird area does not require or create critical area designation under chapter 36.70A RCW. [2004 c 180 § 2.]

**Intent—2004 c 180:** "Washington has a rich variety of birds, wildlife, and fish that its citizens and visitors enjoy. With over three hundred sixty-five bird species, Washington can use this natural asset to attract nature tourists and sportsmen from all over the country and the world. According to a United States fish and wildlife service report, thirty-six percent of Washington's residents currently participate in bird watching, and the watchable wildlife industry brings nearly one billion dollars per year into the state's economy. The economic benefits delivered to rural economies in Washington by those choosing to recreate by hunting waterfowl or upland game birds is equally as impressive.

The legislature has long recognized the important role of waterfowl and upland game bird hunting and other sporting pursuits in both the state's economy and the quality of life for Washington residents. Additionally, the 2003 legislature recognized the economic value of promoting watchable

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wildlife and nature tourism when it required the departments of fish and wildlife and community, trade, and economic development to host a watchable wildlife and nature tourism conference and write a statewide strategic plan. The 2002 legislature recognized the value of identifying and conserving our state's biodiversity for future generations when it created the biodiversity task force and required a plan be developed to recommend ways to conserve biodiversity. Furthermore, over the past fifteen years, the legislature has recognized the important contributions volunteers and nonprofit organizations have made in restoring and monitoring salmon and wildlife habitat. Therefore, it is the goal of the legislature to promote: Partnerships with volunteers; rural economic development; nature tourism; and conservation of biodiversity by encouraging partnerships between state government agencies, volunteers, and nonprofit organizations to designate and conserve natural assets that attract nature tourists and bird watchers to Washington's rural areas.

To accomplish this goal, the legislature recognizes the scientific work by volunteer organizations to use internationally recognized scientific criteria and protocols to identify, conserve, and monitor areas of the state that are important for migrating and resident birds. Scientists, ornithologists, and qualified volunteers have identified important bird areas. Wildlife conservation organizations and their volunteers are working to develop mutually agreed-upon bird conservation plans and monitoring plans in cooperation with public land managers and private landowners. Volunteers and scientists in more than one hundred countries around the world have already completed identification of fourteen thousand two hundred sixty sites that qualify as important bird areas.

Qualified volunteers and scientists have already successfully used the international criteria to identify fifty-three sites important for birds in Washington. Following the final round of site selection, volunteer organizations plan to work with landowners, businesses, and local and state governments to develop plans to maintain or enhance sites that will then become destinations for nature tourists to promote rural economic development. Therefore, it is the intent of the legislature to have Washington participate in the recognition portion of the important bird area program by directing the natural heritage program at the department of natural resources to officially recognize important bird areas." [2004 c 180 § 1.]

**79.70.120 Important bird area—Recognition requirements.** Prior to recognizing an important bird area under this chapter, the department must:

(1) Publish notice of the proposed important bird area in the Washington state register;

(2) Publish notice of the proposed important bird area in a newspaper of general circulation in the county where the proposed important bird area is located; and

(3) Conduct at least one public hearing in the county where the proposed important bird area is located. [2004 c 180 § 3.]

**Intent—2004 c 180:** See note following RCW 79.70.110.

**79.70.130 Distribution of amount in lieu of real property taxes, weed control assessment.** The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section

for weed control to the appropriate weed district. [2005 c 303 § 11.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79.70.900 Construction—1972 ex.s. c 119.** Nothing in this chapter is intended to supersede or otherwise affect any existing legislation. [1972 ex.s. c 119 § 6.]

### Chapter 79.71 RCW WASHINGTON NATURAL RESOURCES CONSERVATION AREAS

#### Sections

79.71.010	Legislative findings.
79.71.020	Characteristics of lands considered for conservation purposes.
79.71.030	Definitions.
79.71.040	Acquisition of property for natural resources conservation areas—Designation.
79.71.050	Transfer of trust land for natural resources conservation areas—Use of proceeds.
79.71.060	Public hearing on proposed conservation area.
79.71.070	Management plans for designated areas.
79.71.080	Administration of natural resources conservation areas—Management agreements and activities.
79.71.090	Natural resources conservation areas stewardship account.
79.71.100	Designation of certain areas as natural resources conservation areas.
79.71.120	Elk river natural resources conservation area—Transfer of management—Hunting opportunities.
79.71.130	Distribution of amount in lieu of real property taxes, weed control assessment.
79.71.900	Severability—1987 c 472.

**79.71.010 Legislative findings.** The legislature finds that: (1) There is an increasing and continuing need by the people of Washington for certain areas of the state to be conserved, in rural as well as urban settings, for the benefit of present and future generations; (2) such areas are worthy of conservation for their outstanding scenic and ecological values and provide opportunities for low-impact public use; (3) in certain cases acquisition of property or rights in property is necessary to protect these areas for public purposes; and (4) there is a need for a state agency to act in an effective and timely manner to acquire interests in such areas and to develop appropriate management strategies for conservation purposes. [1991 c 352 § 1; 1987 c 472 § 1.]

**79.71.020 Characteristics of lands considered for conservation purposes.** Lands possessing the following characteristics are considered by the legislature to be worthy of consideration for conservation purposes:

(1) Lands identified as having high priority for conservation, natural systems, wildlife, and low-impact public use values;

(2) An area of land or water, or land and water, that has flora, fauna, geological, archaeological, scenic, or similar features of critical importance to the people of Washington and that has retained to some degree or has reestablished its natural character;

(3) Examples of native ecological communities; and

(4) Environmentally significant sites threatened with conversion to incompatible or ecologically irreversible uses. [1991 c 352 § 2; 1987 c 472 § 2.]

**79.71.030 Definitions.** As used in this chapter:

"Commissioner" means the commissioner of public lands.

"Department" means the department of natural resources.

"Conservation purposes" include but are not limited to: (1) Maintaining, enhancing, or restoring ecological systems, including but not limited to aquatic, coastal, riparian, montane, and geological systems, whether such systems be unique or typical to the state of Washington; (2) maintaining exceptional scenic landscapes; (3) maintaining habitat for threatened, endangered, and sensitive species; (4) enhancing sites for primitive recreational purposes; and (5) outdoor environmental education.

"Low-impact public use" includes public recreation uses and improvements that do not adversely affect the resource values, are appropriate to the maintenance of the site in a relatively unmodified natural setting, and do not detract from long-term ecological processes.

"Management activities" may include limited production of income from forestry, agriculture, or other resource management activities, if such actions are consistent with the other purposes and requirements of this chapter.

"Natural resources conservation area" or "conservation area" means an area having the characteristics identified in RCW 79.71.020. [1991 c 352 § 3; 1987 c 472 § 3.]

**79.71.040 Acquisition of property for natural resources conservation areas—Designation.** The department is authorized to acquire property or less than fee interests in property, as defined by RCW 64.04.130, by all means, except eminent domain, for creating natural resources conservation areas, where acquisition is the best way to achieve the purposes of this chapter. Areas acquired or assembled by the department for conservation purposes will be designated as "Washington natural resources conservation areas." [1987 c 472 § 4.]

**79.71.050 Transfer of trust land for natural resources conservation areas—Use of proceeds.** The department is authorized to transfer fee simple interest or less than fee interests in trust land, as defined by Article XVI of the Washington Constitution, for the creation of natural resources conservation areas, provided the owner of the trust land receives full fair market value compensation for all rights transferred. The proceeds from such transfers shall be used for the exclusive purpose of acquiring real property to replace those interests utilized for the conservation area in order to meet the department's fiduciary obligations and to maintain the productive land base of the various trusts. [1991 c 352 § 4; 1987 c 472 § 5.]

**79.71.060 Public hearing on proposed conservation area.** The department shall hold a public hearing in the county where the majority of the land in the proposed natural resources conservation area is located prior to establishing the boundary. An area proposed for designation must contain resources consistent with characteristics identified in RCW 79.71.020. [1991 c 352 § 5; 1987 c 472 § 6.]

**79.71.070 Management plans for designated areas.**

The department shall develop a management plan for each designated area. The plan shall identify the significant resources to be conserved consistent with the purposes of this chapter and identify the areas with potential for low-impact public and environmental educational uses. The plan shall specify what types of management activities and public uses that are permitted, consistent with the conservation purposes of this chapter. The department shall make such plans available for review and comment by the public and other state, tribal, and local agencies, prior to final approval by the commissioner. [1991 c 352 § 6; 1987 c 472 § 7.]

**79.71.080 Administration of natural resources conservation areas—Management agreements and activities.**

The department is authorized to administer natural resources conservation areas and may enter into management agreements for these areas with federal agencies, state agencies, local governments, and private nonprofit conservancy corporations, as defined in RCW 64.04.130, when such agreements are consistent with the purposes of acquisition as defined in the adopted management plan. All management activities within a Washington natural resources conservation area will conform with the plan. Any moneys derived from the management of these areas in conformance with the adopted plan shall be deposited in the natural resources conservation areas stewardship account. [1991 c 352 § 7; 1987 c 472 § 8.]

**79.71.090 Natural resources conservation areas stewardship account.** There is hereby created the natural resources conservation areas stewardship account in the state treasury to ensure proper and continuing management of land acquired or designated pursuant to this chapter. Funds for the stewardship account shall be derived from appropriations of state general funds, federal funds, grants, donations, gifts, bond issue receipts, securities, and other monetary instruments of value. Income derived from the management of natural resources conservation areas shall also be deposited in this stewardship account.

Appropriations from this account to the department shall be expended for no other purpose than the following: (1) To manage the areas approved by the legislature in fulfilling the purposes of this chapter; (2) to manage property acquired as natural area preserves under chapter 79.70 RCW; (3) to manage property transferred under the authority and appropriation provided by the legislature to be managed under chapter 79.70 RCW or this chapter or acquired under chapter 79A.15 RCW; and (4) to pay for operating expenses for the natural heritage program under chapter 79.70 RCW. [2000 c 11 § 25; 1991 sp.s. c 13 § 118; 1991 c 352 § 8; 1987 c 472 § 9.]

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

**79.71.100 Designation of certain areas as natural resources conservation areas.** The legislature hereby designates certain areas as natural resources conservation areas:

(1) The Mt. Si conservation area (King County), RCW 79A.05.725, is hereby designated the Mt. Si natural resources conservation area. The department is directed to continue its management of this area and to develop a plan for its continued conservation and use by the public. In accordance with

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Article XVI of the Washington state Constitution, any available private lands and trust lands located within the designated boundaries of the Mt. Si conservation area shall be leased or acquired in fee from the appropriate trust at fair market value using funds appropriated for that purpose.

(2) Trust lands and state-owned land on Cypress Island (Skagit County) are hereby designated as the Cypress Island natural resources conservation area. Any available private lands necessary to achieve the purposes of this section shall be acquired by the department of natural resources using funds appropriated for that purpose. Trust lands located within the designated boundaries of the Cypress Island natural resources conservation area shall be leased or acquired in fee from the appropriate trust at fair market value.

(3) Woodard Bay (Thurston County) is hereby designated the Woodard Bay natural resources conservation area. The department is directed to acquire property available in Sec. 18, T.19N, R1W using funds appropriated for that purpose.

(4) The area adjacent to the Dishman Hills natural area (Spokane County) is hereby designated the Dishman Hills natural resources conservation area. The department is directed to acquire property available in Sec. 19, 29 and 30, T.25N, R44E, using funds appropriated for that purpose. [2000 c 11 § 26; 1987 c 472 § 10.]

**79.71.120 Elk river natural resources conservation area—Transfer of management—Hunting opportunities.**

The property currently designated as the Elk river natural area preserve is transferred from management under chapter 79.70 RCW as a natural area preserve to management under chapter 79.71 RCW as a natural resources conservation area. The legislature finds that hunting is a suitable low-impact public use within the Elk river natural resources conservation area. The department of natural resources shall incorporate this legislative direction into the management plan developed for the Elk river natural resources conservation area. The department shall work with the department of fish and wildlife to identify hunting opportunities compatible with the area's conservation purposes. [1997 c 371 § 1.]

**79.71.130 Distribution of amount in lieu of real property taxes, weed control assessment.**

The state treasurer, on behalf of the department, must distribute to counties for all lands acquired for the purposes of this chapter an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount equal to the amount of weed control assessment that would be due if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due. The county shall distribute the amount received under this section in lieu of real property taxes to all property taxing districts except the state in appropriate tax code areas the same way it would distribute local property taxes from private property. The county shall distribute the amount received under this section for weed control to the appropriate weed district. [2005 c 303 § 12.]

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79.71.900 Severability—1987 c 472.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 472 § 20.]

## Chapter 79.73 RCW MILWAUKEE ROAD CORRIDOR

### Sections

79.73.010	Management and control.
79.73.020	Recreational use—Permit—Rules—Fees.
79.73.030	Powers.
79.73.040	Leasing—Duties with respect to unleased portions.
79.73.050	Authority to terminate or modify leases—Notice.
79.73.060	Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise.

**79.73.010 Management and control.** The portion of the Milwaukee Road corridor from the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., to the Idaho border purchased by the state shall be under the management and control of the department. [2003 c 334 § 456; (2003 c 334 § 455; 2000 c 11 § 23; 1996 c 129 § 8 expired July 1, 2006); 1989 c 129 § 2; 1984 c 174 § 6. Formerly RCW 79.08.275.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Construction—1989 c 129:** See note following RCW 79A.05.315.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79.73.020 Recreational use—Permit—Rules—Fees.** The portion of the Milwaukee Road corridor under management and control of the department shall be open to individuals or organized groups that obtain permits from the department to travel the corridor for recreational purposes. The department shall, for the purpose of issuing permits for corridor use, adopt rules necessary for the orderly and safe use of the corridor and protection of adjoining landowners. Permit fees shall be established at a level that will cover costs of issuance. Upon request of abutting landowners, the department shall notify the landowners of permits issued for use of the corridor adjacent to their property. [2003 c 334 § 457; 1984 c 174 § 7. Formerly RCW 79.08.277.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79.73.030 Powers.** The department may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety in consultation with local legislative authorities or fire districts;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if (a) such a sale or exchange will not adversely affect the recreational, transportation, or utility potential of the corridor and (b) the department has not entered into a lease of the property in accordance with RCW 79.73.040. [2003 c 334 § 458; 1984 c 174 § 8. Formerly RCW 79.08.279.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79.73.040 Leasing—Duties with respect to unleased portions.** (1) The department shall offer to lease, and shall subsequently lease if a reasonable offer is made, portions of the Milwaukee Road corridor under its control to the person who owns or controls the adjoining land for periods of up to ten years commencing with June 7, 1984. The lessee shall assume the responsibility for fire protection, weed control, and maintenance of water conveyance facilities and culverts. The leases shall follow standard department leasing procedures, with the following exceptions:

(a) The lessee may restrict public access pursuant to RCW 79.73.020 and subsection (3) of this section.

(b) The right of renewal shall be to the current lessee if the lessee still owns or controls the adjoining lands.

(c) If two persons own or control opposite sides of the corridor, each person shall be eligible for equal portions of the available property.

(2) The department has the authority to renew leases in existence on June 7, 1984.

(3) The leases shall contain a provision allowing the department to issue permits to travel the corridor for recreational purposes.

(4) Unleased portions of the Milwaukee Road property under this section shall be managed by the department. On these unleased portions, the department solely shall be responsible for weed control, culvert, bridge, and other necessary maintenance and fire protection services. The department shall place hazard warning signs and close hazardous structures on unleased portions and shall regulate activities and restrict uses, including closing the corridor during seasons of high fire danger. [2003 c 334 § 459; 1984 c 174 § 9. Formerly RCW 79.08.281.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79.73.050 Authority to terminate or modify leases—Notice.** The state, through the department, shall reserve the right to terminate a lease entered into pursuant to RCW 79.73.040 or modify authorized uses of the corridor for future recreation, transportation, or utility uses. If the state elects to terminate the lease, the state shall provide the lessee with a minimum of six months' notice. [2003 c 334 § 460; 1984 c 174 § 10. Formerly RCW 79.08.283.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79.73.060 Milwaukee Road corridor—Cross-state trail—Land transfers—Rail carrier franchise.** See RCW 79A.05.115 through 79A.05.130.

### Chapter 79.100 RCW DERELICT VESSELS

#### Sections

79.100.005	Findings.
79.100.010	Definitions.
79.100.020	Chapter not exclusive remedy.
79.100.030	Authority of authorized public entity—Owner retains primary responsibility.
79.100.040	Obtaining custody of vessel.
79.100.050	Use or disposal of vessel.
79.100.060	Reimbursement for costs.
79.100.070	Contract with private company/individual.
79.100.080	Chapter not exclusive.
79.100.100	Derelict vessel removal account.
79.100.110	Vessel abandoned or derelict upon aquatic lands—Penalty.
79.100.120	Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement.
79.100.130	Marina owner may contract with a local government—Contract requirements.
79.100.900	Severability—2002 c 286.
79.100.901	Effective date—2002 c 286.

**79.100.005 Findings.** The legislature finds that there has been an increase in the number of derelict and abandoned vessels that are either grounded or anchored upon publicly or privately owned submerged lands. These vessels are public nuisances and safety hazards as they often pose hazards to navigation, detract from the aesthetics of Washington's waterways, and threaten the environment with the potential release of hazardous materials. The legislature further finds that the costs associated with the disposal of derelict and abandoned vessels are substantial, and that in many cases there is no way to track down the current vessel owners in order to seek compensation. As a result, the costs associated with the removal of derelict vessels becomes a burden on public entities and the taxpaying public. [2002 c 286 § 1.]

**79.100.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Abandoned vessel" means a vessel that has been left, moored, or anchored in the same area without the express consent, or contrary to the rules of, the owner, manager, or lessee of the aquatic lands below or on which the vessel is located for either a period of more than thirty consecutive days or for more than a total of ninety days in any three hundred sixty-five-day period, and the vessel's owner is: (a) Not known or cannot be located; or (b) known and located but is unwilling to take control of the vessel. For the purposes of this subsection (1) only, "in the same area" means within a radius of five miles of any location where the vessel was previously moored or anchored on aquatic lands.

(2) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters, including lands owned by the state and lands owned by other public or private entities.

(3) "Authorized public entity" includes any of the following: The department of natural resources; the department of fish and wildlife; the parks and recreation commission; a

metropolitan park district; a port district; and any city, town, or county with ownership, management, or jurisdiction over the aquatic lands where an abandoned or derelict vessel is located.

(4) "Department" means the department of natural resources.

(5) "Derelict vessel" means the vessel's owner is known and can be located, and exerts control of a vessel that:

(a) Has been moored, anchored, or otherwise left in the waters of the state or on public property contrary to RCW 79.02.300 or rules adopted by an authorized public entity;

(b) Has been left on private property without authorization of the owner; or

(c) Has been left for a period of seven consecutive days, and:

(i) Is sunk or in danger of sinking;

(ii) Is obstructing a waterway; or

(iii) Is endangering life or property.

(6) "Owner" means any natural person, firm, partnership, corporation, association, government entity, or organization that has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(7) "Vessel" means every species of watercraft or other mobile artificial contrivance, powered or unpowered, intended to be used for transporting people or goods on water or for floating marine construction or repair and which does not exceed two hundred feet in length. "Vessel" includes any trailer used for the transportation of watercraft, or any attached floats or debris. [2007 c 342 § 1; 2006 c 153 § 2; 2002 c 286 § 2.]

**79.100.020 Chapter not exclusive remedy.** This chapter is not intended to limit or constrain the ability and authority of the authorized public entities to enact and enforce ordinances or other regulations relating to derelict and abandoned vessels, or to take any actions authorized by federal or state law in responding to derelict or abandoned vessels. This chapter is also not intended to be the sole remedy available to authorized public entities against the owners of derelict and abandoned vessels. [2002 c 286 § 3.]

**79.100.030 Authority of authorized public entity—Owner retains primary responsibility.** (1) An authorized public entity has the authority, subject to the processes and limitations of this chapter, to store, strip, use, auction, sell, salvage, scrap, or dispose of an abandoned or derelict vessel found on or above aquatic lands within the jurisdiction of the authorized public entity. A vessel disposal must be done in an environmentally sound manner and in accordance with all federal, state, and local laws, including the state solid waste disposal provisions provided for in chapter 70.95 RCW. Scuttling or sinking of a vessel is only permissible after obtaining the express permission of the owner or owners of the aquatic lands below where the scuttling or sinking would occur, and obtaining all necessary state and federal permits or licenses.

(2) The primary responsibility to remove a derelict or abandoned vessel belongs to the owner, operator, or lessee of the moorage facility or the aquatic lands where the vessel is

located. If the authorized public entity with the primary responsibility is unwilling or unable to exercise the authority granted by this section, it may request the department to assume the authorized public entity's authority for a particular vessel. The department may at its discretion assume the authorized public entity's authority for a particular vessel after being requested to do so. For vessels not at a moorage facility, an authorized public entity with jurisdiction over the aquatic lands where the vessel is located may, at its discretion, request to assume primary responsibility for that particular vessel from the owner of the aquatic lands where the vessel is located.

(3) The authority granted by this chapter is permissive, and no authorized public entity has a duty to exercise the authority. No liability attaches to an authorized public entity that chooses not to exercise this authority. [2002 c 286 § 4.]

**79.100.040 Obtaining custody of vessel.** (1) Prior to exercising the authority granted in RCW 79.100.030, the authorized public entity must first obtain custody of the vessel. To do so, the authorized public entity must:

(a) Mail notice of its intent to obtain custody, at least twenty days prior to taking custody, to the last known address of the previous owner to register the vessel in any state or with the federal government and to any lien holders or secured interests on record. A notice need not be sent to the purported owner or any other person whose interest in the vessel is not recorded with a state or federal agency;

(b) Post notice of its intent clearly on the vessel for thirty days and publish its intent at least once, more than ten days but less than twenty days prior to taking custody, in a newspaper of general circulation for the county in which the vessel is located; and

(c) Post notice of its intent on the department's internet web site on a page specifically designated for such notices. If the authorized public entity is not the department, the department must facilitate the internet posting.

(2) All notices sent, posted, or published in accordance with this section must, at a minimum, explain the intent of the authorized public entity to take custody of the vessel, the rights of the authorized public entity after taking custody of the vessel as provided in RCW 79.100.030, the procedures the owner must follow in order to avoid custody being taken by the authorized public entity, the procedures the owner must follow in order to reclaim possession after custody is taken by the authorized public entity, and the financial liabilities that the owner may incur as provided for in RCW 79.100.060.

(3)(a) If a vessel is: (i) In immediate danger of sinking, breaking up, or blocking navigational channels; or (ii) poses a reasonably imminent threat to human health or safety, including a threat of environmental contamination; and (iii) the owner of the vessel cannot be located or is unwilling or unable to assume immediate responsibility for the vessel, any authorized public entity may tow, beach, or otherwise take temporary possession of the vessel.

(b) Before taking temporary possession of the vessel, the authorized public entity must make reasonable attempts to consult with the department or the United States coast guard to ensure that other remedies are not available. The basis for taking temporary possession of the vessel must be set out in

writing by the authorized public entity within seven days of taking action and be submitted to the owner, if known, as soon thereafter as is reasonable. If the authorized public entity has not already provided the required notice, immediately after taking possession of the vessel, the authorized public entity must initiate the notice provisions in subsection (1) of this section. The authorized public entity must complete the notice requirements of subsection (1) of this section before using or disposing of the vessel as authorized in RCW 79.100.050. [2007 c 342 § 2; 2006 c 153 § 3; 2002 c 286 § 5.]

**79.100.050 Use or disposal of vessel.** (1) After taking custody of a vessel, the authorized public entity may use or dispose of the vessel in any appropriate and environmentally sound manner without further notice to any owners, but must give preference to uses that derive some monetary benefit from the vessel, either in whole or in scrap. If no value can be derived from the vessel, the authorized public entity must give preference to the least costly, environmentally sound, reasonable disposal option. Any disposal operations must be consistent with the state solid waste disposal provisions provided for in chapter 70.95 RCW.

(2) If the authorized public entity chooses to offer the vessel at a public auction, either a minimum bid may be set or a letter of credit may be required, or both, to discourage future reabandonment of the vessel.

(3) Proceeds derived from the sale of the vessel must first be applied to any administrative costs that are incurred by the authorized public entity during the notification procedures set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. If the proceeds derived from the vessel exceed all administrative costs, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel, the remaining moneys must be applied to satisfying any liens registered against the vessel.

(4) Any value derived from a vessel greater than all liens and costs incurred reverts to the derelict vessel removal account established in RCW 79.100.100. [2002 c 286 § 6.]

**79.100.060 Reimbursement for costs.** (1) The owner of an abandoned or derelict vessel is responsible for reimbursing an authorized public entity for all reasonable and auditable costs associated with the removal or disposal of the owner's vessel under this chapter. These costs include, but are not limited to, costs incurred exercising the authority granted in RCW 79.100.030, all administrative costs incurred by the authorized public entity during the procedure set forth in RCW 79.100.040, removal and disposal costs, and costs associated with environmental damages directly or indirectly caused by the vessel. An authorized public entity that has taken temporary possession of a vessel may require that all reasonable and auditable costs associated with the removal of the vessel be paid before the vessel is released to the owner.

(2) Reimbursement for costs may be sought from an owner who is identified subsequent to the vessel's removal and disposal.

(3) If the full amount of all costs due to the authorized public entity under this chapter is not paid to the authorized

public entity within thirty days after first notifying the responsible parties of the amounts owed, the authorized public entity or the department may bring an action in any court of competent jurisdiction to recover the costs, plus reasonable attorneys' fees and costs incurred by the authorized public entity. [2006 c 153 § 4; 2002 c 286 § 7.]

**79.100.070 Contract with private company/individual.** An authorized public entity may enter into a contract with a private company or individual to carry out the authority granted in this chapter. [2002 c 286 § 8.]

**79.100.080 Chapter not exclusive.** The rights granted by this chapter are in addition to any other legal rights an authorized public entity may have to obtain title to, remove, recover, sell, or dispose of an abandoned or derelict vessel, and in no way does this chapter alter those rights, or affect the priority of other liens on a vessel. [2002 c 286 § 9.]

**79.100.100 Derelict vessel removal account.** (1) The derelict vessel removal account is created in the state treasury. All receipts from RCW 79.100.050 and 79.100.060 and those moneys specified in RCW 88.02.030 and 88.02.050 must be deposited into the account. The account is authorized to receive fund transfers and appropriations from the general fund, deposits from the derelict vessel removal surcharge under RCW 88.02.270, as well as gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this chapter and expend the same or any income according to the terms of the gifts, grants, or endowments provided those terms do not conflict with any provisions of this section or any guidelines developed to prioritize reimbursement of removal projects associated with this chapter. Moneys in the account may only be spent after appropriation. Expenditures from the account shall be used by the department to reimburse authorized public entities for up to ninety percent of the total reasonable and auditable administrative, removal, disposal, and environmental damage costs of abandoned or derelict vessels when the previous owner is either unknown after a reasonable search effort or insolvent. Reimbursement shall not be made unless the department determines that the public entity has made reasonable efforts to identify and locate the party responsible for the vessel, regardless of the title of owner of the vessel. Funds in the account resulting from transfers from the general fund or from the deposit of funds from the watercraft excise tax as provided for under RCW 82.49.030 shall be used to reimburse one hundred percent of these costs and should be prioritized for the removal of large vessels. Costs associated with removal and disposal of an abandoned or derelict vessel under the authority granted in RCW 53.08.320 also qualify for reimbursement from the derelict vessel removal account. In each biennium, up to twenty percent of the expenditures from the account may be used for administrative expenses of the department of licensing and department of natural resources in implementing this chapter.

(2) If the balance of the account reaches one million dollars as of March 1st of any year, exclusive of any transfer or appropriation of funds into the account or funds deposited

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into the account collected under RCW 88.02.270, the department must notify the department of licensing and the collection of any fees associated with this account must be suspended for the following fiscal year.

(3) Priority for use of this account is for the removal of derelict and abandoned vessels that are in danger of sinking, breaking up, or blocking navigation channels, or that present environmental risks such as leaking fuel or other hazardous substances. The department must develop criteria, in the form of informal guidelines, to prioritize removal projects associated with this chapter, but may not consider whether the applicant is a state or local entity when prioritizing. The guidelines must also include guidance to the authorized public entities as to what removal activities and associated costs are reasonable and eligible for reimbursement.

(4) The department must keep all authorized public entities apprized of the balance of the derelict vessel removal account and the funds available for reimbursement. The guidelines developed by the department must also be made available to the other authorized public entities. This subsection (4) must be satisfied by utilizing the least costly method, including maintaining the information on the department's internet web site, or any other cost-effective method.

(5) An authorized public entity may contribute its ten percent of costs that are not eligible for reimbursement by using in-kind services, including the use of existing staff, equipment, and volunteers.

(6) This chapter does not guarantee reimbursement for an authorized public entity. Authorized public entities seeking certainty in reimbursement prior to taking action under this chapter may first notify the department of their proposed action and the estimated total costs. Upon notification by an authorized public entity, the department must make the authorized public entity aware of the status of the fund and the likelihood of reimbursement being available. The department may offer technical assistance and assure reimbursement for up to two years following the removal action if an assurance is appropriate given the balance of the fund and the details of the proposed action. [2007 c 342 § 4; 2006 c 153 § 6; 2002 c 286 § 11.]

**79.100.110 Vessel abandoned or derelict upon aquatic lands—Penalty.** A person who causes a vessel to become abandoned or derelict upon aquatic lands is guilty of a misdemeanor. [2006 c 153 § 1.]

**79.100.120 Contesting an authorized public entity's decision to take temporary custody or possession of a vessel—Contesting the amount of reimbursement.** (1) A person seeking to contest an authorized public entity's decision to take temporary possession or custody of a vessel under this chapter, or to contest the amount of reimbursement owed to an authorized public entity under this chapter, may request a hearing in accordance with this section.

(2)(a) If the contested decision or action was undertaken by a state agency, a written request for a hearing related to the decision or action must be filed with the aquatic resources division of the department within twenty days of the date the authorized public entity acquires custody of the vessel under RCW 79.100.040, or if the vessel is redeemed before the

authorized public entity acquires custody, the date of redemption, or the right to a hearing is deemed waived and the vessel's owner is liable for any costs owed the authorized public entity. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(b) Upon receipt of a timely hearing request, the department shall proceed to hear and determine the validity of the decision to take the vessel into temporary possession or custody and the reasonableness of any towing, storage, or other charges permitted under this chapter. Within five business days after the request for a hearing is filed, the department shall notify the vessel owner requesting the hearing and the authorized public entity of the date, time, and location for the hearing. Unless the vessel is redeemed before the request for hearing is filed, the department shall set the hearing on a date that is within ten business days of the filing of the request for hearing. If the vessel is redeemed before the request for a hearing is filed, the department shall set the hearing on a date that is within sixty days of the filing of the request for hearing.

(3)(a) If the contested decision or action was undertaken by a metropolitan park district, port district, city, town, or county, which has adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, those rules or procedures must be followed in order to contest a decision to take temporary possession or custody of a vessel, or to contest the amount of reimbursement owed.

(b) If the metropolitan park district, port district, city, town, or county has not adopted rules or procedures for contesting decisions or actions pertaining to derelict or abandoned vessels, then a person requesting a hearing under this section must follow the procedure established in RCW 53.08.320(5) for contesting the decisions or actions of moorage facility operators. [2006 c 153 § 5.]

**79.100.130 Marina owner may contract with a local government—Contract requirements.** A marina owner may contract with a local government for the purpose of participating in the derelict vessel removal program. The local government shall serve as the authorized public entity for the removal of the derelict vessel from the marina owner's property. The contract must provide for the marina owner to be financially responsible for the removal costs that are not reimbursed by the department as provided under RCW 79.100.100, and any additional reasonable administrative costs incurred by the local government during the removal of the derelict vessel. Prior to the commencement of any removal which will seek reimbursement from the derelict vessel removal program, the contract and the proposed vessel removal shall be submitted to the department for review and approval. The local government shall use the procedure specified under RCW 79.100.100(6). [2007 c 342 § 3.]

**79.100.900 Severability—2002 c 286.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2002 c 286 § 25.]

**79.100.901 Effective date—2002 c 286.** This act takes effect January 1, 2003. [2002 c 286 § 26.]

## Chapter 79.105 RCW AQUATIC LANDS—GENERAL

### Sections

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79.105.902 Effective date—1984 c 221.  
 79.105.903 Severability—2005 c 155.  
 79.105.904 Part/subchapter headings not law—2005 c 155.

**79.105.001 Intent—2005 c 155.** This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy implications. [2005 c 155 § 1001.]

#### GENERAL PROVISIONS

**79.105.010 Aquatic lands—Findings.** The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. [2005 c 155 § 139; 1984 c 221 § 1. Formerly RCW 79.90.450.]

**79.105.020 Purpose—Articulation of management philosophy.** The purpose of RCW 79.105.060, 79.105.230, 79.105.280, and 79.105.010 through 79.105.040 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands. [2005 c 155 § 101. FORMERLY PART OF RCW 79.90.450.]

**79.105.030 Aquatic lands—Management guidelines.** The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [2005 c 155 § 140; 1984 c 221 § 2. Formerly RCW 79.90.455.]

**79.105.040 Application to existing property rights—Application of shoreline management act.** Nothing in \*this chapter or RCW 79.120.040 or 79.120.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in \*this chapter shall modify, alter, or other-

wise affect the applicability of chapter 90.58 RCW. [2005 c 155 § 157; 1984 c 221 § 20. Formerly RCW 79.90.545.]

**\*Reviser's note:** The reference to "this chapter" referred to chapter 79.90 RCW, which was recodified and/or repealed in its entirety by 2005 c 155.

**79.105.050 Fostering use of aquatic environment—Limitation.** The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2005 c 155 § 141; 2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.90.456, 79.68.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.105.060 Definitions.** The definitions in this section apply throughout chapters 79.105 through 79.145 RCW unless the context clearly requires otherwise.

(1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

(3) "First-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles of either side.

(4) "First-class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile of either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

(5) "Harbor area" means the area of navigable waters determined as provided in Article XV, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

(6) "Improvements" when referring to state-owned aquatic lands means anything considered a fixture in law placed within, upon, or attached to aquatic lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

(7) "Inflation rate" means for a given year the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(8) "Inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

(9) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in water-borne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(10) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in water-borne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

(11) "Nonwater-dependent use" means a use that can operate in a location other than on the waterfront. Examples include, but are not limited to, hotels, condominiums, apartments, restaurants, retail stores, and warehouses not part of a marine terminal or transfer facility.

(12) "Outer harbor line" means a line located and established in navigable waters as provided in Article XV, section 1 of the state Constitution, beyond which the state shall never sell or lease any rights whatever to private persons.

(13) "Person" means any private individual, partnership, association, organization, cooperative, firm, corporation, the state or any agency or political subdivision thereof, any public or municipal corporation, or any unit of government, however designated.

(14) "Port district" means a port district created under Title 53 RCW.

(15) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.

(16) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.

(17) "Second-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.

(18) "Second-class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.

(19) "Shorelands," where not preceded by "first-class" or "second-class," means both first-class shorelands and second-class shorelands.

(20) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by the department or managed under RCW 79.105.420 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department.

(21) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of either cargo or passengers, or both.

(22) "Tidelands," where not preceded by "first-class" or "second-class," means both first-class tidelands and second-class tidelands.

(23) "Valuable materials" when referring to state-owned aquatic lands means any product or material within or upon lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. However, RCW 79.140.190 and 79.140.200 also apply to materials provided for under chapter 79.14 RCW.

(24) "Water-dependent use" means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Water-borne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.

(25) "Water-oriented use" means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and house boats. For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use. [2005 c 155 § 102.]

#### GENERAL USE, SALE, AND LEASE PROVISIONS

**79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications.** The department shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas, which forms shall contain such instructions as will inform and aid the applicants. [2005 c 155 § 104; 1982 1st ex.s. c 21 § 15. Formerly RCW 79.90.090.]

**79.105.110 Who may purchase or lease—Application—Fees.** Any person desiring to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or to purchase any valuable material situated thereon, or to lease any state-owned aquatic

lands, shall file with the department an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board in its rules, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account fund in the general fund. [2005 c 155 § 105; 1982 1st ex.s. c 21 § 16. Formerly RCW 79.90.100.]

**79.105.120 Survey to determine areas subject to sale or lease.** The department may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [2005 c 155 § 108; 1982 1st ex.s. c 21 § 18. Formerly RCW 79.90.120.]

**79.105.130 Reconsideration of official acts.** The department may review and reconsider any of its official acts relating to state-owned aquatic lands until such time as a lease, contract, or deed is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2005 c 155 § 138; 1982 1st ex.s. c 21 § 47. Formerly RCW 79.90.410.]

**79.105.140 Assignment of contracts or leases.** All contracts of purchase of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters issued by the department shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser or lessee of whom they are the assignee, and shall have the same rights in all respects as the original purchaser or lessee of the lands, but only if the assignment is first approved by the department and entered upon the records in the department. [2005 c 155 § 135; 1982 1st ex.s. c 21 § 43. Formerly RCW 79.90.370.]

**79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account.** (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

(a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;

(b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2008 c 299 § 28; 2007 c 341 § 32. Prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2004 c 276:** See notes following RCW 43.330.167.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Severability—Effective date—1997 c 149:** See notes following RCW 43.08.250.

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Effective date—1987 c 350:** "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

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

**Severability—Effective date—1984 c 221:** See RCW 79.105.901 and 79.105.902.

**79.105.160 Aquatic lands—Court review of actions.** Any applicant to purchase or lease any state-owned aquatic lands, or any valuable materials on state-owned aquatic

lands, and any person whose property rights or interest will be affected by the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the order or decision, may appeal in the manner provided in RCW 79.02.030. [2005 c 155 § 137; 2003 c 334 § 606; 1982 1st ex.s. c 21 § 46. Formerly RCW 79.90.400.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

#### LEASING AND RENTAL RATES

**79.105.200 Use and occupancy fee in lieu of lease—Construction of section.** (1) The department may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

(2) Nothing in this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of the aquatic lands when the leasing is not contrary to the statewide public interest. [2005 c 155 § 516; 1982 1st ex.s. c 21 § 102. Formerly RCW 79.94.170.]

**79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority.** (1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, water-borne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or physical or mental handicap. [2005 c 155 § 143; 1984 c 221 § 3. Formerly RCW 79.90.460.]

**79.105.220 Lease of tidelands in front of public parks.** The department may lease state-owned tidelands that

are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission. [2005 c 155 § 145. FORMERLY PART OF RCW 79.94.010; 2002 c 152 § 2; 1984 c 221 § 5. Formerly RCW 79.90.470.]

**Findings—Severability—2002 c 152:** See notes following RCW 79.110.240.

**79.105.230 Use for public parks or public recreation purposes.** Use for public parks or public recreation purposes shall be granted without charge if the state-owned aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. [2005 c 155 § 144.]

**79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses.** Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

(1)(a) The assessed land value, exclusive of improvements, as determined by the county assessor, of the upland tax parcel used in conjunction with the leased area or, if there are no such uplands, of the nearest upland tax parcel used for water-dependent purposes divided by the parcel area equals the upland value.

(b) The upland value times the area of leased aquatic lands times thirty percent equals the aquatic land value.

(2) As of July 1, 1989, and each July 1st thereafter, the department shall determine the real capitalization rate to be applied to water-dependent aquatic land leases commencing or being adjusted under subsection (3)(a) of this section in that fiscal year. The real capitalization rate shall be the real rate of return, except that until June 30, 1989, the real capitalization rate shall be five percent and thereafter it shall not change by more than one percentage point in any one year or be more than seven percent or less than three percent.

(3) The annual rent shall be:

(a) Determined initially, and redetermined every four years or as otherwise provided in the lease, by multiplying the aquatic land value times the real capitalization rate; and

(b) Adjusted by the inflation rate each year in which the rent is not determined under (a) of this subsection.

(4) If the upland parcel used in conjunction with the leased area is not assessed or has an assessed value inconsistent with the purposes of the lease, the nearest comparable upland parcel used for similar purposes shall be substituted and the lease payment determined in the same manner as provided in this section.

(5) For the purposes of this section, "upland tax parcel" is a tax parcel, some portion of which has upland characteristics. Filled tidelands or shorelands with upland characteristics which abut state-owned aquatic land shall be considered as uplands in determining aquatic land values.

(6) The annual rent for filled state-owned aquatic lands that have the characteristics of uplands shall be determined in accordance with RCW 79.105.270 in those cases in which the state owns the fill and has a right to charge for the fill.

(7) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2005 c 155 § 147; 2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7. Formerly RCW 79.90.480.]

**Effective date—2003 c 310:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

**Findings—Report—1998 c 185:** "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
- (b) Compare each with the current method of calculating rents;
- (c) Provide the private industry perspective;
- (d) Describe the public perspective;
- (e) Analyze the impact on state lease revenue;
- (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
- (g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

**79.105.250 Log storage rents.** (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.105.240, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board. [2005 c 155 § 148; 1984 c 221 § 8. Formerly RCW 79.90.485.]

**79.105.260 Rent for leases in effect October 1, 1984.**

(1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent estab-

lished under RCW 79.105.240 or 79.105.250 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. If the first rent amount established under RCW 79.105.240 or 79.105.250 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.105.240 or 79.105.250 shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.105.240 or 79.105.250. [2005 c 155 § 149; 1984 c 221 § 9. Formerly RCW 79.90.490.]

**79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses.** Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. [2005 c 155 § 150; 1984 c 221 § 11. Formerly RCW 79.90.500.]

**79.105.280 Rents and fees for recovery of mineral or geothermal resources.** Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute. [2005 c 155 § 151. FORMERLY PART OF RCW 79.90.500.]

**79.105.290 Aquatic lands—Rents for multiple uses.** If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [2005 c 155 § 152; 1984 c 221 § 12. Formerly RCW 79.90.505.]

**79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use.** If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13. Formerly RCW 79.90.510.]

**79.105.310 Aquatic lands—Rent for improvements.**

(1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [2005 c 155 § 153; 1984 c 221 § 14. Formerly RCW 79.90.515.]

**79.105.320 Aquatic lands—Administrative review of proposed rent.**

The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board. For leases managed under RCW 79.105.420, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed by rule adopted by the board and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [2005 c 155 § 154; 1991 c 64 § 1; 1984 c 221 § 15. Formerly RCW 79.90.520.]

**79.105.330 Aquatic lands—Security for leases for more than one year.**

For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16. Formerly RCW 79.90.525.]

**79.105.340 Aquatic lands—Payment of rent.** If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17. Formerly RCW 79.90.530.]

**79.105.350 Aquatic lands—Interest rate.** The interest rate and all interest rate guidelines shall be fixed by rule adopted by the board and shall not be less than six percent per annum. [2005 c 155 § 155; 1991 c 64 § 2; 1984 c 221 § 18. Formerly RCW 79.90.535.]

**79.105.360 Adoption of rules.** The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290 through 79.105.350, 79.105.400, 79.105.420, 79.130.070, and 79.135.100, specifically including criteria for determining under RCW 79.105.240(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [2005 c 155 § 156; 1984 c 221 § 19. Formerly RCW 79.90.540.]

## OTHER CONVEYANCES

**79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation.**

The department may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. The board shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.105.030. The department may not exchange state-owned harbor areas or waterways. [2005 c 155 § 142; 1995 c 357 § 1. Formerly RCW 79.90.457.]

**79.105.410 Gifts of aquatic land—Procedures and criteria.**

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.105.030, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2005 c 155 § 163; 2003 c 176 § 1. Formerly RCW 79.90.580.]

**79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement.**

(1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port dis-

tract, for port purposes as provided in Title 53 RCW. The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage state-owned aquatic lands if: (a) The port district acquires the leasehold interest in accordance with state law, or (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.105 through 79.140 RCW and the implementing rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use the lands, the rental fee attributable to the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department. However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent is due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board. [2005 c 155 § 146; 1984 c 221 § 6. Formerly RCW 79.90.475.]

**79.105.430 Private recreational docks—Mooring buoys.** (1) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) pre-

vents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recre-

ational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere. [2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

#### DREDGED MATERIAL DISPOSAL

**79.105.500 Aquatic land dredged material disposal sites—Findings.** The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound partnership. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2007 c 341 § 58; 2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Effective date—1987 c 259:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

**79.105.510 Aquatic land dredged material disposal site account.** The aquatic land dredged material disposal site account is established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [2005 c 155 § 159; 1991 sp.s. c 13 § 63; 1987 c 259 § 2. Formerly RCW 79.90.555.]

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

**Effective date—1987 c 259:** See note following RCW 79.105.500.

**79.105.520 Fees for use of aquatic land dredged material disposal sites authorized.** The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All

such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.105.510. [2005 c 155 § 160; 1987 c 259 § 3. Formerly RCW 79.90.560.]

**Effective date—1987 c 259:** See note following RCW 79.105.500.

#### OTHER MANAGEMENT PROVISIONS

**79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances.** After consultation with the director of community, trade, and economic development, the department may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. The agreements, leases, or other conveyances may contain those conditions as are required for the department to comply with its legal rights and duties. All agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.105 through 79.140 RCW. [2005 c 155 § 161; 1995 c 399 § 210; 1988 c 124 § 9. Formerly RCW 79.90.565.]

**Severability—Intent—Application—1988 c 124:** See RCW 27.53.901 and notes following RCW 27.53.030.

**79.105.610 Puget Sound partners.** When administering funds under this chapter, the \*interagency committee for outdoor recreation shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 33.]

**\*Reviser's note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**79.105.620 City use of state-owned aquatic lands for publicly owned marina—Reduced fee lease—Expiration date. (Expires July 1, 2029.)** (1)(a) A city with a population between twenty thousand and twenty-five thousand on June 12, 2008, and that currently operates a publicly owned marina may enter into a reduced fee lease authorizing the city to use state-owned aquatic lands for the purpose of operating a publicly owned marina. The office of financial management's population estimate must be used to determine a city's population for purposes of this section. The lease period may not exceed twenty years.

(b) No rent is due the state for the use of state-owned aquatic lands for the first ten years under such a lease. During subsequent years under such a lease, rent is due for only those lands that have been included under a previous aquatic land lease for the marina. The lease may not be renewed, extended, or put into holdover.

(2) A city choosing to enter into a lease as provided in subsection (1) of this section must do so within one year of June 12, 2008. Prior to entering into such a lease, the city must be in good standing with the department and must have

paid all amounts owed the department including any accrued interest.

(3) State-owned aquatic lands that may be included in the lease are limited only to those lands included in the most recent expired lease with the city for the marina, along with any state-owned aquatic lands immediately adjacent to those lands. Only those marina operations conducted directly by the city may be included within the leased area.

(4) If a city chooses to enter into an agreement as provided in subsection (1) of this section, the city is not eligible to apply for grants from the aquatic lands enhancement account created under RCW 79.105.150 for the first ten years of the lease.

(5) Upon expiration of the twenty-year lease, the city may enter into a new lease for the use of state-owned aquatic lands or vacate the lands as agreed to in the expiring lease. To ensure the consistent statewide application of aquatic land management principles, the new lease must be completed in accordance with all applicable sections of this title.

(6) This section expires July 1, 2029. [2008 c 132 § 1.]

**79.105.630 Administering funds—Preference to an evergreen community.** When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 33.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**79.105.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.105.901 Severability—1984 c 221.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 221 § 31. Formerly RCW 79.90.901.]

**79.105.902 Effective date—1984 c 221.** This act shall take effect on October 1, 1984. [1984 c 221 § 32. Formerly RCW 79.90.902.]

**79.105.903 Severability—2005 c 155.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 155 § 1014.]

**79.105.904 Part/subchapter headings not law—2005 c 155.** Part headings and subchapter headings used in this act are not any part of the law. [2005 c 155 § 1002.]

(2008 Ed.)

## Chapter 79.110 RCW AQUATIC LANDS—EASEMENTS AND RIGHTS-OF-WAY

### Sections

79.110.001 Intent—2005 c 155.

#### EASEMENTS FOR REMOVAL OF VALUABLE MATERIALS

79.110.010 Certain aquatic lands subject to easements for removal of valuable materials.

79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials.

79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.

79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.

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79.110.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.110.001 Intent—2005 c 155.** See RCW 79.105.001.

#### EASEMENTS FOR REMOVAL OF VALUABLE MATERIALS

**79.110.010 Certain aquatic lands subject to easements for removal of valuable materials.** All tidelands and shorelands originally belonging to the state, and which were granted, sold, or leased at any time after June 15, 1911, and

which contain any valuable materials or are contiguous to or in proximity of state lands or other tidelands or shorelands which contain any valuable materials, shall be subject to the right of the state or any grantee or lessee who has acquired the other lands, or any valuable materials thereon, after June 15, 1911, to acquire the right-of-way over the lands so granted, sold, or leased, for private railroads, skid roads, flumes, canals, watercourses, or other easements for the purpose of, and to be used in, transporting and moving valuable materials from the other lands, over and across the lands so granted or leased in accordance with the provisions of RCW 79.36.370. [2005 c 155 § 201; 2003 c 334 § 607; 1982 1st ex.s. c 21 § 48. Formerly RCW 79.91.010.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.020 Certain aquatic lands subject to easements for removal of valuable materials—Private easements subject to common use in removal of valuable materials.** Every right-of-way for a private railroad, skid road, canal, flume, or watercourse, or other easement, over and across any state-owned tidelands or shorelands, for the purpose of, and to be used in, transporting and moving valuable materials of the land, granted after June 15, 1911, shall be subject to joint and common use in accordance with the provisions of RCW 79.36.380. [2005 c 155 § 202; 1982 1st ex.s. c 21 § 49. Formerly RCW 79.91.020.]

**79.110.030 Certain state and aquatic lands subject to easements for removal of valuable materials—Reasonable facilities and service for transporting must be furnished.** Any person having acquired a right-of-way or easement as provided in RCW 79.110.010 and 79.110.020 over any state-owned tidelands or shorelands or over or across beds of any navigable water or stream for the purpose of transporting or moving valuable materials and being engaged in such business, or any grantee or lessee thereof acquiring after June 15, 1911, state lands or tidelands or shorelands containing valuable materials, where the land is contiguous to or in proximity of the right-of-way or easement, shall accord to the state or any person acquiring after June 15, 1911, valuable materials upon any such lands, proper and reasonable facilities and service for transporting and moving valuable materials under reasonable rules and upon payment of just and reasonable charges in accordance with the provisions of RCW 79.36.390. [2005 c 155 § 203; 2003 c 334 § 608; 1982 1st ex.s. c 21 § 50. Formerly RCW 79.91.030.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.040 Certain state and aquatic lands subject to easements for removal of valuable materials—Duty of utilities and transportation commission.** Should the owner or operator of any private railroad, skid road, flume, canal, watercourse, or other right-of-way or easement provided for in RCW 79.110.020 and 79.110.030 fail to agree with the state or any grantee or lessee, as to the reasonable and proper rules and charges, concerning the transportation and movement of valuable materials from those lands contiguous to or in proximity to the lands over which the private right-of-way or easement is operated, the state or any grantee or lessee, owning and desiring to have the valuable materials trans-

ported or moved, may apply to the Washington state utilities and transportation commission for an inquiry into the reasonableness of the rules, investigate the rules, and make binding reasonable, proper, and just rates and regulations in accordance with the provisions of RCW 79.36.400. [2005 c 155 § 204; 2003 c 334 § 609; 1982 1st ex.s. c 21 § 51. Formerly RCW 79.91.040.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.050 Certain state and aquatic lands subject to easements for removal of valuable materials—Penalty for violation of orders.** Any person owning or operating any right-of-way or easement subject to the provisions of RCW 79.110.020 through 79.110.040, over and across any state-owned tidelands or shorelands or across any beds of navigable waters, and violating or failing to comply with any rule or order made by the utilities and transportation commission, after inquiry, investigation, and a hearing as provided in RCW 79.110.040, shall be subject to the same penalties provided in RCW 79.36.410. [2005 c 155 § 205; 2003 c 334 § 610; 1982 1st ex.s. c 21 § 52. Formerly RCW 79.91.050.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.060 Certain state and aquatic lands subject to easements for removal of valuable materials—Application for right-of-way.** Any person engaged in the business of logging or lumbering, quarrying, mining, or removing sand, gravel, or other valuable materials from land, and desirous of obtaining a right-of-way or easement provided for in RCW 79.110.010 through 79.110.030 over and across any state-owned tidelands or shorelands, or beds of navigable waters or any lands sold or leased by the state since June 15, 1911, shall file with the department upon a form to be furnished for that purpose, a written application for the right-of-way in accordance with the provisions of RCW 79.36.350. [2005 c 155 § 206; 2003 c 334 § 611; 1982 1st ex.s. c 21 § 53. Formerly RCW 79.91.060.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.070 Certain state and aquatic lands subject to easements for removal of valuable materials—Forfeiture for nonuser.** Any right-of-way or easement granted under the provisions of RCW 79.110.010 through 79.110.030 which has never been used, or for a period of two years has ceased to be used for the purpose for which it was granted, shall be deemed forfeited. The forfeiture of any such right-of-way previously granted or granted under the provisions of RCW 79.110.010 through 79.110.030, shall be rendered effective by the mailing of a notice of the forfeiture to the grantee at the grantee's last known post office address and by posting a copy of the certificate, or other record of the grant, in the department's Olympia office with the word "canceled" and the date of the cancellation. [2005 c 155 § 207; 1982 1st ex.s. c 21 § 54. Formerly RCW 79.91.070.]

#### RIGHTS-OF-WAY FOR ROADS, BRIDGES, AND TRESTLES

**79.110.100 United States of America, state agency, county, or city right-of-way for roads and streets over,**

**and wharves over and upon aquatic lands.** Any county or city or the United States of America or any state agency desiring to locate, establish, and construct a road or street over and across any aquatic lands, or wharf over any state-owned tidelands or shorelands, shall by resolution of the legislative body of the county, or city council or other governing body of the city, or proper agency of the United States of America or state agency, file a petition with the department for a right-of-way for the road or street or wharf in accordance with the provisions of RCW 79.36.440.

The department may grant the petition if it deems it in the best interest of the state and upon payment for the right-of-way and any damages to the affected aquatic lands. [2005 c 155 § 208; 2003 c 334 § 612; 1982 1st ex.s. c 21 § 55. Formerly RCW 79.91.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.110 Railroad bridge rights-of-way across navigable streams.** Any railroad company organized under the laws of the territory or state of Washington, or under any other state or territory of the United States, or under any act of the congress of the United States, and authorized to do business in the state and to construct and operate railroads, shall have the right to construct bridges across the navigable streams within this state over which the line or lines of its railway shall run for the purpose of being made a part of the railway line, or for the more convenient use thereof, if the bridges are constructed so as not to interfere with, impede, or obstruct navigation on the streams. However, payment for any right-of-way and any damages to those aquatic lands affected must be paid first. [2005 c 155 § 209; 1982 1st ex.s. c 21 § 56. Formerly RCW 79.91.090.]

**79.110.120 Public bridges or trestles across waterways and aquatic lands—Recovery of reasonable direct administrative costs—Report to the legislature.** (1) Counties, cities, towns, and other municipalities shall have the right to construct bridges and trestles across waterways heretofore or hereafter laid out under the authority of the state of Washington, and over and across any tidelands, shorelands, bedlands, or harbor areas owned and managed by the state adjacent thereto over which the projected line or lines of highway will run, if such bridges or trestles are constructed in good faith for the purpose of being made a part of the constructed line of such a highway, upon payment for any natural resource damages to those aquatic lands affected not already covered by an approved state or federal regulatory mitigation plan. Such a right shall be granted by easement and no charge may be made to the county, city, town, or other municipality, for such an easement. The department may recover only its reasonable direct administrative costs incurred in processing and approving the request or application, and reviewing plans for construction of the bridge or trestle.

(2) For purposes of this section, "direct administrative costs" means the cost of hours worked directly on an application or request, based on salaries and benefits, plus travel reimbursement and other actual out-of-pocket costs. Direct administrative costs recovered by the department must be deposited into the resource management cost account.

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(3) By December 1, 2008, the department must deliver a report to the legislature regarding the collection of administrative fees as described in this section. [2005 c 58 § 1; 1982 1st ex.s. c 21 § 57. Formerly RCW 79.91.100.]

**79.110.130 Common carriers may bridge or trestle state waterways.** Any person authorized by any state or municipal law or ordinance to construct and operate railroads, interurban railroads, or street railroads as common carriers within this state, shall have the right to construct bridges or trestles across waterways laid out under the authority of the state of Washington, over which the projected line or lines of railroad will run. The bridges or trestles shall be constructed in good faith for the purpose of being made a part of the constructed line of the railroad, and may also include a roadway for the accommodation of vehicles and foot passengers. Full payment for any right-of-way and any damages to those aquatic lands affected by the right-of-way shall first be made. [2005 c 155 § 211; 1982 1st ex.s. c 21 § 58. Formerly RCW 79.91.110.]

**79.110.140 Location and plans of bridge or trestle to be approved—Future alterations.** The location and plans of any bridge, draw bridge, or trestle proposed to be constructed under RCW 79.110.110 through 79.110.130 shall be submitted to and approved by the department before construction is commenced. However, in case the portion of the waterway, river, stream, or watercourse, at the place to be crossed is navigable water of the United States, or otherwise within the jurisdiction of the United States, the location and plans shall also be submitted to and approved by the United States army corps of engineers before construction is commenced. When plans for any bridge or trestle have been approved by the department and the United States army corps of engineers, it is unlawful to deviate from the plans either before or after the completion of the structure, unless the modification of the plans has previously been submitted to, and received the approval of the department and the United States army corps of engineers, as the case may be. Any structure authorized and approved as indicated in this section shall remain within the jurisdiction of the respective officer or officers approving the structure, and shall be altered or changed from time to time at the expense of the municipality owning the highway, or at the expense of the common carriers, at the time owning the railway or road using the structure, to meet the necessities of navigation and commerce in such a manner as may be from time to time ordered by the respective officer or officers at the time having jurisdiction of the structure, and the orders may be enforced by appropriate action at law or in equity at the suit of the state. [2005 c 155 § 212; 1982 1st ex.s. c 21 § 59. Formerly RCW 79.91.120.]

#### RIGHTS-OF-WAY FOR UTILITY LINES

**79.110.200 Right-of-way for utility pipelines, transmission lines, etc.** A right-of-way through, over, and across any tidelands, shorelands, beds of navigable waters, oyster reserves belonging to the state, or the reversionary interest of the state in oyster lands may be granted to any person or the United States of America, constructing or proposing to con-

struct, or which has constructed, any telephone line, ditch, flume, or pipeline for the domestic water supply of any municipal corporation or transmission line for the purpose of generating or transmitting electricity for light, heat, or power. [2005 c 155 § 213; 1982 1st ex.s. c 21 § 60. Formerly RCW 79.91.130.]

**79.110.210 Right-of-way for utility pipelines, transmission lines, etc.—Procedure to acquire.** In order to obtain the benefits of the grant made in RCW 79.110.200, the person or the United States of America constructing or proposing to construct, or which has constructed, a telephone line, ditch, flume, pipeline, or transmission line, shall file, with the department, a map accompanied by the field notes of the survey and location of the telephone line, ditch, flume, pipeline, or transmission line, and shall make payment as provided in RCW 79.110.220. The land within the right-of-way shall be limited to an amount necessary for the construction of the telephone line, ditch, flume, pipeline, or transmission line sufficient for the purposes required, together with sufficient land on either side thereof for ingress and egress to maintain and repair the telephone line, ditch, flume, pipeline, or transmission line. The grant shall also include the right to cut all standing timber outside the right-of-way marked as danger trees located on public lands upon full payment of the appraised value. [2005 c 155 § 214; 1982 1st ex.s. c 21 § 61. Formerly RCW 79.91.140.]

**79.110.220 Right-of-way for utility pipelines, transmission lines, etc.—Appraisal—Certificate—Reversion for nonuser.** On the filing of the plat and field notes, as provided in RCW 79.110.210, the land applied for and any improvements included in the right-of-way applied for, if any, shall be appraised as in the case of an application to purchase state lands. Upon full payment of the appraised value of the state-owned aquatic land applied for, or upon payment of an annual rental when the department deems a rental to be in the best interests of the state, and upon full payment of the appraised value of any danger trees and improvements, if any, the department shall issue to the applicant a certificate of the grant of right-of-way stating the terms and conditions and shall enter the certificate in the abstracts and records in the department's Olympia office, and thereafter any sale or lease of the lands affected by the right-of-way shall be subject to the easement of the right-of-way. However, should the person or the United States of America securing the right-of-way ever abandon the use of the right-of-way for the purposes for which it was granted, the right-of-way shall revert to the state, or the state's grantee. [2005 c 155 § 215; 1982 1st ex.s. c 21 § 62. Formerly RCW 79.91.150.]

**79.110.230 Use of state-owned aquatic lands for public utility lines.** (1) The use of state-owned aquatic lands for public utility lines owned by a governmental entity shall be granted by an agreement, permit, or other instrument if the use is consistent with the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The department may recover only its administrative costs incurred in processing and approving the request or

application, and reviewing plans for construction of public utility lines as determined under RCW 79.110.240. Administrative costs recovered by the department must be deposited into the resource management cost account.

(2) The use of state-owned aquatic lands for local public utility lines owned by a nongovernmental entity will be granted by easement if the use is consistent with the purpose of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.400, and 79.130.070 and does not obstruct navigation or other public uses. The total charge for the easement will be determined under RCW 79.110.240.

(3) Nothing in this section limits the ability of the department to obtain payment for commodity costs, such as lost revenue from renewable resources, resulting from the granted use of state-owned aquatic lands for public utility lines. [2008 c 55 § 1; 2005 c 155 § 216. FORMERLY PART OF RCW 79.90.470.]

**79.110.240 Charge for term of easement—Recovery of costs.** (1) Until July 1, 2017, the charge for the term of an easement granted under RCW 79.110.230(2) will be determined as follows and will be paid in advance upon grant of the easement:

(a) Five thousand dollars for individual easement crossings that are no longer than one mile in length;

(b) Twelve thousand five hundred dollars for individual easement crossings that are more than one mile but less than five miles in length; or

(c) Twenty thousand dollars for individual easement crossings that are five miles or more in length.

(2) The charge for easements under subsection (1) of this section must be adjusted annually by the rate of yearly increase in the most recently published consumer price index, all urban consumers, for the Seattle-Everett SMSA, over the consumer price index for the preceding year, as compiled by the bureau of labor statistics, United States department of labor for the state of Washington rounded up to the nearest fifty dollars.

(3) The term of the easement is thirty years or a period of less than thirty years if requested by the person or entity seeking the easement.

(4) In addition to the charge for the easement under subsection (1) of this section, the department may recover its administrative costs incurred in receiving an application for the easement, approving the easement, and reviewing plans for and construction of the public utility lines. For the purposes of this subsection, "administrative costs" is equivalent to twenty percent of the fee for the easement as determined under subsection (1) of this section and adjusted under subsection (2) of this section. For public utility lines owned by a governmental entity, the administrative costs will be calculated based on the length of the easement and the fee that it would be charged if it were subject to the easement charges in this section. When multiple public utility lines are owned by the same entity and are authorized under the same easement, the administrative fee for the easement shall be equal to twenty percent of the easement fee for the single longest public utility line. Administrative costs recovered by the department must be deposited into the resource management cost account.

(5) Applicants under RCW 79.110.230(2) providing a residence with an individual service connection for electrical, natural gas, cable television, or telecommunications service are not required to pay the charge for the easement under subsection (1) of this section but shall pay administrative costs under subsection (4) of this section.

(6) A final decision on applications for an easement must be made within one hundred twenty days after the department receives the completed application and after all applicable regulatory permits for the aquatic easement have been acquired. This subsection applies to applications submitted before June 13, 2002, as well as to applications submitted on or after June 13, 2002. Upon request of the applicant, the department may reach a decision on an application within sixty days and charge an additional fee for an expedited processing. The fee for an expedited processing is ten percent of the combined total of the easement charge and administrative costs.

(7) By December 31, 2016, the legislature shall review the granting of easements on state-owned aquatic lands under this chapter and determine whether all applications for easements are processed within one hundred twenty days for normal processing of applications and sixty days for expedited processing of applications, and whether the granting of easements on state-owned aquatic lands generates reasonable income for the aquatic lands enhancement account. [2008 c 55 § 2; 2005 c 155 § 162; 2002 c 152 § 3. Formerly RCW 79.90.575.]

**Findings—2002 c 152:** "The legislature finds that local public utilities provide essential services to all of the residents of the state and that the construction and improvement of local utility infrastructure is critical to the public health, safety, and welfare, community and economic development, and installation of modern and reliable communication and energy technology. The legislature further finds that local utility lines must cross state-owned aquatic lands in order to reach all state residents and that, for the benefit of such residents, the state should permit the crossings, consistent with all applicable state environmental laws, in a nondiscriminatory, economic, and timely manner. The legislature further finds that this act and the valuation methodology in section 3 of this act applies only to the uses listed in section 2 of this act, and does not establish a precedent for valuation for any other uses on state-owned aquatic lands." [2002 c 152 § 1.]

**Severability—2002 c 152:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 152 § 4.]

#### RIGHTS-OF-WAY FOR IRRIGATION, DIKING, AND DRAINAGE/OVERFLOW RIGHTS

**79.110.300 Right-of-way for irrigation, diking, and drainage purposes.** A right-of-way through, over, and across any state-owned tidelands or shorelands is granted to any irrigation district, or irrigation company duly organized under the laws of this state, and to any person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or to any diking and drainage district or any diking and drainage improvement district proposing to construct a dike or drainage ditch. [2005 c 155 § 217; 1982 1st ex.s. c 21 § 63. Formerly RCW 79.91.160.]

**79.110.310 Right-of-way for irrigation, diking, and drainage purposes—Procedure to acquire.** In order to

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obtain the benefits of the grant provided for in RCW 79.110.300, the irrigation district, irrigation company, person, or the United States of America, constructing or proposing to construct an irrigation ditch or pipeline for irrigation, or the diking and drainage district or diking and drainage improvement district constructing or proposing to construct any dike or drainage ditch, shall file with the department a map accompanied by the field notes of the survey and location of the proposed irrigation ditch, pipeline, dike, or drainage ditch, and shall pay to the state as provided in RCW 79.110.320, the amount of the appraised value of the lands used for or included within the right-of-way. The land within the right-of-way shall be limited to an amount necessary for the construction of the irrigation ditch, pipeline, dike, or drainage ditch for the purposes required, together with sufficient land on either side for ingress and egress to maintain and repair the irrigation ditch, pipeline, dike, or drainage ditch. [2005 c 155 § 218; 1982 1st ex.s. c 21 § 64. Formerly RCW 79.91.170.]

**79.110.320 Right-of-way for irrigation, diking, and drainage purposes—Appraisal—Certificate.** Upon the filing of the plat and field notes as in RCW 79.110.310, the lands included within the right-of-way applied for shall be appraised as in the case of an application to purchase the lands, at full market value. Upon full payment of the appraised value of the lands the department shall issue to the applicant a certificate of right-of-way, and enter the certificate in the department records. Any subsequent sale or lease by the state of the lands affected by the right-of-way shall be subject to the certificate of right-of-way. [2005 c 155 § 219; 1982 1st ex.s. c 21 § 65. Formerly RCW 79.91.180.]

**79.110.330 Grant of overflow rights.** The department has the power and authority to grant to any person, the right, privilege, and authority to perpetually back and hold water upon or over any state-owned tidelands or shorelands, and to overflow and inundate the lands, whenever the department deems it necessary for the purpose of erecting, constructing, maintaining, or operating any water power plant, reservoir, or works for impounding water for power purposes, irrigation, mining, or other public use in accordance with the provisions of RCW 79.36.570. [2005 c 155 § 220; 2003 c 334 § 613; 1982 1st ex.s. c 21 § 66. Formerly RCW 79.91.190.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.340 Construction of RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330 relating to rights-of-way and overflow rights.** RCW 79.110.010 through 79.110.220 and 79.110.240 through 79.110.330, relating to the acquiring of rights-of-way and overflow rights through, over, and across state-owned aquatic lands, shall not be construed as exclusive or as affecting the right of municipal and public service corporations to acquire lands belonging to or under the control of the state, or rights-of-way or other rights, by condemnation proceedings. [2005 c 155 § 221; 1982 1st ex.s. c 21 § 67. Formerly RCW 79.91.200.]

**79.110.350 Grant of such easements and rights-of-way as applicant may acquire in private lands by eminent domain.** The department may grant to any person easements and rights in tidelands and shorelands and oyster reserves owned by the state as the applicant may acquire in privately or publicly owned lands through proceedings in eminent domain in accordance with the provisions of RCW 79.36.355. [2005 c 155 § 222; 2003 c 334 § 614; 1982 1st ex.s. c 21 § 68. Formerly RCW 79.91.210.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.110.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.110.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.115 RCW

### AQUATIC LANDS—HARBOR AREAS

#### Sections

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**79.115.001 Intent—2005 c 155.** See RCW 79.105.001.

#### HARBOR LINE ESTABLISHMENT AND RELOCATION

##### **79.115.010 Harbor lines and areas to be established.**

(1) It is the duty of the board acting as the harbor line commission to locate and establish harbor lines and determine harbor areas, as required by Article XV, section 1 of the state Constitution, where harbor lines and harbor areas have not previously been located and established.

(2) The board shall locate and establish outer harbor lines beyond which the state shall never sell or lease any rights whatever to private persons, and to locate and establish the inner harbor line, thereby defining the width of the harbor area between such harbor lines. The harbor area shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce. [2005 c 155 § 301; 1982 1st ex.s. c 21 § 69. Formerly RCW 79.92.010.]

**79.115.020 Relocation of harbor lines by the harbor line commission.** Whenever it appears that the inner harbor line of any harbor area has been so established as to overlap or fall inside the government meander line, or for any other good cause, the board acting as the harbor line commission is empowered to relocate and reestablish said inner harbor line so erroneously established, outside of the meander line. All tidelands or shorelands within the inner harbor line so reestablished and relocated, shall belong to the state and may be sold or leased as other first-class tidelands or shorelands in accordance with the provisions of RCW 79.125.200. However, in all other cases, authority to relocate the inner harbor line or outer harbor line, or both, shall first be obtained from the legislature. [2005 c 155 § 302; 1982 1st ex.s. c 21 § 70. Formerly RCW 79.92.020.]

**79.115.030 Relocation of harbor lines authorized by legislature.** The commission on harbor lines is authorized to change, relocate, or reestablish harbor lines in Guemes Channel and Fidalgo Bay in front of the city of Anacortes, Skagit county; in Grays Harbor in front of the cities of Aberdeen, Hoquiam, and Cosmopolis, Grays Harbor county; Bellingham Bay in front of the city of Bellingham and in Drayton Harbor in front of the city of Blaine, Whatcom county; in Elliott Bay, Puget Sound and Lake Union within, and in front of the city of Seattle, King county, and within one mile of the limits of such city; Port Angeles harbor in front of the city of Port Angeles, Clallam county; in Lake Washington in front of the cities of Renton and Lake Forest Park, King county; Commencement Bay in front of the city of Tacoma, Pierce county; and within one mile of the limits of such city; Budd Inlet in front of the city of Olympia, Thurston county; the Columbia river in front of the city of Kalama, Cowlitz county; Port Washington Narrows and Sinclair Inlet in front of the city of Bremerton, Kitsap county; Sinclair Inlet in front of the city of Port Orchard, Kitsap county; in Liberty Bay in front of the city of Poulsbo, Kitsap county; the Columbia river in front of the city of Vancouver, Clark county; Port Townsend Bay in front of the city of Port Townsend, Jefferson county; the Swinomish Channel in front of the city of La Conner, Skagit county; and Port Gardner Bay in front of the city of Everett, except no harbor lines shall be established in Port Gardener Bay west of the easterly shoreline of Jetty Island as presently situated or west of a line extending S 37° 09' 38" W from the Snohomish River Light (5), and in front of the city of Edmonds, Snohomish county; in Oakland Bay in front of the city of Shelton, Mason county; and within one mile of the limits of such city; in Gig Harbor in front of the city of Gig Harbor, Pierce county; and within one mile of the limits of such city, at the entrance to the Columbia river in front of the city of Ilwaco, Pacific county; in the Columbia river in front of the city of Pasco, Franklin county; and in the Columbia river in front of the city of Kennewick, Benton county. [2005 c 155 § 303; 2004 c 219 § 1; 1989 c 79 § 1; 1982 1st ex.s. c 21 § 71. Formerly RCW 79.92.030.]

**79.115.040 Modification of harbor lines in Port Gardner Bay.** The harbor line commission shall modify harbor lines in Port Gardner Bay as necessary to facilitate the conveyance through exchange authorized in RCW

79.125.800. [2005 c 155 § 304; 1987 c 271 § 5. Formerly RCW 79.92.035.]

**Severability—1987 c 271:** See note following RCW 79.130.050.

**79.115.050 Seizure or sale of improvements for taxes.**

Whenever improvements have been made on state-owned tidelands, shorelands, or beds of navigable waters, in front of cities or towns, prior to the location of harbor lines in front of the cities or towns, and the reserved harbor area as located include the improvements, no seizure or sale of the improvements for taxes shall be had until six months after the lands have been leased or offered for lease. However, this section shall not affect or impair the lien for taxes on the improvements. [2005 c 155 § 136; 1982 1st ex.s. c 21 § 45. Formerly RCW 79.90.390.]

HARBOR AREA LEASES

**79.115.100 Terms of harbor area leases.**

Applications, leases, and bonds of lessees shall be in such a form as the department shall prescribe. Every lease shall provide that the rental shall be payable to the department, and for cancellation by the department upon sixty days' written notice for any breach of the conditions. Every lessee shall furnish a bond, with surety satisfactory to the department, with such penalty as the department may prescribe, but not less than five hundred dollars, conditioned upon the faithful performance of the terms of the lease and the payment of the rent when due. If the department at any time deems any bond insufficient, it may require the lessee to file a new and sufficient bond within thirty days after receiving notice to do so.

Applications for leases of harbor areas upon tidal waters shall be accompanied by plans and drawings and other data concerning the proposed wharves, docks, or other structures or improvements as the department shall require. Every lease of harbor areas shall provide that, wharves, docks, or other conveniences of navigation and commerce adequate for the public needs, to be specified in the lease, shall be constructed within the time as may be fixed in each case by the department. In no case shall the construction be commenced more than two years from the date of the lease and shall be completed within such reasonable time as the department shall fix, any of which times may be extended by the department either before or after their expiration, and the character of the improvements may be changed either before or after completion with the approval of the department. However, if in its opinion improvements existing upon such harbor area or the tidelands adjacent thereto are adequate for public needs of commerce and navigation, the department shall require the maintenance of existing improvements and need not require further improvements. [2005 c 155 § 305; 1982 1st ex.s. c 21 § 74. Formerly RCW 79.92.060.]

**79.115.110 Construction or extension of docks, wharves, etc., in harbor areas—New lease.** If the owner of any harbor area lease upon tidal waters desires to construct any wharf, dock, or other convenience of navigation or commerce, or to extend, enlarge, or substantially improve any existing structure used in connection with the harbor area, and deems the required expenditure not warranted by the les-

see's right to occupy the harbor area during the remainder of the term of their lease, the lease owner may make application to the department for a new lease of the harbor area for a period not exceeding thirty years. Upon the filing of an application accompanied by proper plans, drawings, or other data, the department shall investigate the application and if the department determines that the proposed work or improvement is in the public interest and reasonably adequate for the public needs, it shall by order fix the terms and conditions and the rate of rental for a new lease, the rate of rental shall be a fixed percentage, during the term of the lease, on the true and fair value in money of the harbor area determined by the department. The department may propose modifications of the proposed wharf, dock, or other convenience or extensions, enlargements, or improvements. The department shall, within ninety days from the filing of an application notify the applicant in writing of the terms and conditions upon which a new lease will be granted, and of the rental to be paid, and if the applicant shall within ninety days elect to accept a new lease of the harbor area upon the terms and conditions, and at the rental prescribed by the department, the department shall make a new lease for the harbor area for the term applied for and the existing lease shall be surrendered and canceled. [2005 c 155 § 306; 2000 c 11 § 27; 1982 1st ex.s. c 21 § 75. Formerly RCW 79.92.070.]

**79.115.120 Re-leases of harbor areas.** Upon the expiration of any harbor area lease upon tidal waters, the lessee may apply for a re-lease of the harbor area for a period not exceeding thirty years. The application shall be accompanied with maps showing the existing improvements upon the harbor area and the adjacent tidelands and with proper plans, drawings, and other data showing any proposed extensions or improvements of existing structures. Upon the filing of an application the department shall investigate the application and if it determines that the character of the wharves, docks, or other conveniences of commerce and navigation are reasonably adequate for the public needs and in the public interest, it shall by order fix and determine the terms and conditions upon which the re-lease shall be granted and the rate of rental to be paid, which rate shall be a fixed percentage during the term of the lease on the true and fair value in money of the harbor area as determined by the department. [2005 c 155 § 307; 2000 c 11 § 28; 1982 1st ex.s. c 21 § 76. Formerly RCW 79.92.080.]

**79.115.130 Procedure to re-lease harbor areas.** Upon completion of the valuation of any tract of harbor area applied for under RCW 79.115.120, the department shall notify the applicant of the terms and conditions upon which the re-lease will be granted and of the rental fixed. The applicant or the applicant's successor in interest shall have the option for the period of sixty days from the date of the service of notice in which to accept a lease on the terms and conditions and at the rental so fixed and determined by the department. If the terms and conditions and rental are accepted a new lease shall be granted for the term applied for. If the terms and conditions are not accepted by the applicant within the period of time, or within such further time, not exceeding three months, as the department shall grant, the lease shall be

deemed rejected by the applicant, and the department shall give eight weeks' notice by publication once a week in one or more newspapers of general circulation in the county in which the harbor area is located, that a lease of the harbor area will be sold on the terms and conditions and at the rental, at a time and place specified in the notice (which shall not be more than three months from the date of the first publication of the notice) to the person offering at the public sale to pay the highest sum as a cash bonus at the time of sale of the lease. Notice of the sale shall be served upon the applicant at least six weeks prior to the date of sale. The person paying the highest sum as a cash bonus shall be entitled to lease the harbor area. However, if the lease is not sold at the public sale the department may at any time or times again fix the terms, conditions, and rental, and again advertise the lease for sale as provided in this section and upon similar notice. Further, upon failure to secure any sale of the lease as prescribed in this section, the department may issue revocable leases without requirement of improvements for one year periods at a minimum rate of two percent. [2005 c 155 § 308; 1985 c 469 § 61; 1982 1st ex.s. c 21 § 77. Formerly RCW 79.92.090.]

**79.115.140 Regulation of wharfage, dockage, and other tolls.** The state of Washington retains and reserves the right to regulate the rates of wharfage, dockage, and other tolls to be imposed by the lessee or the lessee's assigns upon commerce for any of the purposes for which the leased area may be used and the right to prevent extortion and discrimination in such use. [2005 c 155 § 309; 1982 1st ex.s. c 21 § 78. Formerly RCW 79.92.100.]

**79.115.150 Harbor areas and tidelands within towns—Distribution of rents to municipal authorities.** (1) Where any leased harbor area or tideland is situated within the limits of a town, whether or not the harbor area or tideland lies within a port district, the rents from the leases shall be paid by the state treasurer to the municipal authorities of the town to be expended for water-related improvements.

(2) The state treasurer is authorized and directed to make payments to the respective towns on the first days of July and January of each year, of all moneys payable under the terms of this section. [2005 c 155 § 310; 1984 c 221 § 25; 1983 c 153 § 1; 1982 2nd ex.s. c 8 § 2; 1982 1st ex.s. c 21 § 79. Formerly RCW 79.92.110.]

**Severability—Effective date—1984 c 221:** See RCW 79.105.901 and 79.105.902.

**Effective date—1983 c 153:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 153 § 2.]

**Effective date—1982 2nd ex.s. c 8 § 2:** "Section 2 of this act shall take effect July 1, 1983." [1982 2nd ex.s. c 8 § 3.]

**79.115.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.115.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.120 RCW

### AQUATIC LANDS—WATERWAYS AND STREETS

#### Sections

- 79.120.001 Intent—2005 c 155.
- 79.120.010 First-class tidelands and shorelands to be platted—Public waterways and streets.
- 79.120.020 Streets, waterways, etc., validated.
- 79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.
- 79.120.040 Permits to use waterways.
- 79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.
- 79.120.060 Vacation of waterways—Extension of streets.
- 79.120.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.120.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.120.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.120.010 First-class tidelands and shorelands to be platted—Public waterways and streets.** It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town, or as soon as practicable, to survey and plat all first-class tidelands and shorelands not previously platted, and in plating the tidelands and shorelands to lay out streets which shall be dedicated to public use, subject to the control of the cities or towns in which they are situated.

The department shall also establish one or more public waterways not less than fifty nor more than one thousand feet wide, beginning at the outer harbor line and extending inland across the tidelands belonging to the state. These waterways shall include within their boundaries, as nearly as practicable, all navigable streams running through the tidelands, and shall be located at other places as in the judgment of the department may be necessary for the present and future convenience of commerce and navigation. All waterways shall be reserved from sale or lease and remain as public highways for watercraft until vacated as provided for in this chapter.

The department shall appraise the value of platted tidelands and shorelands and enter the appraisals in its records. [2005 c 155 § 401; 1982 1st ex.s. c 21 § 80. Formerly RCW 79.93.010.]

**79.120.020 Streets, waterways, etc., validated.** All alleys, streets, avenues, boulevards, waterways, and other public places and highways located and platted on the first-class tidelands and shorelands, or harbor areas, as provided by law, and not vacated as provided by law, are validated as public highways and dedicated to the use of the public for the purposes for which they were intended, subject to vacation as provided for in this chapter. [2005 c 155 § 402; 1982 1st ex.s. c 21 § 81. Formerly RCW 79.93.020.]

**79.120.030 Approval of plans/authorize construction on state-owned aquatic lands.** The department has the power to approve plans for and authorize the construction of slopes, with rock, riprap, or other protection, upon any state-owned aquatic lands incident to the improvement of any abutting or adjacent street or avenue by any city or town in this state. [2005 c 155 § 403; 1982 1st ex.s. c 21 § 82. Formerly RCW 79.93.030.]

**79.120.040 Permits to use waterways.** If the United States government has established pierhead lines within a waterway created under the laws of this state at any distance from the boundaries established by the state, structures may be constructed in that strip of waterway between the waterway boundary and the nearest pierhead line only with the consent of the department and upon such plans, terms, and conditions and for such term as determined by the department. However, no permit shall extend for a period longer than thirty years.

The department may cancel any permit upon sixty days' notice for a substantial breach by the permittee of any of the permit conditions.

If a waterway is within the territorial limits of a port district, the duties assigned by this section to the department may be exercised by the port commission of the port district as provided in RCW 79.105.420.

Nothing in this section shall confer upon, create, or recognize in any abutting owner any right or privilege in or to any strip of waterway abutting any street and between prolongations of the lines of the street, but the control of and the right to use the strip is reserved to the state of Washington, except as authorized by RCW 79.105.420. [2005 c 155 § 404; 1984 c 221 § 21; 1982 1st ex.s. c 21 § 83. Formerly RCW 79.93.040.]

**Severability—Effective date—1984 c 221:** See RCW 79.105.901 and 79.105.902.

*Application to existing property rights:* RCW 79.105.040.

**79.120.050 Excavation of waterways—Waterways open to public—Tide gates or locks.** All waterways excavated through any state-owned tidelands or shorelands by virtue of the provisions of chapter 99, Laws of 1893, so far as they run through the tidelands or shorelands, are declared to be public waterways, free to all citizens upon equal terms, and subject to the jurisdiction of the proper authorities, as otherwise provided by law. However, where tide gates or locks are considered by the contracting parties excavating any waterways to be necessary to the efficiency of the waterway, the department may, in its discretion, authorize tide gates or locks to be constructed and may authorize the parties constructing the waterway to operate them and collect a reasonable toll from vessels passing through the tide gates or locks. Further, the state of Washington or the United States of America can, at any time, appropriate the tide gates or locks upon payment to the parties erecting them of the reasonable value of the tide gates or locks at the date of the appropriation, reasonable value to be ascertained and determined as in other cases of condemnation of private property for public use. [2005 c 155 § 405; 1982 1st ex.s. c 21 § 84. Formerly RCW 79.93.050.]

**79.120.060 Vacation of waterways—Extension of streets.** If a waterway established under the laws of this state, or any portion of the waterway, has not been excavated, or is not used for navigation, or is not required in the public interest to exist as a waterway, the waterway or a portion of the waterway may be vacated by written order of the commissioner upon request by ordinance or resolution of the city council of the city in which such waterway is located or by resolution of the port commission of the port district in which

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the waterway is located. If the waterway or a portion of the waterway which is vacated is navigable water of the United States, or otherwise within the jurisdiction of the United States, a copy of the resolution or ordinance, together with a copy of the vacation order of the commissioner shall be submitted to the United States army corps of engineers for their approval, and if they approve, the waterway or a portion of the waterway is vacated. However, if a port district owns property abutting the waterway and the provisions of this section are otherwise satisfied, the waterway, or the portion of the waterway that abuts the port district property, shall be vacated.

Upon vacation of a waterway, the commissioner shall notify the city in which the waterway is located, and the city has the right, if otherwise permitted by RCW 79.125.200, to extend across the portions so vacated any existing streets, or to select portions of the waterway as the city may desire for street purposes, in no case to exceed one hundred fifty feet in width for any one street. The selection shall be made within sixty days subsequent to the receipt of notice of the vacation of the portion of the waterway.

If the city fails to make a selection within the time, or selects only a portion of the waterway, the title of the remaining portions of the vacated waterway shall vest in the state, unless the waterway is located within the territorial limits of a port district, in which event, if otherwise permitted by RCW 79.125.200, the title shall vest in the port district. The title is subject to any railroad or street railway crossings existing at the time of the vacation. [2005 c 155 § 406; 1984 c 221 § 22; 1982 1st ex.s. c 21 § 85. Formerly RCW 79.93.060.]

**Severability—Effective date—1984 c 221:** See RCW 79.105.901 and 79.105.902.

*Application to existing property rights:* RCW 79.105.040.

**79.120.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.120.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

**Chapter 79.125 RCW  
AQUATIC LANDS—  
TIDELANDS AND SHORELANDS**

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- 79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.
- 79.125.901 Severability—Part/subchapter headings not law—2005 c 155.

**79.125.001 Intent—2005 c 155.** See RCW 79.105.001.

## PLAT/APPRaisal/REPLAT

**79.125.010 Location of line dividing tidelands from shorelands in tidal rivers.** The department is authorized to locate in all navigable rivers in this state which are subject to tidal flow, the line dividing the tidelands in the river from the shorelands in the river, and the classification or the location of the dividing line shall be final and not subject to review, and the department shall enter the location of the line upon the plat of the tidelands and shorelands affected. [2005 c 155 § 532; 1982 1st ex.s. c 21 § 118. Formerly RCW 79.94.330.]

**79.125.020 First-class tidelands and shorelands to be platted.** It is the duty of the department simultaneously with the establishment of harbor lines and the determination of harbor areas in front of any city or town or as soon as practicable to survey and plat all first-class tidelands and shorelands not previously platted as provided in RCW 79.120.010. [2005 c 155 § 501; 1982 1st ex.s. c 21 § 87. Formerly RCW 79.94.020.]

**79.125.030 Second-class tidelands and shorelands may be platted.** The department may survey and plat any second-class tidelands and shorelands not previously platted. [2005 c 155 § 502; 1982 1st ex.s. c 21 § 88. Formerly RCW 79.94.030.]

**79.125.040 Tidelands and shorelands—Plats—Record.** The department shall prepare plats showing all tidelands and shorelands, surveyed, platted, and appraised by it in the respective counties, on which shall be marked the location of all tidelands and shorelands, with reference to the lines of the United States survey of the abutting upland, and shall prepare a record of its proceedings, including a list of the tidelands and shorelands surveyed, platted, or replatted, and appraised by it and its appraisal of the tidelands and shorelands, which plats and books shall be in triplicate and the department shall file one copy of the plats and records in the department's Olympia office, and file one copy in the office of the county auditor of the county where the lands platted, or replatted, and appraised are situated, and file one copy in the office of the city engineer of the city in which, or within two miles of which, the lands platted, or replatted, are situated. [2005 c 155 § 503; 1982 1st ex.s. c 21 § 89. Formerly RCW 79.94.040.]

**79.125.050 Date of sale limited by time of appraisal.** In no case shall any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, be offered for sale unless the lands have been appraised by the

department within ninety days prior to the date fixed for the sale. [2005 c 155 § 107; 1982 1st ex.s. c 21 § 17. Formerly RCW 79.90.110.]

**79.125.060 First or second-class tidelands and shorelands—Appraisal—Record.** In appraising tidelands or shorelands, the department shall appraise each lot, tract, or piece of land separately, and shall maintain a description of each lot, tract, or piece of first or second-class tidelands or shorelands, its full appraised value, the area and rate per acre at which it was appraised, and if any lot is covered in whole or in part by improvements in actual use for commerce, trade, residence, or business, on or prior to, the date of the plat or replat, the department shall enter the name of the owner, or reputed owner, the nature of the improvements, the area covered by the improvements, the portion of each lot, tract, or piece of land covered, and the appraised value of the land covered, with and exclusive of, the improvements. [2005 c 155 § 504; 1982 1st ex.s. c 21 § 90. Formerly RCW 79.94.050.]

**79.125.070 Tidelands and shorelands—Notice of filing plat and record of appraisal—Appeal.** (1) The department shall, before filing in the department's Olympia office the plat and record of appraisal of any tidelands or shorelands platted and appraised by it, publish a notice once each week for four consecutive weeks in a newspaper published and of general circulation in the county where the lands covered by the plat and record are situated, stating that the plat and record, describing it, is complete and subject to inspection at the department's Olympia office, and will be filed on a certain day to be named in the notice.

(2) Any person entitled to purchase under RCW 79.125.200 and claiming a preference right of purchase of any of the tidelands or shorelands platted and appraised by the department, and who feels aggrieved at the appraisal fixed by the department upon the lands, or any part thereof, may within sixty days after the filing of the plat and record in the department's Olympia office (which shall be done on the day fixed in the notice), appeal from the appraisal to the superior court of the county in which the tidelands or shorelands are situated, in the manner provided for taking appeals from orders or decisions under RCW 79.105.160.

(3) The prosecuting attorney of any county, or city attorney of any city, in which the aquatic lands are located, shall at the request of the governor, appeal on behalf of the state, or the county, or city, from any appraisal in the manner provided in this section. Notice of the appeal shall be served upon the commissioner, and the department must immediately notify all persons entitled to purchase under RCW 79.125.200 and claiming a preference right to purchase the lands subject to the appraisal.

(4) Any party, other than the state or the county or city appealing, shall execute a bond to the state with sufficient surety, to be approved by the department, in the sum of two hundred dollars conditioned for the payment of costs on appeal.

(5) The superior court to which an appeal is taken shall hear evidence as to the value of the lands appraised and enter an order confirming, or raising, or lowering the appraisal

appealed from, and the clerk of the court shall file a certified copy in the department's Olympia office. The appraisal fixed by the court shall be final. [2005 c 155 § 505; 1982 1st ex.s. c 21 § 91. Formerly RCW 79.94.060.]

**79.125.080 Tidelands and shorelands—Petition for replat—Replating and reappraisal—Vacation by replat.** Whenever all of the owners and other persons having a vested interest in those tidelands or shorelands embraced within any plat of tidelands or shorelands or within any portion of any plat in which there are unsold state-owned tidelands or shorelands, shall file a petition with the department accompanied by proof of service of the petition upon the city council, or other governing body, of the city or town in which the tidelands or shorelands described in the petition are situated, or upon the legislative body of the county in which the tidelands or shorelands outside of any incorporated city or town are situated, asking for a replat of the tidelands or shorelands, the department is authorized and empowered to replat the tidelands or shorelands described in the petition, and all unsold tidelands or shorelands situated within the replat shall be reappraised as provided for the original appraisal of tidelands or shorelands. However, any streets or alleys embraced within the plat or portion of plat, vacated by the replat shall vest in the owner or owners of the abutting lands. [2005 c 155 § 509; 1982 1st ex.s. c 21 § 95. Formerly RCW 79.94.100.]

**79.125.090 Tidelands and shorelands—Dedication of replat—All interests must join.** If in the preparation of a replat provided for in RCW 79.125.080 by the department, it becomes desirable to appropriate any tidelands or shorelands previously sold for use as streets, alleys, waterways, or other public places, all persons interested in the title to the tidelands or shorelands desired for public places shall join in the dedication of the replat before it shall become effective. [2005 c 155 § 510; 1982 1st ex.s. c 21 § 96. Formerly RCW 79.94.110.]

**79.125.100 Tidelands and shorelands—Vacation procedure cumulative.** RCW 79.125.080, 79.125.090, and 79.125.420 are intended to afford a method of procedure, in addition to other methods provided in this title for the vacation of streets, alleys, waterways, and other public places platted on tidelands or shorelands. [2005 c 155 § 512; 1982 1st ex.s. c 21 § 98. Formerly RCW 79.94.130.]

**79.125.110 Tidelands and shorelands—Effect of replat.** A replat of tidelands or shorelands platted shall be in full force and effect and shall constitute a vacation of streets, alleys, waterways, and other dedicated public places, when otherwise permitted by RCW 79.125.200, and the dedication of new streets, alleys, waterways, and other public places appearing upon the replat, when the replat is recorded and filed as in the case of original plats. [2005 c 155 § 513; 1982 1st ex.s. c 21 § 99. Formerly RCW 79.94.140.]

## EXCHANGE, SALE, LEASE LIMITATIONS/TERMS

**79.125.200 State-owned tidelands, shorelands, and waterways—Sold only to public entities—Leasing—Limitation.**

(1) This section applies to:

- (a) First-class tidelands as defined in RCW 79.105.060;
- (b) Second-class tidelands as defined in RCW 79.105.060;
- (c) First-class shorelands as defined in RCW 79.105.060;
- (d) Second-class shorelands as defined in RCW 79.105.060, except as included within RCW 79.125.450;
- (e) Waterways as described in RCW 79.120.010.

(2) Notwithstanding any other provision of law, from and after August 9, 1971, all state-owned tidelands and shorelands enumerated in subsection (1) of this section shall not be sold except to public entities as may be authorized by law and they shall not be given away.

(3) Tidelands and shorelands enumerated in subsection (1) of this section may be leased for a period not to exceed fifty-five years. However, nothing in this section shall be construed as modifying or canceling any outstanding lease during its present term.

(4) Nothing in this section shall:

- (a) Be construed to cancel an existing sale contract;
- (b) Prohibit sale or exchange of beds and shorelands where the water course has changed and the area now has the characteristics of uplands;
- (c) Prevent exchange involving state-owned tidelands and shorelands;
- (d) Be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of such aquatic lands when such leasing is not contrary to the statewide public interest. [2005 c 155 § 514. FORMERLY PART OF RCW 79.94.170; 1982 1st ex.s. c 21 § 100. Formerly RCW 79.94.150.]

**79.125.210 Sale of second-class tidelands.** All second-class tidelands shall be offered for sale, when otherwise permitted under RCW 79.125.200 to be sold, and sold in the same manner as state lands, other than capitol building lands, but for not less than five dollars per lineal chain, measured on the United States meander line bounding the inner shore limit of the tidelands, and shall pay one-tenth of the purchase price on the date of sale. [2005 c 155 § 508; 1982 1st ex.s. c 21 § 94. Formerly RCW 79.94.090.]

**79.125.220 Second-class tidelands or shorelands—Lease for booming purposes.** (1) The department is authorized to lease any second-class tidelands or shorelands, whether reserved from sale, or from lease for other purposes, by or under authority of law, or not, except any oyster reserve containing oysters in merchantable quantities, to any person, for booming purposes, for any term not exceeding ten years from the date of the lease, for annual rental and upon terms and conditions as the department may fix and determine, and may also provide for forfeiture and termination of any lease at any time for failure to pay the fixed rental or for any violation of the terms or conditions.

(2) The lessee of any lands for booming purposes shall receive, hold, and sort the logs and other timber products of all persons requesting the service and upon the same terms and without discrimination, and may charge and collect tolls for the service not to exceed seventy-five cents per thousand feet scale measure on all logs, spars, or other large timber and reasonable rates on all other timber products, and shall be subject to the same duties and liabilities, so far as the duties and liabilities are applicable, as are imposed upon boom companies organized under the laws of the state. However, failure to use any lands leased under the provisions of this section for booming purposes for a period of one year shall work a forfeiture of the lease, and the lands shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department.

(3) At the expiration of any lease issued under the provisions of this section, the lessee shall have the preference right to re-lease the lands covered by the lessee's original lease for a further term, not exceeding ten years, at the rental and upon the terms and conditions as may be prescribed by the department. [2005 c 155 § 528; 1982 1st ex.s. c 21 § 114. Formerly RCW 79.94.290.]

**79.125.230 Second-class tidelands or shorelands separated from uplands by navigable water—Sale.** Second-class tidelands and shorelands that are separated from the upland by navigable waters shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, but in no case at less than five dollars per acre. An applicant to purchase the tidelands or shorelands shall, at the applicant's own expense, survey and file with the application a plat of the surveys of the land applied for, which survey shall be connected with, and the plat shall show, two or more connections with the United States survey of the uplands, and the applicant shall file the field notes of the survey of the land with the application. The department shall examine and test the plat and field notes of the survey, and if found incorrect or indefinite, it shall cause the survey to be corrected or may reject the survey and cause a new survey to be made. [2005 c 155 § 526; 1982 1st ex.s. c 21 § 112. Formerly RCW 79.94.270.]

**79.125.240 Sale procedure—Terms of payment—Deferred payments, rate of interest.** All state-owned tidelands and shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall be sold on the following terms: One-tenth to be paid on the date of sale; one-tenth to be paid one year from the date of the issuance of the contract of sale; and one-tenth annually thereafter until the full purchase price has been made; but any purchaser may make full payment at any time. All deferred payments shall draw interest at the rate as may be fixed by rule adopted by the board, and the rate of interest, as so fixed at the date of each sale, shall be stated in all advertising for and notice of the sale and in the contract of sale. The first installment of interest shall become due and payable one year after the date of the contract of sale and all interest shall become due and payable annually on that date, and all remittances for payment of either principal or interest shall be forwarded to the department. [2005 c 155 § 122; 1982 1st ex.s. c 21 § 31. Formerly RCW 79.90.250.]

**79.125.250 Sale procedure—Certificate to governor of payment in full—Deed.** When the entire purchase price of any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall have been fully paid, the department shall certify the fact to the governor, and shall cause a deed signed by the governor and attested by the secretary of state, with the seal of the state attached, to be issued to the purchaser and to be recorded in the department, and no fee shall be required for any deed issued by the governor other than the fee provided for in this chapter. [2005 c 155 § 123; 1982 1st ex.s. c 21 § 32. Formerly RCW 79.90.260.]

**79.125.260 Sale procedure—Reservation in contract.** Each and every contract for the sale of, and each deed to, state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, shall contain the reservation contained in RCW 79.11.210. [2005 c 155 § 124; 2003 c 334 § 601; 1982 1st ex.s. c 21 § 33. Formerly RCW 79.90.270.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.125.270 Sale procedure—Form of contract—Forfeiture—Extension of time.** The purchaser of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, except in cases where the full purchase price is paid at the time of the purchase, shall enter into and sign a contract with the state to be signed by the commissioner on behalf of the state, with the seal of the commissioner's office attached, and in a form to be prescribed by the attorney general, and under those terms and conditions provided in RCW 79.11.200. [2005 c 155 § 125; 1982 1st ex.s. c 21 § 34. Formerly RCW 79.90.280.]

**79.125.280 Subdivision of leases—Fee.** Whenever the holder of any contract to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or the holder of any lease of any lands, except for mining of valuable minerals, or coal, or extraction of petroleum or gas, shall surrender the contract or lease to the department with the request to have it divided into two or more contracts or leases, the department may divide the contract or lease and issue new contracts or leases. However, no new contract or lease shall issue while there is due and unpaid any rental, taxes, or assessments on the land held under the contract or lease, nor in any case where the department is of the opinion that the state's security would be impaired or endangered by the proposed division. For all new contracts or leases a fee as determined by the board for each new contract or lease issued, shall be paid by the applicant and the fee shall be paid into the state treasury to the resource management cost account in the general fund, pursuant to RCW 79.64.020. [2005 c 155 § 133; 1982 1st ex.s. c 21 § 41. Formerly RCW 79.90.350.]

**79.125.290 First-class tidelands and shorelands—Sale of remaining lands.** Any first-class tidelands or shorelands remaining unsold, and where there is no pending application for purchase under claim of any preference right, when otherwise permitted under RCW 79.125.200 to be sold, shall

be sold on the same terms and in the same manner as provided for the sale of state lands for not less than the appraised value fixed at the time of the application to purchase, and the department whenever it deems it advisable and for the best interest of the state may reappraise the lands in the same manner as provided for the appraisal of state lands. [2005 c 155 § 507; 1982 1st ex.s. c 21 § 93. Formerly RCW 79.94.080.]

**79.125.300 Tidelands or shorelands—Failure to re-lease tidelands or shorelands—Appraisal of improvements.** (1) In case any lessee of tidelands or shorelands, for any purpose except mining of valuable minerals or coal, or extraction of petroleum or gas, or the lessee's successor in interest, shall after the expiration of any lease, fail to purchase, when otherwise permitted under RCW 79.125.200 to be purchased, or re-lease from the state the tidelands or shorelands formerly covered by the lease, when the lands are offered for sale or re-lease, then and in that event the department shall appraise and determine the value of all improvements existing upon the tidelands or shorelands at the expiration of the lease which are not capable of removal without damage to the land, including the cost of filling and raising the property above high tide, or high water, whether filled or raised by the lessee or the lessee's successors in interest, or by virtue of any contract made with the state, and also including the then value to the land of all existing local improvements paid for by the lessee or the lessee's successors in interest. In case the lessee or the lessee's successor in interest is dissatisfied with the appraised value of the improvements as determined by the department, the lessee shall have the right of appeal to the superior court of the county where the tidelands or shorelands are situated, within the time and according to the method prescribed in RCW 79.105.160 for taking appeals from decisions of the department.

(2) In case the tidelands or shorelands are leased, or sold, to any person other than such lessee or the lessee's successor in interest, within three years from the expiration of the former lease, the bid of the subsequent lessee or purchaser shall not be accepted until payment is made by the subsequent lessee or purchaser of the appraised value of the improvements as determined by the department, or as may be determined on appeal, to the former lessee or the former lessee's successor in interest.

(3) In case the tidelands or shorelands are not leased, or sold, within three years after the expiration of the former lease, then in that event, the improvements existing on the lands at the time of any subsequent lease, shall belong to the state and be considered a part of the land, and shall be taken into consideration in appraising the value, or rental value, of the land and sold or leased with the land. [2005 c 155 § 531; 1982 1st ex.s. c 21 § 117. Formerly RCW 79.94.320.]

**79.125.310 Effect of mistake or fraud.** Any sale or lease of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, made by mistake, or not in accordance with law, or obtained by fraud or misrepresentation, shall be void, and the contract of purchase or lease, issued shall be of no effect, and the holder of the contract or lease, shall be required to surrender the contract or lease to the department, which, except in the case of fraud on

the part of the purchaser, or lessee, shall cause the money paid on account of the surrendered contract or lease to be refunded to the holder, provided the money has not been paid into the state treasury. [2005 c 155 § 134; 1982 1st ex.s. c 21 § 42. Formerly RCW 79.90.360.]

#### SALE OR LEASING PREFERENCE

**79.125.400 First-class tidelands and shorelands—Lease—Preference right of upland owner—How exercised.** (1) Upon platting and appraisal of first-class tidelands or shorelands as provided in this chapter, if the department deems it for the best public interest to offer the first-class tidelands or shorelands for lease, the department shall notify the owner of record of uplands fronting upon the tidelands or shorelands to be offered for lease if the upland owner is a resident of the state, or the upland owner is a nonresident of the state, shall mail to the upland owner's last known post office address, as reflected in the county records, a copy of the notice notifying the owner that the state is offering the tidelands or shorelands for lease, giving a description of those lands and the department's appraised fair market value of the tidelands or shorelands for lease, and notifying the owner that the upland owner has a preference right to apply to lease the tidelands or shorelands at the appraised value for the lease for a period of sixty days from the date of service of mailing of the notice.

(2) If at the expiration of sixty days from the service or mailing of the notice, as provided in subsection (1) of this section, there being no conflicting applications filed, and the owner of the uplands fronting upon the tidelands or shorelands offered for lease, has failed to avail themselves of their preference right to apply to lease or to pay to the department the appraised value for lease of the tidelands or shorelands described in the notice, the tidelands or shorelands may be offered for lease to any person and may be leased in the manner provided for in the case of lease of state lands.

(3) If at the expiration of sixty days two or more claimants asserting a preference right to lease have filed applications to lease any tract, conflicting with each other, the conflict between the claimants shall be equitably resolved by the department as the best interests of the state require in accord with the procedures prescribed by chapter 34.05 RCW. However, any contract purchaser of lands or rights therein, which upland qualifies the owner for a preference right under this section, shall have first priority for the preference right. [2005 c 155 § 506; 2000 c 11 § 29; 1982 1st ex.s. c 21 § 92. Formerly RCW 79.94.070.]

**79.125.410 First-class unplatted tidelands and shorelands—Lease preference right to upland owners—Lease for booming purposes.** (1) The department is authorized to lease to the abutting upland owner any unplatted first-class tidelands or shorelands.

(2) The department shall, prior to the issuance of any lease under the provisions of this section, fix the annual rental for the tidelands or shorelands and prescribe the terms and conditions of the lease. No lease issued under the provisions of this section shall be for a longer term than ten years, and every lease shall be subject to termination upon ninety days' notice to the lessee in the event that the department shall

decide that it is in the best interest of the state that the tidelands or shorelands be surveyed and platted. At the expiration of any lease issued under the provisions of this section, the lessee or the lessee's successors or assigns shall have a preference right to re-lease the lands covered by the original lease or any portion of the lease, if the department deems it to be in the best interests of the state to re-lease the lands, for succeeding periods not exceeding five years each at the rental and upon the terms and conditions as may be prescribed by the department.

(3) In case the abutting uplands are not improved and occupied for residential purposes and the abutting upland owner has not filed an application for the lease of the lands, the department may lease the lands to any person for booming purposes under the terms and conditions of this section. However, failure to use for booming purposes any lands leased under this section for such purposes for a period of one year shall work a forfeiture of the lease and the land shall revert to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 527; 1982 1st ex.s. c 21 § 113. Formerly RCW 79.94.280.]

**79.125.420 Tidelands and shorelands—Vacation by replat—Preference right of tideland or shoreland owner.** If any platted street, alley, waterway, or other public place is vacated by a replat as provided for in RCW 79.125.080 and 79.125.090, or any new street, alley, waterway, or other public place is so laid out as to leave unsold tidelands or shorelands between a new street, alley, waterway, or other public place, and tidelands or shorelands previously sold, the owner of the adjacent tidelands or shorelands shall have the preference right for sixty days after the final approval of the plat to purchase the unsold tidelands or shorelands so intervening at the appraised value, if otherwise permitted under RCW 79.125.200 to be sold. [2005 c 155 § 511; 1982 1st ex.s. c 21 § 97. Formerly RCW 79.94.120.]

**79.125.430 Tidelands or shorelands—Preference rights, time limit on exercise.** All preference rights to purchase tidelands or shorelands, when otherwise permitted by RCW 79.125.200 to be purchased, awarded by the department, or by the superior court in case of appeal from the award of the department, shall be exercised by the parties to whom the award is made within thirty days from the date of the service of notice of the award by registered mail, by the payment to the department of the sums required by law to be paid for a contract, or deed, as in the case of the sale of state lands, other than capitol building lands, and upon failure to make the payment the preference rights shall expire. [2005 c 155 § 529; 1982 1st ex.s. c 21 § 115. Formerly RCW 79.94.300.]

**79.125.440 Tidelands or shorelands—Accretions—Lease.** Any accretions that may be added to any tract or tracts of tidelands or shorelands previously sold, or that may be sold, by the state, shall belong to the state and shall not be sold, or offered for sale, unless otherwise permitted by this chapter to be sold, and unless the accretions are surveyed under the direction of the department. However, the owner of

the adjacent tidelands or shorelands shall have the preference right to purchase the lands produced by accretion, when otherwise permitted by RCW 79.125.200 to be sold, for thirty days after the owner of the adjacent tidelands or shorelands shall have been notified by registered mail of the owner's preference right to purchase the accreted lands. [2005 c 155 § 530; 1982 1st ex.s. c 21 § 116. Formerly RCW 79.94.310.]

**79.125.450 Second-class shorelands on navigable lakes—Sale.** (1) The legislature finds that maintaining public lands in public ownership is often in the public interest. However, when second-class shorelands on navigable lakes have minimal public value, the sale of those shorelands to the abutting upland owner may not be contrary to the public interest. However, the purpose of this section is to remove the prohibition contained in RCW 79.125.200 regarding the sale of second-class shorelands to abutting owners, whose uplands front on the shorelands. Nothing contained in this section shall be construed to otherwise affect the rights of interested parties relating to public or private ownership of shorelands within the state.

(2) Notwithstanding the provisions of RCW 79.125.200, the department may sell second-class shorelands on navigable lakes to abutting owners whose uplands front upon the shorelands in cases where the board has determined that these sales would not be contrary to the public interest. These shorelands shall be sold at fair market value, but not less than five percent of the fair market value of the abutting upland, less improvements, to a maximum distance of one hundred and fifty feet landward from the line of ordinary high water.

(3) Review of the decision of the department regarding the sale price established for a shoreland to be sold pursuant to this section may be obtained by the upland owner by filing a petition with the board of tax appeals created in accordance with chapter 82.03 RCW within thirty days after the mailing of notification by the department to the owner regarding the price. The board of tax appeals shall review the cases in an adjudicative proceeding as described in chapter 34.05 RCW, the administrative procedure act, and the board's review shall be de novo. Decisions of the board of tax appeals regarding fair market values determined pursuant to this section shall be final unless appealed to the superior court pursuant to RCW 34.05.510 through 34.05.598. [2005 c 155 § 520. Prior: 1989 c 378 § 3; 1989 c 175 § 171; 1982 1st ex.s. c 21 § 106. Formerly RCW 79.94.210.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**79.125.460 Second-class shorelands—Sale or lease when in best public interest—Preference right of upland owner—Procedure upon determining sale or lease not in best public interest or where transfer made for public use—Platting.** (1) If application is made to purchase or lease any second-class shorelands and the department deems it for the best public interest to offer second-class shorelands for sale or lease, the department shall cause a notice to be served upon the abutting upland owner if the owner is a resident of the state, or if the upland owner is a nonresident of the state, shall mail to the owner's last known post office address, as reflected in the county records a copy of a notice notifying the owner that the state is offering the shorelands for sale or

lease, giving a description of the department's appraised fair market value of the shorelands for sale or lease, and notifying the upland owner that he or she has a preference right to purchase, if the purchase is otherwise permitted under RCW 79.125.200, or lease the shorelands at the appraised value for a period of thirty days from the date of the service or mailing of the notice. If at the expiration of the thirty days from the service or mailing of the notice, as provided in this section, the abutting upland owner has failed to exercise the preference right to purchase, as otherwise permitted under RCW 79.125.200, or lease, or to pay to the department the appraised value for sale or lease of the shorelands described in the notice, then in that event, except as otherwise provided in this section, the shorelands may be offered for sale, when otherwise permitted under RCW 79.125.200, or offered for lease, and sold or leased in the manner provided for the sale or lease of state lands, as otherwise permitted under this chapter.

(2) The department shall authorize the sale or lease, whether to abutting upland owners or others, only if the sale or lease would be in the best public interest and is otherwise permitted under RCW 79.125.200. It is the intent of the legislature that whenever it is in the best public interest, the second-class shorelands managed by the department shall not be sold but shall be maintained in public ownership for the use and benefit of the people of the state.

(3) In all cases where application is made for the lease of any second-class shorelands adjacent to upland, under the provisions of this section, the shorelands shall be leased per lineal chain frontage.

(4) If, following an application by the abutting upland owner to either purchase as otherwise permitted under RCW 79.125.200 or to obtain an exclusive lease at appraised full market value or rental, the department deems that the sale or lease is not in the best public interest, or if property rights in state-owned second-class shorelands are at any time withdrawn, sold, or assigned in any manner authorized by law to a public agency for a use by the general public, the department shall within one hundred and eighty days from receipt of the application to purchase or lease, or on reaching a decision to withdraw, sell, or assign such shorelands to a public agency, and: (a) Make a formal finding that the body of water adjacent to the shorelands is navigable; (b) find that the state or the public has an overriding interest inconsistent with a sale or exclusive lease to a private person, and specifically identify the interest and the factor or factors amounting to the inconsistency; and (c) provide for the review of the decision in accordance with the procedures prescribed by chapter 34.05 RCW.

(5) Notwithstanding subsections (1) through (4) of this section, the department may cause any of the shorelands to be platted as is provided for the platting of first-class shorelands, and when so platted the lands shall be sold, when otherwise permitted under RCW 79.125.200 to be sold, or leased in the manner provided for the sale or lease of first-class shorelands. [2005 c 155 § 525; 1982 1st ex.s. c 21 § 111. Formerly RCW 79.94.260.]

SECOND-CLASS SHORELANDS—  
SPECIAL PLATTING AND SELECTION PROVISIONS

**79.125.500 Second-class shorelands—Boundary of shorelands when water lowered—Certain shorelands granted to city of Seattle.** In every case where the state of Washington had prior to June 13, 1913, sold to any purchaser from the state any second-class shorelands bordering upon navigable waters of this state by description where the water boundary of the purchased shorelands is not defined, the water boundary shall be the line of ordinary navigation in the water; and whenever the waters have been or shall be lowered by any action done or authorized either by the state of Washington or the United States, the water boundary shall be the line of ordinary navigation as the water boundary shall be found in the waters after the lowering, and there is granted and confirmed to every purchaser, the purchaser's heirs and assigns, all the lands. However, this section and RCW 79.125.510 shall not apply to the portions of the second-class shorelands which shall, as provided by RCW 79.125.510, be selected by the department for harbor areas, slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, or other public purposes. Further, all shorelands and the bed of Lake Washington from the southerly margin of the plat of Lake Washington shorelands southerly along the westerly shore of the lake to a line three hundred feet south of and parallel with the east and west center line of section 35, township 24 north, range 4 east, W.M., are reserved for public uses and are granted and donated to the city of Seattle for public park, parkway, and boulevard purposes, and as a part of its public park, parkway, and boulevard system and any diversion or attempted diversion of the lands so donated from such purposes shall cause the title to the lands to revert to the state. [2005 c 155 § 521; 1982 1st ex.s. c 21 § 107. Formerly RCW 79.94.220.]

**79.125.510 Second-class shorelands—Survey/platting—Selection for slips, docks, wharves, etc.—Filing of plat.** It is the duty of the department to survey the second-class shorelands and in platting the survey to designate for public use all of the shorelands as in the opinion of the department is available, convenient, or necessary to be selected for the use of the public as harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways and boulevards, alleys, and other public purposes.

Upon the filing of the plat in the department's Olympia office, the title to all harbor areas so selected shall remain in the state, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated, the title to and control of any lands so selected and designated upon the plat for parkways and boulevard purposes shall, if the lands lie outside of the corporate limits of any city or town and if the lands form a part of the general parkway and boulevard system of a first-class city lie in the city, and the title to all selections for slips, docks, wharves, warehouses, and other public purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated. [2005 c 155 § 522; 1982 1st ex.s. c 21 § 108. Formerly RCW 79.94.230.]

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**79.125.520 Second-class shorelands—Platting of certain shorelands of Lake Washington for use as harbor area—Effect.** It is the duty of the department to plat for the public use harbor area in front of the portions of the shorelands of Lake Washington sold as second-class shorelands by the state of Washington as in the opinion of the department are necessary for the use of the public as harbor area. However, this section and RCW 79.125.530 shall not be construed to authorize the department to change the location of any inner or outer harbor line or the boundaries or location of, or to replat any harbor area platted under and by virtue of sections 1 and 2, chapter 183, Laws of 1913, and the title to all shorelands purchased from the state as second-class shorelands is confirmed to the purchaser, the purchaser's heirs and assigns, out to the inner harbor line established and platted under sections 1 and 2, chapter 183, Laws of 1913, or which shall be established and platted under RCW 79.125.510 and 79.125.530, and all reservations shown upon the plat made and filed pursuant to sections 1 and 2, chapter 183, Laws of 1913, are declared null and void, except reservations shown for harbor area, and reservations in the harbor area, and reservations across shorelands for traversed streets which were extensions of streets existing across shorelands at the time of filing of such plat. The department shall in platting the harbor area make a new plat showing all the harbor area on Lake Washington already platted under sections 1 and 2, chapter 183, Laws of 1913, and under sections 1 and 2, chapter 150, Laws of 1917, and upon the adoption of any new plat by the board acting as the harbor line commission, and the filing of the plat in the department's Olympia office, the title to all the harbor areas so selected shall remain in the state of Washington, and the harbor areas shall not be sold, but may be leased as provided for by law relating to the leasing of the harbor area. [2005 c 155 § 523; 1982 1st ex.s. c 21 § 109. Formerly RCW 79.94.240.]

**79.125.530 Platting of certain shorelands of Lake Washington for use as harbor area—Selection for slips, docks, wharves, etc.—Vesting of title.** Immediately after establishing the harbor area provided for in RCW 79.125.520, it is the duty of the department to make a plat designating all first and second-class shorelands, not sold by the state of Washington, and to select for the use of the public out of the shorelands, or out of harbor areas, sites for slips, docks, wharves, warehouses, streets, avenues, parkways, boulevards, alleys, commercial waterways, and other public purposes, insofar as the shorelands may be available for any or all public purposes.

Upon the filing of the plat of shorelands with the reservations and selections in the department's Olympia office, the title to all selections for streets, avenues, and alleys shall vest in any city or town within the corporate limits of which they are situated, otherwise in the county in which they are situated. The title to and control of any land so selected and designated upon the plat for parkway and boulevard purposes shall, if the lands lie outside the corporate limits of any city or town, and if the lands form a part of the general parkway and boulevard system of the first-class city, be in the city. The title to all selections for commercial waterway purposes shall vest in the commercial waterway district in which they are situated, or for which selected, and the title to all selections

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for slips, docks, wharves, warehouses, and other purposes shall vest in the port district if they are situated in a port district, otherwise in the county in which they are situated, and any sales of the shorelands when otherwise permitted by law shall be made subject to the selection and reservation for public use. [2005 c 155 § 524; 1982 1st ex.s. c 21 § 110. Formerly RCW 79.94.250.]

#### SALES OF TIDELANDS AND SHORELANDS

**79.125.600 Sale procedure—Fixing date, place, and time of sale—Notice—Publication and posting.** (1) When the department decides to sell any state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, it shall be the duty of the department to fix the date, place, and the time of sale, and no sale shall be had on any day which is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) specify the appraised value; (c) describe with particularity each parcel of land to be sold; and (d) specify that the terms of sale will be posted in the region headquarters and the department's Olympia office. [2005 c 155 § 112; 1982 1st ex.s. c 21 § 23. Formerly RCW 79.90.170.]

**79.125.610 List of state-owned tidelands and shorelands permitted to be sold.** The department shall print a list of all state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, giving appraised value, character of the land, and other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the general and regional office of the department, and, when requested to do so, shall mail copies of the list as issued to any applicant. [2005 c 155 § 113; 1982 1st ex.s. c 21 § 24. Formerly RCW 79.90.180.]

**79.125.620 Sale procedure—Additional advertising expense.** The department is authorized to expend any sum in additional advertising of the sale as shall be determined to be in the best interests of the state. [2005 c 155 § 114; 1982 1st ex.s. c 21 § 25. Formerly RCW 79.90.190.]

**79.125.630 Reoffer—Continuance.** Any sale that has been offered, and for which there are no bids received shall not be reoffered until it has been readvertised as specified in RCW 79.125.600, 79.125.610, and 79.125.620. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the

hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 115; 1982 1st ex.s. c 21 § 26. Formerly RCW 79.90.200.]

**79.125.640 Sale at public auction—Minimum price—Sales by leaseholder.** All sales of state-owned tidelands and shorelands otherwise permitted by RCW 79.125.200 to be sold, shall be sold at public auction to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land shall be sold for less than the appraised value. Sales of aquaculture products by a leaseholder shall be as specified in RCW 79.135.040. [2005 c 155 § 116; 2005 c 113 § 2; 1990 c 163 § 1; 1982 1st ex.s. c 21 § 27. Formerly RCW 79.90.210.]

**Reviser's note:** This section was amended by 2005 c 113 § 2 and by 2005 c 155 § 116, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**79.125.650 Highest responsible bidder—Determination.** (1) To determine the "highest responsible bidder" under RCW 79.125.640, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.125.680. [2005 c 155 § 117; 2003 c 28 § 1; 1990 c 163 § 2. Formerly RCW 79.90.215.]

**79.125.660 Sale procedure—Conduct of sales—Deposits—Bid bonds—Memorandum of purchase.** (1) Sales by public auction under this chapter shall be conducted under the direction of the department or by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by

certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of the purchase containing a description of the land or materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 118; 1982 1st ex.s. c 21 § 28. Formerly RCW 79.90.220.]

**79.125.670 Sale procedure—Readvertisement of lands not sold.** If any tideland or shoreland, when otherwise permitted under RCW 79.125.200, offered for sale is not sold, it may again be advertised for sale, as provided in this chapter, whenever in the opinion of the department it is expedient to do so. Whenever any person applies to the department in writing to have the land offered for sale and agrees to pay at least the appraised value of the land and deposits with the department at the time of making the application a sufficient sum of money to pay the cost of advertising the sale, the land may be advertised again and offered for sale as provided in this chapter. [2005 c 155 § 119; 1982 1st ex.s. c 21 § 29. Formerly RCW 79.90.230.]

**79.125.680 Sale procedure—Confirmation of sale.** (1) A sale of tidelands or shorelands otherwise permitted by RCW 79.125.200 to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the lands sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 120; 1990 c 163 § 3; 1982 1st ex.s. c 21 § 30. Formerly RCW 79.90.240.]

#### CONVEYANCE TO PUBLIC ENTITIES/PUBLIC USE

**79.125.700 Sale of state-owned tidelands or shorelands to municipal corporation or state agency—Authority to execute agreements, deeds, etc.** The department may with the advice and approval of the board sell state-owned tidelands or shorelands at the appraised market value to any municipal corporation or agency of the state of Washington when the land is to be used solely for municipal or state purposes. However, the department shall with the advice and approval of the attorney general, execute agreements, writings, or relinquishments and certify to the governor such deeds as are necessary or proper to affect the sale or exchange. [2005 c 155 § 515; 1982 1st ex.s. c 21 § 101. Formerly RCW 79.94.160.]

**79.125.710 Grant of lands for city park or playground purposes.** Whenever application is made to the department by any incorporated city or town or metropolitan park district for the use of any state-owned tidelands or shorelands within the corporate limits of the city or town or metropolitan park district for municipal park and/or playground purposes, the department shall cause the application to be entered in the records of its office, and shall then forward the application to the governor, who shall appoint a committee of five representative citizens of the city or town, in addition to the commissioner and the director of ecology, both of whom shall be ex officio members of the committee, to investigate the lands and determine whether they are suitable and needed for park or playground purposes; and, if they so find, the commissioner shall certify to the governor that the property shall be deeded, when in accordance with RCW 79.125.200 and 79.125.700, to the city or town or metropolitan park district and the governor shall then execute a deed in the name of the state of Washington, attested by the secretary of state, conveying the use of the lands to the city or town or metropolitan park district for park or playground purposes for so long as it shall continue to hold, use, and maintain the lands for park or playground purposes. [2005 c 155 § 517; 2003 c 334 § 447; 1988 c 127 § 33; 1939 c 157 § 1; RRS § 7993-1. Formerly RCW 79.94.175, 79.08.080.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.125.720 Exchange of lands to secure city parks and playgrounds.** In the event there are no state-owned tidelands or shorelands in any city or town or metropolitan park district suitable for the purposes of RCW 79.125.710 and the committee finds other lands which are suitable and needed

for parks or playgrounds, the department is authorized to secure the lands by exchanging state-owned tidelands or shorelands of equal value in the same county, and the use of the lands so secured shall be conveyed to any city or town or metropolitan park district as provided for in RCW 79.125.710. In all exchanges the department is authorized and directed, with the assistance of the attorney general, to execute agreements, writings, relinquishments, and deeds as are necessary or proper for the purpose of carrying the exchanges into effect. Upland owners shall be notified of the state-owned tidelands or shorelands to be exchanged. [2005 c 155 § 518; 2003 c 334 § 448; 1939 c 157 § 2; RRS § 7993-2. Formerly RCW 79.94.181, 79.08.090.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

### 79.125.730 Director of ecology to assist city parks.

The director of ecology, in addition to serving as an ex officio member of the committee, is authorized and directed to assist the city or town or metropolitan park district in the development and decoration of any lands so conveyed and to furnish trees, grass, flowers, and shrubs therefor. [2005 c 155 § 519; 1988 c 127 § 34; 1939 c 157 § 3; RRS § 7993-3. Formerly RCW 79.94.185, 79.08.100.]

**79.125.740 Certain tidelands reserved for recreational use and taking of fish and shellfish.** The following described tidelands, being public lands of the state, are withdrawn from sale or lease and reserved as public areas for recreational use and for the taking of fish and shellfish for personal use as defined in RCW 77.08.010:

Parcel No. 1. (Point Whitney) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to or abutting upon lots 3, 4, and 5, section 7, township 26 north, range 1 west, W.M., with a frontage of 72.45 lineal chains, more or less.

Excepting, however, those portions of the above-described second-class tidelands conveyed to the state of Washington, department of fish and wildlife through deed issued May 14, 1925, under application No. 8136, records of department of public lands.

Parcel No. 2. (Point Whitney) The second-class tidelands lying below the line of mean low tide, owned by the state of Washington, situate in front of lot 1, section 6, township 26 north, range 1 west, W.M., with a frontage of 21.00 lineal chains, more or less; also

The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 6 and 7, and that portion of lot 5, section 1, township 26 north, range 1 west, W.M., lying south of a line running due west from a point on the government meander line which is S 22° E 1.69 chains from an angle point in said meander line which is S 15° W 1.20 chains, more or less, from the point of intersection of the north line of said lot 5 and the meander line, with a frontage of 40.31 lineal chains, more or less.

Parcel No. 3. (Toandos Peninsula) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 4. (Shine) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right-of-way for county road granted to Jefferson county December 8, 1941, under application No. 1731, records of department of public lands.

Parcel No. 5. (Lilliwaup) The second-class tidelands, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to, or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or less.

Subject to easements for rights-of-way for state road granted through the filing of state road plats No. 374 December 15, 1930, No. 661, March 29, 1949, and No. 666 August 25, 1949, records of department of public lands.

Parcel No. 6. (Nemah) Those portions of the second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 5, 6, and 7, section 3 and lots 1, 2, and 3, section 4, township 12 north, range 10 west, W.M., lots 1, 2, 3, and 4, section 34, section 27 and lots 1, 2, 3 and 4, section 28, township 13 north, range 10 west, W.M., lying easterly of the easterly line of the Nemah Oyster reserve and easterly of the easterly line of a tract of second-class tidelands conveyed through deed issued July 28, 1938, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 9731, with a frontage of 326.22 lineal chains, more or less.

Parcels No. 7 and 8. (Penn Cove) The unplatted first and second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1 and 2, section 33, lots 1, 2, 3, and 4, section 32, lots 2 and 3 and the B.P. Barstow D.L.C. No. 49, sections 30 and 31 and that portion of the R.H. Lansdale D.L.C. No. 54 in section 30, lying west of the east 3.00 chains thereof as measured along the government meander line, all in township 32 north, range 1 east, W.M., with a frontage of 260.34 lineal chains, more or less.

Excepting, however, the tidelands above the line of mean low tide in front of said lot 1, section 32 which were conveyed as second-class tidelands through deed issued December 29, 1908, application No. 4957, records of department of public lands.

Subject to an easement for right-of-way for transmission cable line granted to the United States of America Army Engineers June 7, 1943, under application No. 17511, records of department of public lands.

Parcel No. 9. (South of Penn Cove) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 2, 3 and 4, section 17 and lots 1, 2 and 3, section 20, township 31 north, range 2 east, W.M., with a frontage of 129.97 lineal chains, more or less.

Parcel No. 10. (Mud Bay—Lopez Island) The second-class tidelands, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section

18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any second-class tideland in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909, pursuant to the provisions of chapter 24, Laws of 1895, under application No. 4985, records of department of public lands.

Parcel No. 11. (Cattle Point) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lot 1, section 6, lots 1, 3, 4, 5, 6, 7, 8, 9, and 10, section 7, lots 1, 2, 3, 4, 5, 6 and 7, section 8 and lot 1, section 5, all in township 34 north, range 2 west, W.M., with a frontage of 463.88 lineal chains, more or less.

Excepting, however, any second-class tidelands in front of said lot 10, section 7 conveyed through deed issued June 1, 1912, under application No. 6906, records of department of public lands.

Parcel No. 12. (Spencer Spit) The second-class tidelands, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less. [2005 c 155 § 533; 2003 c 39 § 42; 1994 c 264 § 66; 1983 1st ex.s. c 46 § 181; 1982 1st ex.s. c 21 § 124. Formerly RCW 79.94.390.]

**Tidelands—Upland owner use:** "The state department of fisheries is authorized to permit designated portions of the following described tidelands to be used by the upland owners thereof for the purpose of building and maintaining docks: Tidelands of the second class owned by the state of Washington situated in front of, adjacent to, or abutting upon, the entire west side of lot 1, section 5, Township 34 North, Range 2 West, W.M., to the northernmost tip of said lot, and lots 2 and 3, section 8, Township 34 North, Range 2 West, W.M. (Cattle Point)." [1967 ex.s. c 128 § 1.]

**79.125.750 Access to and from tidelands reserved for recreational use and taking of fish and shellfish.** The director of fish and wildlife may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79.125.740. [2005 c 155 § 534; 1994 c 264 § 67; 1982 1st ex.s. c 21 § 125. Formerly RCW 79.94.400.]

**79.125.760 Use of certain tidelands, shorelands, and abutting bedlands—Grant to the United States—Purposes—Limitations.** The use of any tidelands, shorelands, and abutting bedlands covered with less than four fathoms of water at ordinary low tide belonging to the state, and adjoining and bordering on any tract, piece, or parcel of land, which may have been reserved or acquired, or which may be reserved or acquired, by the government of the United States, for the purposes of erecting and maintaining forts, magazines, arsenals, dockyards, navy yards, prisons, penitentiaries, lighthouses, fog signal stations, aviation fields, or other aids to navigation, may be granted to the United States, upon payment for the rights, so long as the upland adjoining the tidelands or shorelands shall continue to be held by the government of the United States for any of the public purposes above mentioned. However, this grant shall not extend to or include any aquatic lands covered by more than four fathoms of water at ordinary low tide; and shall not be construed to prevent any citizen of the state from using the lands for the

taking of food fishes so long as the fishing does not interfere with the public use of them by the United States. [2005 c 155 § 535; 1982 1st ex.s. c 21 § 126. Formerly RCW 79.94.410.]

**79.125.770 Tidelands and shorelands—Use of lands granted to United States—Application—Proof of upland use—Conveyance.** Whenever application is made to the department by any department of the United States government for the use of any state-owned tidelands or shorelands and adjoining and bordering on any upland held by the United States for any of the purposes mentioned in RCW 79.125.760, upon proof being made to the department, that the uplands are so held by the United States for such purposes, and upon payment for the land, it shall cause the fact to be entered in the records of the department and the department shall certify the fact to the governor who will execute a deed in the name of the state, attested by the secretary of state, conveying the use of the lands, for such purposes, to the United States, so long as it shall continue to hold for the public purposes the uplands adjoining the tidelands and shorelands. [2005 c 155 § 536; 1982 1st ex.s. c 21 § 127. Formerly RCW 79.94.420.]

**79.125.780 Tidelands and shorelands—Use of lands granted to United States—Easements over tidelands or shorelands to United States.** Whenever application is made to the department, by any department of the United States government, for the use of any state-owned tidelands or shorelands, for any public purpose, and the department shall be satisfied that the United States requires or may require the use of the tidelands or shorelands for the public purposes, the department may reserve the tidelands or shorelands from public sale and grant the use of them to the United States, upon payment for the land, so long as it may require the use of them for the public purposes. In such a case, the department shall execute an easement to the United States, which grants the use of the tidelands or shorelands to the United States, so long as it shall require the use of them for the public purpose. [2005 c 155 § 537; 1982 1st ex.s. c 21 § 128. Formerly RCW 79.94.430.]

**79.125.790 Tidelands and shorelands—Use of lands granted to United States—Reversion on cessation of use.** Whenever the United States shall cease to hold and use any uplands for the use and purposes mentioned in RCW 79.125.760, or shall cease to use any tidelands or shorelands for the purpose mentioned in RCW 79.125.780, the grant or easement of the tidelands or shorelands shall be terminated, and the tidelands or shorelands shall revert to the state without resort to any court or tribunal. [2005 c 155 § 538; 1982 1st ex.s. c 21 § 129. Formerly RCW 79.94.440.]

**79.125.800 United States Navy base—Exchange of property—Procedure.** The department is authorized to deed, by exchanges of property, to the United States Navy those tidelands necessary to facilitate the location of the United States Navy base in Everett. In carrying out this authority, the department shall request that the governor execute the deed in the name of the state attested to by the secretary of state. The department will follow the requirements

outlined in RCW 79.17.050 in making the exchange. The department must exchange the state's tidelands for lands of equal value, and the land received in the exchange must be suitable for natural preserves, recreational purposes, or have commercial value. The lands must not have been previously used as a waste disposal site. Choice of the site must be made with the advice and approval of the board. [2003 c 334 § 615; 1987 c 271 § 4. Formerly RCW 79.94.450.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Severability—1987 c 271:** See note following RCW 79.130.050.

**79.125.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.125.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

### Chapter 79.130 RCW

## AQUATIC LANDS—BEDS OF NAVIGABLE WATERS

### Sections

79.130.001	Intent—2005 c 155.
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79.130.901	Severability—Part/subchapter headings not law—2005 c 155.

**79.130.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.130.010 Lease of beds of navigable waters.** (1) Except as provided in RCW 79.130.060, the department may lease to the abutting tidelands or shorelands owner or lessee, the beds of navigable waters lying below the line of extreme low tide in waters where the tide ebbs and flows, and below the line of navigability in lakes and rivers claimed by the state and defined in Article XVII, section 1 of the state Constitution.

(2) In case the abutting tidelands or shorelands or the abutting uplands are not improved or occupied for residential or commercial purposes, the department may lease the beds to any person for a period not exceeding ten years for booming purposes.

(3) Nothing in this chapter shall change or modify any of the provisions of the state Constitution or laws of the state which provide for the leasing of harbor areas and the reservation of lands lying in front of harbor areas. [2005 c 155 § 601; 1987 c 271 § 2; 1982 1st ex.s. c 21 § 130. Formerly RCW 79.95.010.]

**Severability—1987 c 271:** See note following RCW 79.130.050.

**79.130.020 Lease of beds of navigable waters—Terms and conditions of lease—Forfeiture for nonuser.** (1) The department shall, prior to the issuance of any lease under the provisions of this chapter, fix the annual rental and prescribe the terms and conditions of the lease. However, in fixing the rental, the department shall not take into account the value of any improvements placed upon the lands by the lessee.

(2) No lease issued under the provisions of this chapter shall be for a term longer than thirty years from the date thereof if in front of second-class tidelands or shorelands; or a term longer than ten years if in front of unplatted first-class tidelands or shorelands leased under the provisions of RCW 79.125.410, in which case the lease shall be subject to the same terms and conditions as provided for in the lease of the unplatted first-class tidelands or shorelands. Failure to use those beds leased under the provisions of this chapter for booming purposes, for a period of two years shall work a forfeiture of the lease and the land shall revert to the state without notice to the lessee upon the entry of a declaration of forfeiture in the records of the department. [2005 c 155 § 602; 1982 1st ex.s. c 21 § 131. Formerly RCW 79.95.020.]

**79.130.030 Lease of beds of navigable waters—Improvements—Federal permit—Forfeiture—Plans and specifications.** The applicant for a lease under the provisions of this chapter shall first obtain from the United States army corps of engineers or other federal regulatory agency, a permit to place structures or improvements in the navigable waters and file with the department a copy of the permit. No structures or improvements shall be constructed beyond a point authorized by the army corps of engineers or the department and any construction beyond authorized limits will work a forfeiture of all rights granted by the terms of any lease issued under the provisions of this chapter. The applicant shall also file plans and specifications of any proposed improvements to be placed upon the areas with the department, the plans and specifications to be the same as provided for in the case of the lease of harbor areas. [2005 c 155 § 603; 1982 1st ex.s. c 21 § 132. Formerly RCW 79.95.030.]

**79.130.040 Lease of beds of navigable waters—Preference right to re-lease.** At the expiration of any lease issued under the provisions of this chapter, the lessee or the lessee's successors or assigns, shall have a preference right to re-lease all or part of the area covered by the original lease if the department deems it to be in the best interest of the state to re-lease the area. Such re-lease shall be for the term as specified by the provisions of this chapter, and at the rental and upon the conditions as may be prescribed by the department. However, if the preference right is not exercised, the rights and obligations of the lessee, the department, and any subsequent lessee shall be the same as provided in RCW 79.125.300 relating to failure to re-lease tidelands or shorelands. Any person who prior to June 11, 1953, had occupied and improved an area subject to lease under this chapter and has secured a permit for the improvements from the United States army corps of engineers, or other federal regulatory agency, shall have the rights and obligations of a lessee under this section upon the filing of a copy of the permit together with plans and specifications of the improvements with the

department. [2005 c 155 § 604; 1982 1st ex.s. c 21 § 133. Formerly RCW 79.95.040.]

**79.130.050 United States Navy base—Legislative findings and declaration.** The legislature recognizes the importance of economic development in the state of Washington, and finds that the location of a United States Navy base in Everett, Washington will enhance economic development. The legislature finds that the state should not assume liability or risks resulting from any action taken by the United States Navy, now or in the future associated with the dredge disposal program for that project known as confined aquatic disposal (CAD). The legislature also recognizes the importance of improving water quality and cleaning up pollution in Puget Sound. The legislature declares these actions to be a public purpose necessary to protect the health, safety, and welfare of its citizens, and to promote economic growth and improve environmental quality in the state of Washington. The United States Navy proposes to commence the Everett home port project immediately. [2005 c 155 § 605; 1987 c 271 § 1. Formerly RCW 79.95.050.]

**Severability—1987 c 271:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 271 § 6.]

**79.130.060 Lease of bedlands in Port Gardner Bay for dredge spoil site—Conditions.** (1) Upon application by the United States Navy, and upon verification of the legal description and compliance with the intent of this chapter, the commissioner is authorized to lease bedlands in Port Gardner Bay for a term of thirty years so the United States Navy can utilize a dredge spoil site solely for purposes related to construction of the United States Navy base at Everett.

(2) The lease shall reserve for the state uses of the property and associated waters which are not inconsistent with the use of the bed by the Navy as a disposal site. The lease shall include conditions under which the Navy:

(a) Will agree to hold the state of Washington harmless for any damage and liability relating to, or resulting from, the use of the property by the Navy; and

(b) Will agree to comply with all terms and conditions included in the applicable state of Washington section 401 water quality certification issued under the authority of the federal clean water act (33 U.S.C. Sec. 1251, et seq.), all terms and conditions of the army corps of engineers section 404 permit (33 U.S.C. Sec. 1344), and all requirements of statutes, regulations, and permits relating to water quality and aquatic life in Puget Sound and Port Gardner Bay, including all reasonable and appropriate terms and conditions of any permits issued under the authority of the Washington state shoreline management act (chapter 90.58 RCW) and any applicable shoreline master program.

(3) The ability of the state of Washington to enforce the terms and conditions specified in subsection (2)(b) of this section shall include, but not be limited to: (a) The terms and conditions of the lease; (b) the section 401 water quality certification under the clean water act, 33 U.S.C. Sec. 1251, et seq.; (c) the comprehensive environmental response, compensation, and liability act, 42 U.S.C. Sec. 9601, et seq.; (d) the resource conservation and recovery act, 42 U.S.C. Sec.

6901, et seq.; or (e) any other applicable federal or state law. [2005 c 155 § 606; 1987 c 271 § 3. Formerly RCW 79.95.060.]

**Severability—1987 c 271:** See note following RCW 79.130.050.

**79.130.070 Exchange of bedlands—Cowlitz river.** (1) The department is authorized to exchange bedlands abandoned through rechanneling of the Cowlitz river near the confluence of the Columbia river so that the state obtains clear title to the Cowlitz river as it now exists or where it may exist in the future through the processes of erosion and accretion.

(2) The department is also authorized to exchange bedlands and enter into boundary line agreements to resolve any disputes that may arise over the location of state-owned lands now comprising the dike that was created in the 1920s.

(3) For purposes of chapter 150, Laws of 2001, "Cowlitz river near the confluence of the Columbia river" means those tidelands and bedlands of the Cowlitz river fronting and abutting sections 10, 11, and 14, township 7 north, range 2 west, Willamette Meridian and fronting and abutting the Huntington Donation Land Claim No. 47 and the Blakeny Donation Land Claim No. 43, township 7 north, range 2 west, Willamette Meridian.

(4) Nothing in chapter 150, Laws of 2001 shall be deemed to convey to the department the power of eminent domain. [2003 c 334 § 454; 2001 c 150 § 2. Formerly RCW 79.90.458, 79.08.260.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—2001 c 150:** "(1) The legislature finds that in the 1920s the Cowlitz river near the confluence of the Columbia river in Longview, Washington was diverted from its original course by dredging and construction of a dike. As a result, a portion of the original bed of the Cowlitz river became a nonnavigable body of shallow water. Another portion of the original bed of the Cowlitz river became part of a dike and is indistinguishable from existing islands. The main channel of the Cowlitz river was diverted over uplands to the south of the original bed and has continued as a navigable channel.

(2) The legislature finds that continued ownership of the nonnavigable portion of the original bed of the Cowlitz river near the confluence of the Columbia river no longer serves the state's interest in navigation. Ownership of the existing navigable bed of the Cowlitz river would better serve the state's interest in navigation. It is also in the state's interest to resolve any disputes that have arisen because state-owned land is now indistinguishable from privately owned land within the dike." [2001 c 150 § 1.]

**Severability—2001 c 150:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 150 § 3.]

**79.130.900 Savings—Captions—Severability—Effective dates—1982 1st ex.s. c 21.** See RCW 79.135.900 through 79.135.904.

**79.130.901 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.135 RCW

AQUATIC LANDS—OYSTERS, GEODUCKS,  
SHELLFISH, OTHER AQUACULTURAL USES,  
AND MARINE AQUATIC PLANTS

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**79.135.001 Intent—2005 c 155.** See RCW 79.105.001.

## GENERAL PROVISIONS

**79.135.010 Bush act/Callow act lands.** (1) A person in possession of real property conveyed by the state of Washington pursuant to the authority of chapter 24, Laws of 1895 (Bush act) or chapter 25, Laws of 1895 (Callow act), wherein such lands are subject to a possibility of reversion, shall heretofore have and are granted the further right to use all of the property for the purpose of cultivating and propagating clams and any shellfish.

(2008 Ed.)

(2) The rights granted under subsection (1) of this section do not include the right to use subtidal portions of Bush act and Callow act lands for the harvest and cultivation of any species of shellfish that had not commenced prior to December 31, 2001.

(3) For the purposes of this section, harvest and cultivation of any species of shellfish shall not be deemed to have commenced unless the subtidal portions of the land had been planted with that species of shellfish prior to December 31, 2001.

(4) No vested rights in shellfish cultivation may be impaired by any of the provisions of chapter 123, Laws of 2002, nor is anything other than what is stated in subsection (2) of this section intended to grant any further rights in the subtidal lands than what was originally included under the intent of the Bush and Callow acts. [2002 c 123 § 2. Formerly RCW 79.90.570.]

**Findings—2002 c 123:** "The legislature declares that shellfish farming provides a consistent source of quality food, offers opportunities of new jobs, increases farm income stability, and improves balance of trade. The legislature also finds that many areas of the state of Washington are scientifically and biologically suitable for shellfish farming, and therefore the legislature has encouraged and promoted shellfish farming activities, programs, and development with the same status as other agricultural activities, programs, and development within the state. It being the policy of this state to encourage the development and expansion of shellfish farming within the state and to promote the development of a diverse shellfish farming industry, the legislature finds that the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds is interfering with this policy. The legislature finds that uncertainty of the grant of rights for the claim and other shellfish culture as contained in chapter 166, Laws of 1919 must be fully and finally resolved. It is not the intent of this act to impair any vested rights in shellfish cultivation or current shellfish aquaculture activities to which holders of Bush act and Callow act lands are entitled." [2002 c 123 § 1.]

**79.135.020 Sale of reserved or reversionary rights in tidelands.** Upon an application to purchase the reserved and reversionary rights of the state in any tidelands sold under the provisions of chapter 24, Laws of 1895, or chapter 25, Laws of 1895, or chapter 165, Laws of 1919, or either the reserved or reversionary right if only one exists, being filed in the department's Olympia office by the owner of the tidelands, accompanied by an abstractor's certificate, or other evidence of the applicant's title to the lands, the department, if it finds the applicant is the owner of the tidelands, is authorized to inspect, appraise, and sell, if otherwise permitted under RCW 79.125.200, for not less than the appraised value, such reserved or reversionary rights of the state to the applicant, and upon payment of the purchase price to cause a deed to be issued as in the case of the sale of state lands, or upon the payment of one-fifth of the purchase price, to issue a contract of sale, providing that the remainder of the purchase price may be paid in four equal annual installments, with interest on deferred payments at the rate of six percent per annum, or sooner at the election of the contract holder, which contract shall be subject to cancellation by the department for failure to comply with its provisions, and upon the completion of the payments as provided in the contract to cause a deed to the lands described in the contract to be issued to the holder as in the case of the sale of state lands. [2005 c 155 § 713; 1982 1st ex.s. c 21 § 145. Formerly RCW 79.96.120.]

**79.135.030 Wrongful taking of shellfish from public lands—Civil remedies.** (1) If a person wrongfully takes

shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, the person is liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, the person is liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fish and wildlife or the department where the reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where the lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.135.210.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department or the department of fish and wildlife may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of rules of the department of fish and wildlife. [2005 c 155 § 714; 1994 c 264 § 73; 1990 c 163 § 9. Formerly RCW 79.96.130.]

**79.135.040 Aquaculture products—Sale by leaseholder.** Aquaculture products produced on leased state-owned aquatic land may be sold by the leaseholder as prescribed by the department without competitive bid or public

auction and consistent with statutes governing aquaculture leases on state-owned aquatic land. [2005 c 113 § 1.]

**Reviser's note:** This section was directed to be codified in chapter 79.96 RCW. However, chapter 79.96 RCW was recodified in its entirety by 2005 c 155.

#### LEASING FOR SHELLFISH CULTIVATION/ AQUACULTURE USE

**79.135.100 Aquatic lands used for aquaculture production and harvesting—Rents and fees—Limitations on leases.** (1) If state-owned aquatic lands are used for aquaculture production or harvesting, rents and fees shall be established through competitive bidding or negotiation.

(2) After an initial twenty-three acres are leased, the department is prohibited from offering leases that would permit the intertidal commercial aquaculture of geoducks on more than fifteen acres of state-owned aquatic lands a [per] year until December 1, 2014.

(3) Any intertidal leases entered into by the department for geoduck aquaculture must be conditioned in such a way that the department can engage in monitoring of the environmental impacts of the lease's execution, without unreasonably diminishing the economic viability of the lease, and that the lease tracts are eligible to be made part of the studies conducted under RCW 28B.20.475.

(4) The department must notify all abutting landowners and any landowner within three hundred feet of the lands to be leased of the intent of the department to lease any intertidal lands for the purposes of geoduck aquaculture. [2007 c 216 § 3; 1984 c 221 § 10. Formerly RCW 79.90.495.]

**79.135.110 Leasing beds of tidal waters for shellfish cultivation or other aquaculture use.** (1) The beds of all navigable tidal waters in the state lying below extreme low tide, except as prohibited by Article XV, section 1 of the state Constitution shall be subject to lease for the purposes of planting and cultivating oyster beds, or for the purpose of cultivating clams or other edible shellfish, or for other aquaculture use, for periods not to exceed thirty years.

(2) Nothing in this section shall prevent any person from leasing more than one parcel, as offered by the department. [2005 c 155 § 701; 1993 c 295 § 1; 1982 1st ex.s. c 21 § 134. Formerly RCW 79.96.010.]

**79.135.120 Leasing lands for shellfish cultivation or other aquaculture use—Who may lease—Application—Deposit.** Any person desiring to lease tidelands or beds of navigable waters for the purpose of planting and cultivating oyster beds, or for the purpose of cultivating clams and other edible shellfish, shall file with the department, on a proper form, an application in writing signed by the applicant and accompanied by a map of the lands desired to be leased, describing the lands by metes and bounds tied to at least two United States government corners, and by the reference to local geography as shall suffice to convey a knowledge of the location of the lands with reasonable accuracy to persons acquainted with the vicinity, and accompanied by a deposit of ten dollars. The deposit shall be returned to the applicant in case a lease is not granted. [2005 c 155 § 702; 1982 1st ex.s. c 21 § 135. Formerly RCW 79.96.020.]

**79.135.130 Leasing lands for shellfish cultivation or other aquaculture use—Inspection and report by director of fish and wildlife—Rental and term—Commercial harvest of subtidal hardshell clams by hydraulic escalating.**

(1) The department, upon the receipt of an application for a lease for the purpose of planting and cultivating oyster beds or for the purpose of cultivating clams or other edible shellfish, shall notify the director of fish and wildlife of the filing of the application describing the tidelands or beds of navigable waters applied for. The director of fish and wildlife shall cause an inspection of the lands applied for to be made and shall make a full report to the department of the director's findings as to whether it is necessary, in order to protect existing natural oyster beds, and to secure adequate seeding of the lands, to retain the lands described in the application for lease or any part of the lands, and in the event the director deems it advisable to retain the lands or any part of the lands for the protection of existing natural oyster beds or to guarantee the continuance of an adequate seed stock for existing natural oyster beds, the lands shall not be subject to lease. However, if the director determines that the lands applied for or any part of the lands may be leased, the director shall so notify the department and the director shall cause an examination of the lands to be made to determine the presence, if any, of natural oysters, clams, or other edible shellfish on the lands, and to fix the rental value of the lands for use for oyster, clam, or other edible shellfish cultivation. In the report to the department, the director shall recommend a minimum rental for the lands and an estimation of the value of the oysters, clams, or other edible shellfish, if any, then present on the lands applied for. The lands approved by the director for lease may then be leased to the applicant for a period of not less than five years nor more than ten years at a rental not less than the minimum rental recommended by the director of fish and wildlife. In addition, before entering upon possession of the land, the applicant shall pay the value of the oysters, clams, or other edible shellfish, if any, then present on the land as determined by the director, plus the expense incurred by the director in investigating the quantity of oysters, clams, or other edible shellfish, present on the land applied for.

(2) When issuing new leases or reissuing existing leases the department shall not permit the commercial harvest of subtidal hardshell clams by means of hydraulic escalating when the upland within five hundred feet of any lease tract is zoned for residential development. [2005 c 155 § 703; 1994 c 264 § 68; 1987 c 374 § 1; 1982 1st ex.s. c 21 § 136. Formerly RCW 79.96.030.]

**79.135.140 Leasing lands for shellfish cultivation or other aquaculture use—Survey and boundary markers.** Before entering into possession of any leased tidelands or beds of navigable waters, the applicant shall have the lands surveyed by a registered land surveyor, and the applicant shall furnish to the department and to the director of fish and wildlife, a map of the leased premises signed and certified by the registered land surveyor. The lessee shall also mark the boundaries of the leased premises by piling monuments or other markers of a permanent nature as the director of fish and wildlife may direct. [2005 c 155 § 704; 1994 c 264 § 69; 1982 1st ex.s. c 21 § 137. Formerly RCW 79.96.040.]

(2008 Ed.)

**79.135.150 Renewal lease—Application.** The department may, upon the filing of an application for a renewal lease, inspect the tidelands or beds of navigable waters, and if the department deems it in the best interests of the state to release the lands, the department shall issue to the applicant a renewal lease for a further period not exceeding thirty years and under the terms and conditions as may be determined by the department. However, in the case of an application for a renewal lease it shall not be necessary for the lands to be inspected and reported upon by the director of fish and wildlife. [2005 c 155 § 705; 1994 c 264 § 70; 1993 c 295 § 2; 1982 1st ex.s. c 21 § 138. Formerly RCW 79.96.050.]

**79.135.160 Leasing lands for shellfish cultivation or other aquaculture use—Reversion for use other than cultivation of shellfish.** All leases of tidelands and beds of navigable waters for the purpose of planting and cultivating oysters, clams, or other edible shellfish shall expressly provide that if at any time after the granting of the lease, the described lands shall cease to be used for the purpose of oyster beds, clam beds, or other edible shellfish beds, they shall revert to and become the property of the state and that the lands are leased only for the purpose of cultivating oysters, clams, or other edible shellfish thereon, and that the state reserves the right to enter upon and take possession of the lands if at any time the lands are used for any other purpose than the cultivation of oysters, clams, or other edible shellfish. [2005 c 155 § 706; 1982 1st ex.s. c 21 § 139. Formerly RCW 79.96.060.]

**79.135.170 Leasing lands for shellfish cultivation or other aquaculture use—Abandonment—Application for other lands.** If from any cause any lands leased for the purpose of planting and cultivating oysters, clams, or other edible shellfish become unfit and valueless for any such purposes, the lessee or the lessee's assigns, upon certifying the fact under oath to the department, together with the fact that the lessee has abandoned the land, shall be entitled to make application for other lands for such purposes. [2005 c 155 § 707; 1982 1st ex.s. c 21 § 140. Formerly RCW 79.96.070.]

#### GEODUCK HARVEST/CULTIVATION

**79.135.200 Geoduck harvest/cultivation—Survey of navigable waters by private party—Record of survey.** Beds of navigable waters held under contract or deed from the state of Washington upon which a private party is harvesting or cultivating geoduck shall be surveyed by the private party and a record of survey filed in compliance with chapter 58.09 RCW prior to harvest. Property corners will be placed in sufficient quantity and location to aid in relocation of the oyster tract lines occurring or extending below extreme low tide. Buoys on anchors must be placed intervisibly along and at angle points on any ownership boundaries that extend below extreme low tide, for the harvest term. The survey of privately owned beds of navigable waters will be established on the Washington coordinate system in compliance with chapter 58.20 RCW and property corners labeled with their coordinates on the record of survey. [2002 c 123 § 3. Formerly RCW 79.96.140.]

**Findings—2002 c 123:** See note following RCW 79.135.010.

**79.135.210 Geoduck harvesting—Agreements, regulation.** (1) Except as provided in RCW 79.135.040, geoducks shall be sold as valuable materials under the provisions of \*chapter 79.90 RCW. After confirmation of the sale, the department may enter into an agreement with the purchaser for the harvesting of geoducks. The department may place terms and conditions in the harvesting agreements as the department deems necessary. The department may enforce the provisions of any harvesting agreement by suspending or canceling the harvesting agreement or through any other means contained in the harvesting agreement. Any geoduck harvester may terminate a harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the harvester, its agents, or its employees, prohibit harvesting, for a period exceeding thirty days during the term of the harvesting agreement, except as provided within the agreement. Upon termination of the agreement by the harvester, the harvester shall be reimbursed by the department for the cost paid to the department on the agreement, less the value of the harvest already accomplished by the harvester under the agreement.

(2) Harvesting agreements under this title for the purpose of harvesting geoducks shall require the harvester and the harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as the law exists or as amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.). However, for the purposes of this section and RCW 77.60.070, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the harvesting agreement. Further, for the purposes of this subsection if the harvester contracts with another person or entity for the harvesting of geoducks, the harvesting agreement shall not be suspended or canceled if the harvester terminates its business relationship with such an entity until compliance with this subsection is secured. [2005 c 155 § 708; 2005 c 113 § 3; 2003 c 39 § 43; 1990 c 163 § 4; 1982 1st ex.s. c 21 § 141. Formerly RCW 79.96.080.]

**Reviser's note:** \*(1) Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

(2) This section was amended by 2005 c 113 § 3 and by 2005 c 155 § 708, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**79.135.220 Geoduck harvesting—Designation of aquatic lands.** The department shall designate the areas of state-owned aquatic lands that are available for geoduck harvesting by licensed geoduck harvesters in accordance with \*chapter 79.90 RCW. [2005 c 155 § 709; 1990 c 163 § 5; 1983 1st ex.s. c 46 § 129; 1979 ex.s. c 141 § 5. Formerly RCW 79.96.085, 75.28.286.]

**\*Reviser's note:** Chapter 79.90 RCW was recodified and/or repealed in its entirety by 2005 c 155.

*Commercial harvesting of geoducks: RCW 77.60.070, 77.65.410.*

**79.135.230 Intensive management plan for geoducks.** The department may enter into agreements with the depart-

ment of fish and wildlife for the development of an intensive management plan for geoducks including the development and operation of a geoduck hatchery. [2005 c 155 § 718; 1994 c 264 § 74; 1984 c 221 § 26. Formerly RCW 79.96.906.]

**Severability—Effective date—1984 c 221:** See RCW 79.105.901 and 79.105.902.

## OYSTER RESERVES

**79.135.300 Lease of tidelands set aside as oyster reserves.** The department is authorized to lease first or second-class tidelands which have been or that are set aside as state oyster reserves in the same manner as provided elsewhere in this chapter for the lease of those lands. [2005 c 155 § 710; 1982 1st ex.s. c 21 § 142. Formerly RCW 79.96.090.]

**79.135.310 Inspection by director of fish and wildlife.** The department, upon the receipt of an application for the lease of any first or second-class state-owned tidelands that are set aside as state oyster reserves, shall notify the director of fish and wildlife of the filing of the application describing the lands applied for. It is the duty of the director of fish and wildlife to inspect the reserve for the purpose of determining whether the reserve or any part of the reserve should be retained as a state oyster reserve or vacated. [2005 c 155 § 711; 1994 c 264 § 71; 1982 1st ex.s. c 21 § 143. Formerly RCW 79.96.100.]

**79.135.320 Vacation of reserve—Lease of lands—Designated state oyster reserve lands.** (1) In the event that the fish and wildlife commission approves the vacation of the whole or any part of a reserve, the department may vacate and offer for lease the parts or all of the reserve as it deems to be for the best interest of the state, and all moneys received for the lease of the lands shall be paid to the department.

(2) Notwithstanding RCW 77.60.020, subsection (1) of this section, or any other provision of state law, the state oyster reserves in Eld Inlet, Hammersley Inlet, or Totten Inlet, situated in Mason or Thurston counties shall permanently be designated as state oyster reserve lands. [2005 c 155 § 712; 2001 c 273 § 4; 2000 c 11 § 30; 1994 c 264 § 72; 1982 1st ex.s. c 21 § 144. Formerly RCW 79.96.110.]

## MARINE AQUATIC PLANTS

**79.135.400 Seaweed—Marine aquatic plants defined.** Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Marine aquatic plants" means saltwater marine plant species that are dependent upon the marine aquatic or tidal environment, and exist in either an attached or free-floating state. Marine aquatic plants include but are not limited to seaweed of the classes Chlorophyta, Phaeophyta, and Rhodophyta. [1993 c 283 § 2. Formerly RCW 79.96.200, 79.01.800.]

**Findings—1993 c 283:** "The legislature finds that the plant resources of marine aquatic ecosystems have inherent value and provide essential habitat. These resources are also becoming increasingly valuable as economic commodities and may be declining. The legislature further finds that the regulation of harvest of these resources is currently inadequate to afford necessary protection." [1993 c 283 § 1.]

**79.135.410 Seaweed—Personal use limit—Commercial harvesting prohibited—Exception—Import restriction.** (1) The maximum daily wet weight harvest or possession of seaweed for personal use from all state-owned aquatic lands and all privately owned tidelands is ten pounds per person. The department in cooperation with the department of fish and wildlife may establish seaweed harvest limits of less than ten pounds for conservation purposes. This section shall in no way affect the ability of any state agency to prevent harvest of any species of marine aquatic plant from lands under its control, ownership, or management.

(2) Except as provided under subsection (3) of this section, commercial harvesting of seaweed from state-owned aquatic lands, and all privately owned tidelands is prohibited. This subsection shall in no way affect commercial seaweed aquaculture.

(3) Upon mutual approval by the department and the department of fish and wildlife, seaweed species of the genus *Macrocystis* may be commercially harvested for use in the herring spawn-on-kelp fishery.

(4) Importation of seaweed species of the genus *Macrocystis* into Washington state for the herring spawn-on-kelp fishery is subject to the fish and shellfish disease control policies of the department of fish and wildlife. *Macrocystis* shall not be imported from areas with fish or shellfish diseases associated with organisms that are likely to be transported with *Macrocystis*. The department shall incorporate this policy on *Macrocystis* importation into its overall fish and shellfish disease control policies. [2005 c 155 § 715; 2003 c 334 § 442; 1996 c 46 § 1; 1994 c 286 § 1; 1993 c 283 § 3. Formerly RCW 79.96.210, 79.01.805.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1994 c 286:** "This act shall take effect July 1, 1994." [1994 c 286 § 6.]

**Findings—1993 c 283:** See note following RCW 79.135.400.

**79.135.420 Seaweed—Harvest and possession violations—Penalties and damages.** (1) It is unlawful to exceed the harvest and possession restrictions imposed under RCW 79.135.410.

(2) A violation of this section is a misdemeanor, and a violation taking place on state-owned aquatic lands is subject to the provisions of RCW 79.02.300.

(3) A person committing a violation of this section on private tidelands which he or she owns is liable to the state for treble the amount of damages to the seaweed resource, and a person trespassing on privately owned tidelands and committing a violation of this section is liable to the private tideland owner for treble the amount of damages to the seaweed resource. Damages recoverable include, but are not limited to, damages for the market value of the seaweed, for injury to the aquatic ecosystem, and for the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs. [2005 c 155 § 716. Prior: 2003 c 334 § 443; 2003 c 53 § 380; 1994 c 286 § 2; 1993 c 283 § 4. Formerly RCW 79.96.220, 79.01.810.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

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

(2008 Ed.)

**Effective date—1994 c 286:** See note following RCW 79.135.410.

**Findings—1993 c 283:** See note following RCW 79.135.400.

**79.135.430 Seaweed—Enforcement.** The department of fish and wildlife and law enforcement authorities may enforce the provisions of RCW 79.135.410 and 79.135.420. [2005 c 155 § 717; 2003 c 334 § 444; 1994 c 286 § 3; 1993 c 283 § 5. Formerly RCW 79.96.230, 79.01.815.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Effective date—1994 c 286:** See note following RCW 79.135.410.

**Findings—1993 c 283:** See note following RCW 79.135.400.

**79.135.900 Savings—1982 1st ex.s. c 21.** The enactment of this act including all repeals, decodifications, and amendments shall not be construed as affecting any existing right acquired under the statutes repealed, decodified, or amended or under any rule, regulation, or order issued pursuant thereto; nor as affecting any proceeding instituted thereunder. [1982 1st ex.s. c 21 § 181. Formerly RCW 79.96.901.]

**79.135.901 Captions—1982 1st ex.s. c 21.** Chapter and section headings as used in this act do not constitute any part of the law. [1982 1st ex.s. c 21 § 182. Formerly RCW 79.96.902.]

**79.135.902 Severability—1982 1st ex.s. c 21.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 21 § 184. Formerly RCW 79.96.903.]

**79.135.903 Effective date—1982 1st ex.s. c 21 §§ 176 and 179.** Sections 176 (amending RCW 79.01.525) and 179 (creating a new section providing for an aquatic lands joint legislative committee) of this act are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1982 1st ex.s. c 21 § 185. Formerly RCW 79.96.904.]

**79.135.904 Effective date—1982 1st ex.s. c 21.** Except as provided in \*RCW 79.96.904, this act shall take effect July 1, 1983. [1982 1st ex.s. c 21 § 186. Formerly RCW 79.96.905.]

**\*Reviser's note:** RCW 79.96.904 was recodified as RCW 79.135.903 pursuant to 2005 c 155 § 1010.

**79.135.905 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.140 RCW

### AQUATIC LANDS—VALUABLE MATERIALS

Sections

79.140.001 Intent—2005 c 155.

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- 79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.
- 79.140.900 Severability—Part/subchapter headings not law—2005 c 155.

**79.140.001 Intent—2005 c 155.** See RCW 79.105.001.

## SALE PROCEDURE

**79.140.010 Manner of sale—Notice.** (1) When the department decides to sell any valuable materials situated within or upon any state-owned aquatic lands, it is the duty of the department to fix the date, place, and time of sale, and no sale shall be had on any day that is a legal holiday.

(2) The department shall give notice of the sale by advertisement published once a week for four consecutive weeks immediately preceding the date fixed for sale in the notice, in at least one newspaper published and of general circulation in the county in which the whole or any part of any lot, block, or tract of land containing the valuable material to be sold is situated, and by causing a copy of the notice to be posted in a conspicuous place in the department's Olympia office and the region headquarters administering the sale.

(3) The notice shall: (a) Specify the place and time of sale; (b) estimate the volume of valuable materials; (c) state the appraised value; (d) describe with particularity each parcel of land from which valuable materials are to be sold; and (e) specify that the terms of sale will be posted in the area headquarters and the department's Olympia office. [2005 c 155 § 801. FORMERLY PART OF RCW 79.90.170.]

**79.140.020 List of valuable materials.** The department shall print a list of valuable materials contained within or upon state-owned aquatic lands, giving appraised value, character of the land, and such other information as may be of interest to prospective buyers. The lists must be issued at least four weeks prior to the date of any sale. The department shall retain for free distribution in its office in Olympia and the regional offices sufficient copies of the lists, to be kept in a conspicuous place or receptacle on the counter of the gen-

eral and regional office of the department, and, when requested, shall mail copies of the list as issued to any applicant. [2005 c 155 § 802. FORMERLY PART OF RCW 79.90.180.]

**79.140.030 Expenditures for advertising.** The department is authorized to expend any sum in additional advertising of the sale as is determined to be in the best interests of the state. [2005 c 155 § 803. FORMERLY PART OF RCW 79.90.190.]

**79.140.040 Reoffer of sale—Readvertised.** Any sale that has been offered, and for which there are no bids received, shall not be reoffered until it has been readvertised as specified in RCW 79.140.010 through 79.140.030. If all sales cannot be offered within the specified time on the advertised date, the sale shall continue on the following day between the hours of ten o'clock a.m. and four o'clock p.m. [2005 c 155 § 804. FORMERLY PART OF RCW 79.90.200.]

**79.140.050 Sale by public auction/sealed bid—Exception.** All sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value. However:

(1) When valuable material has been appraised at an amount not exceeding one hundred thousand dollars, the department, when authorized by the board, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold;

(2) Any sale of valuable material on state-owned aquatic lands of an appraised value of ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising. [2005 c 155 § 805. FORMERLY PART OF RCW 79.90.210.]

*Sales of aquaculture products by a leaseholder: RCW 79.135.040.*

**79.140.060 Determination of highest responsible bidder.** (1) To determine the "highest responsible bidder" under RCW 79.140.050, the department shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder was the "highest responsible bidder" for a sale within the previous five years but failed to complete the sale, such as by not entering into a resulting contract or by not paying the difference between the deposit and the total amount due. However, sales that were bid prior

to January 1, 2003, may not be considered for the purposes of this subsection (1)(d);

(e) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" includes a guilty plea, or unvacated forfeiture of bail;

(f) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(g) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.140.080. [2005 c 155 § 806. FORMERLY PART OF RCW 79.90.215.]

**79.140.070 Sales by public auction—Procedure.** (1) Sales by public auction under this chapter shall be conducted under the direction of the department, by its authorized representative. The department's representatives are referred to as auctioneers.

(2) On or before the time specified in the notice of sale each bidder shall deposit with the auctioneer, in cash or by certified check, cashier's check, or postal money order payable to the order of the department, or by bid guarantee in the form of bid bond acceptable to the department, an amount equal to the deposit specified in the notice of sale. The deposit shall include a specified amount of the appraised price for the valuable materials offered for sale, together with any fee required by law for the issuance of contracts or bills of sale. The deposit may, when prescribed in the notice of sale, be considered an opening bid of an amount not less than the minimum appraised price established in the notice of sale. The successful bidder's deposit will be retained by the auctioneer and the difference, if any, between the deposit and the total amount due shall on the day of the sale be paid in cash, certified check, cashier's check, draft, postal money order, or by personal check made payable to the department. If a bid bond is used, the share of the total deposit due guaranteed by the bid bond shall, within ten days of the day of sale, be paid in cash, certified check, cashier's check, draft, or postal money order payable to the department. Other deposits, if any, shall be returned to the respective bidders at the conclusion of each sale.

(3) The auctioneer shall deliver to the purchaser a memorandum of purchase containing a description of the materials purchased, the price bid, and the terms of the sale.

(4) The auctioneer shall at once send to the department the cash, certified check, cashier's check, draft, postal money order, or bid guarantee received from the purchaser, and a copy of the memorandum delivered to the purchaser, together with such additional report of the auctioneer's proceedings with reference to the sales as may be required by the department. [2005 c 155 § 807. FORMERLY PART OF RCW 79.90.220.]

(2008 Ed.)

**79.140.080 Confirmation of sale.** (1) A sale of valuable materials shall be confirmed if:

(a) No affidavit showing that the interest of the state in such a sale was injuriously affected by fraud or collusion, is filed with the department's Olympia office within ten days from the receipt of the report of the auctioneer conducting the sale;

(b) It appears from the report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at the sale, and that the sale price is not less than the appraised value of the property sold;

(c) The department is satisfied that the material sold would not, upon being readvertised and offered for sale, sell for a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale has been made, and that the best interests of the state are being served.

(2) Upon confirming a sale, the department shall enter upon its records the confirmation of sale and issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter. [2005 c 155 § 808. FORMERLY PART OF RCW 79.90.240.]

#### SPECIAL PROVISIONS AND LEASES

**79.140.100 Valuable materials from Columbia river—Agreements with Oregon.** The department is authorized and empowered to confer with and enter into any agreements with the public authorities of the state of Oregon, which in the judgment of the department will assist the state of Washington and the state of Oregon in securing the maximum revenues for sand, gravel, or other valuable materials taken from the bed of the Columbia river where the river forms the boundary line between the states. [2005 c 155 § 109; 1991 c 322 § 24; 1982 1st ex.s. c 21 § 19. Formerly RCW 79.90.130.]

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**79.140.110 Material removed for channel or harbor improvement or flood control—Use for public purpose.** When gravel, rock, sand, silt, or other material from any state-owned aquatic lands is removed by any public agency or under public contract for channel or harbor improvement, or flood control, use of the material may be authorized by the department for a public purpose on land owned or leased by the state or any municipality, county, or public corporation. However, when no public land site is available for deposit of the material, its deposit on private land with the landowner's permission is authorized and may be designated by the department to be for a public purpose. Prior to removal and use, the state agency, municipality, county, or public corporation contemplating or arranging the use shall first obtain written permission from the department. No payment of royalty shall be required for the gravel, rock, sand, silt, or other material used for the public purpose, but a charge will be made if the material is subsequently sold or used for some other purpose. Further, the department may authorize the public agency or private landowner to dispose of the material without charge when necessary to implement disposal of material. No charge shall be required for any use of the material obtained under the provisions of this chapter when used

solely on an authorized site. No charge shall be required for any use of the material obtained under the provisions of this chapter if the material is used for public purposes by local governments. Public purposes include, but are not limited to, construction and maintenance of roads, dikes, and levies. Nothing in this section shall repeal or modify the provisions of \*RCW 77.55.100 or eliminate the necessity of obtaining a permit for the removal from other state or federal agencies as otherwise required by law. [2005 c 155 § 110; 2003 c 39 § 41; 1991 c 337 § 1; 1982 1st ex.s. c 21 § 21. Formerly RCW 79.90.150.]

\*Reviser's note: RCW 77.55.100 was repealed by 2005 c 146 § 1006. For later enactment, see RCW 77.55.021.

**79.140.120 Mt. St. Helen's eruption—Dredge spoils—Sale by certain landowners.** (1) The legislature finds and declares that, due to the extraordinary volume of material washed down onto beds of navigable waters and shorelands in the Toutle river, Coweeman river, and portions of the Cowlitz river, the dredge spoils placed upon adjacent publicly and privately owned property in the areas, if further disposed, will be of nominal value to the state and that it is in the best interests of the state to allow further disposal without charge.

(2) All dredge spoil or materials removed from the state-owned beds and shores of the Toutle river, Coweeman river, and that portion of the Cowlitz river from two miles above the confluence of the Toutle river to its mouth deposited on adjacent public and private lands during the years 1980 through December 31, 1995, as a result of dredging of these rivers for navigation and flood control purposes may be sold, transferred, or otherwise disposed of by owners of the lands without the necessity of any charge by the department and free and clear of any interest of the department of the state of Washington. [2005 c 155 § 111; 2000 c 13 § 2; 1989 c 213 § 4; 1985 c 307 § 7; 1985 c 12 § 1; 1982 1st ex.s. c 21 § 22. Formerly RCW 79.90.160.]

**79.140.130 Prior appraisal required.** In no case shall any valuable materials situated within or upon any tidelands, shorelands, or beds of navigable waters belonging to the state, be offered for sale unless the same shall have been appraised by the department of natural resources within ninety days prior to the date fixed for the sale. [2005 c 155 § 809. FORMERLY PART OF RCW 79.90.110.]

**79.140.140 Bill of sale for valuable material sold separately.** When valuable materials are sold separate from state-owned aquatic lands and the purchase price is paid in full, the department shall cause a bill of sale, signed by the commissioner and attested by the seal of the commissioner's office, setting forth the time within which the material shall be removed. The bill of sale shall be issued to the purchaser and shall be recorded in the department's Olympia office, upon the payment of the fee provided for in this chapter. [2005 c 155 § 126; 1982 1st ex.s. c 21 § 35. Formerly RCW 79.90.290.]

**79.140.150 Sale of rock, gravel, sand, silt, and other valuable materials.** The department, upon application by

any person or when determined by the department to be in the best interest of the state, may enter into a contract or lease providing for the removal and sale of rock, gravel, sand, and silt, or other valuable materials located within or upon beds of navigable waters, or upon any state-owned tidelands or shorelands and providing for payment to be made by such royalty as the department may fix, by negotiation, by sealed bid, or at public auction. If application is made for the purchase of any valuable material situated within or upon state-owned aquatic lands the department shall inspect and appraise the value of the material in the application. [2005 c 155 § 127; 1991 c 322 § 26; 1982 1st ex.s. c 21 § 36. Formerly RCW 79.90.300.]

**Findings—Intent—1991 c 322:** See note following RCW 86.12.200.

**79.140.160 Sale of rock, gravel, sand, and silt—Application—Terms of lease or contract—Bond—Payment—Reports.** Each application made pursuant to RCW 79.140.150 shall set forth the estimated quantity and kind of materials desired to be removed and shall be accompanied by a map or plat showing the area from which the applicant wishes to remove the materials. The department may in its discretion include in any lease or contract entered into pursuant to RCW 79.140.150 through 79.140.170, terms and conditions deemed necessary by the department to protect the interests of the state. In each lease or contract the department shall provide for a right of forfeiture by the state, upon a failure to operate under the lease or contract or pay royalties or rent for periods therein stipulated, and the department shall require a bond with a surety company authorized to transact a surety business in this state, as surety to secure the performance of the terms and conditions of the contract or lease including the payment of royalties. The right of forfeiture shall be exercised by entry of a declaration of forfeiture in the records of the department. The amount of rock, gravel, sand, or silt taken under the contract or lease shall be reported monthly by the purchaser to the department and payment made on the basis of the royalty provided in the lease or contract. [2005 c 155 § 128; 1982 1st ex.s. c 21 § 37. Formerly RCW 79.90.310.]

**79.140.170 Sale of rock, gravel, sand, and silt—Investigation, audit of books of person removing.** The department may inspect and audit books, contracts, and accounts of each person removing rock, gravel, sand, or silt pursuant to any lease or contract under RCW 79.140.150 and 79.140.160 and make such other investigation and secure or receive any other evidence necessary to determine whether or not the state is being paid the full amount payable to it for the removal of the materials. [2005 c 155 § 129; 1982 1st ex.s. c 21 § 38. Formerly RCW 79.90.320.]

**79.140.180 Contract for sale of rock, gravel, etc.—Royalties—Consideration of flood protection value.** Whenever, pursuant to RCW 79.15.300, the department enters into a contract for the sale and removal of rock, gravel, sand, or silt out of a riverbed, the department shall, when establishing a royalty, take into consideration flood protection value to the public that will arise as a result of the

removal. [2005 c 155 § 130; 2003 c 334 § 602; 1984 c 212 § 10. Formerly RCW 79.90.325, 79.01.135.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.190 Leases and permits for prospecting and contracts for mining valuable minerals and specific materials from aquatic lands.** The department may issue permits and leases for prospecting, placer mining contracts, and contracts for the mining of valuable minerals and specific materials, except rock, gravel, sand, silt, coal, or hydrocarbons, upon and from any state-owned aquatic lands, or which have been sold and the minerals reserved by the state in tracts not to exceed six hundred forty acres or an entire government-surveyed section. The procedures contained at RCW 79.14.300 through 79.14.450, inclusive, shall apply. [2005 c 155 § 131; 2003 c 334 § 603; 1987 c 20 § 16; 1982 1st ex.s. c 21 § 39. Formerly RCW 79.90.330.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.200 Option contracts for prospecting and leases for mining and extraction of coal from aquatic lands.** The department is authorized to execute option contracts for prospecting purposes and leases for the mining and extraction of coal from any state-owned aquatic lands or from which it may acquire title, or from any aquatic lands sold or leased by the state the minerals of which have been reserved by the state. The procedures contained at RCW 79.14.470 through 79.14.580, inclusive, shall apply. [2005 c 155 § 132; 2003 c 334 § 604; 1982 1st ex.s. c 21 § 40. Formerly RCW 79.90.340.]

**Intent—2003 c 334:** See note following RCW 79.02.010.

**79.140.900 Severability—Part/subchapter headings not law—2005 c 155.** See RCW 79.105.903 and 79.105.904.

## Chapter 79.145 RCW MARINE PLASTIC DEBRIS

### Sections

79.145.001	Intent—2005 c 155.
79.145.010	Intent.
79.145.020	Definitions.
79.145.030	Coordinating implementation—Rules.
79.145.040	Agreements with other entities.
79.145.050	Employees—Information clearinghouse contracts.
79.145.060	Grants, funds, or gifts.
79.145.900	Severability—1989 c 23.
79.145.901	Severability—Part/subchapter headings not law—2005 c 155.

**79.145.001 Intent—2005 c 155.** See RCW 79.105.001.

**79.145.010 Intent.** The legislature finds that the public health and safety is threatened by an increase in the amount of plastic garbage being deposited in the waters and on the shores of the state. To address this growing problem, the commissioner appointed the marine plastic debris task force which presented a state action plan in October 1988. It is necessary for the state of Washington to implement the action plan in order to:

- (1) Cleanup and prevent further pollution of the state's waters and aquatic lands;
- (2) Increase public awareness;
- (3) Coordinate federal, state, local, and private efforts;
- (4) Foster the stewardship of the aquatic lands of the state. [2005 c 155 § 901; 1989 c 23 § 1. Formerly RCW 79.97.010, 79.81.010.]

**79.145.020 Definitions.** As used in this chapter:

- (1) "Department" means the department of natural resources.
- (2) "Action plan" means the marine plastic debris action plan of October 1988 as presented to the commissioner by the marine plastic debris task force. [2005 c 155 § 902; 1989 c 23 § 2. Formerly RCW 79.97.020, 79.81.020.]

**79.145.030 Coordinating implementation—Rules.** The department shall have the authority to coordinate implementation of the action plan with appropriate state agencies including the parks and recreation commission and the departments of ecology and fish and wildlife. The department is authorized to adopt, in consultation with affected agencies, the necessary rules to provide for the cleanup and to prevent pollution of the waters of the state and aquatic lands by plastic and other marine debris. [2005 c 155 § 903; 1994 c 264 § 65; 1989 c 23 § 3. Formerly RCW 79.97.030, 79.81.030.]

**79.145.040 Agreements with other entities.** The department may enter into intergovernmental agreements with federal or state agencies and agreements with private parties deemed necessary by the department to carry out the provisions of this chapter. [1989 c 23 § 4. Formerly RCW 79.97.040, 79.81.040.]

**79.145.050 Employees—Information clearinghouse contracts.** The department is the designated agency to coordinate implementation of the action plan and is authorized to hire such employees as are necessary to coordinate the action plan among state and federal agencies, the private sector, and interested public groups and organizations. The department is authorized to contract, through an open bidding process, with interested parties to act as the information clearinghouse for marine plastic debris related issues. [2005 c 155 § 904; 1989 c 23 § 5. Formerly RCW 79.97.050, 79.81.050.]

**79.145.060 Grants, funds, or gifts.** The department is authorized to accept, receive, disburse, and administer grants or funds or gifts from any source including private individuals, public entities, and the federal government to supplement the funds appropriated to carry out the purposes of this chapter. [2005 c 155 § 905; 1989 c 23 § 6. Formerly RCW 79.97.060, 79.81.060.]

**79.145.900 Severability—1989 c 23.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 23 § 7. Formerly RCW 79.97.900, 79.81.900.]

**79.145.901 Severability—Part/subchapter headings  
not law—2005 c 155.** See RCW 79.105.903 and  
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# Title 79A

## PUBLIC RECREATIONAL LANDS

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*Private business activity policy: RCW 42.52.570.*

**79A.05.010 Definitions.** The definitions in this section apply throughout this title unless the context clearly requires otherwise.

(1) "Commission" means the state parks and recreation commission.

(2) "Chair" means the member of the commission elected pursuant to RCW 79A.05.025.

(3) "Director" and "director of the state parks and recreation commission" mean the director of parks and recreation or the director's designee.

(4) "Recreation" means those activities of a voluntary and leisure time nature that aid in promoting entertainment, pleasure, play, relaxation, or instruction.

(5) "Natural forest" means a forest that faithfully represents, or is meant to become representative of, its unaltered state. [1999 c 249 § 101.]

**Severability—1999 c 249:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 249 § 1901.]

**79A.05.015 Commission created—Composition—Compensation and expenses.** There is hereby created a "state parks and recreation commission" consisting of seven citizens of the state. The members of the commission shall be appointed by the governor by and with the advice and consent of the senate and shall serve for a term of six years, expiring on December 31st of even-numbered years, and until their successors are appointed. In case of a vacancy, the governor shall fill the vacancy for the unexpired term of the commissioner whose office has become vacant.

In making the appointments to the commission, the governor shall choose citizens who understand park and recreation needs and interests. No person shall serve if he or she holds any elective or full-time appointive state, county, or municipal office. Members of the commission shall be compensated in accordance with RCW 43.03.240 and in addition shall be allowed their travel expenses incurred while absent from their usual places of residence in accordance with RCW 43.03.050 and 43.03.060.

Payment of expenses pertaining to the operation of the commission shall be made upon vouchers certified to by such persons as shall be designated by the commission. [1999 c 249 § 201; 1984 c 287 § 82; 1975-'76 2nd ex.s. c 34 § 116; 1969 ex.s. c 31 § 1; 1965 ex.s. c 132 § 1; 1965 c 8 § 43.51.020. Prior: 1947 c 271 § 1; 1945 c 36 § 1; 1921 c 7 § 10; RRS § 10768. Formerly RCW 43.51.020.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

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

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

**79A.05.020 Duties of commission.** In addition to whatever other duties may exist in law or be imposed in the future, it is the duty of the commission to:

(1) Implement integrated pest management practices and regulate pests as required by RCW 17.15.020;

(2) Take steps necessary to control spartina and purple loosestrife as required by RCW 17.26.020;

(3) Participate in the implementation of chapter 19.02 RCW;

(4) Coordinate planning and provide staffing and administrative assistance to the Lewis and Clark trail committee as required by \*RCW 27.34.340;

(5) Administer those portions of chapter 46.10 RCW not dealing with registration and licensing of snowmobiles as required by RCW 46.10.210;

(6) Consult and participate in the scenic and recreational highway system as required by chapter 47.39 RCW; and

(7) Develop, prepare, and distribute information relating to marine oil recycling tanks and sewage holding tank pumping stations, in cooperation with other departments, as required by chapter 88.02 RCW.

The commission has the power reasonably necessary to carry out these duties. [1999 c 249 § 301.]

**\*Reviser's note:** RCW 27.34.340 was repealed by 1999 c 35 § 5. See chapter 35, Laws of 1999 for the Lewis and Clark bicentennial advisory committee.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.025 Chair—Meetings—Quorum.** The commission shall elect one of its members as chair. The commission may be convened at such times as the chair deems necessary, and a majority shall constitute a quorum for the transaction of business. [1999 c 249 § 202; 1965 c 8 § 43.51.030. Prior: 1947 c 271 § 3; RRS § 10768-2. Formerly RCW 43.51.030.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.030 Powers and duties—Mandatory.** The commission shall:

(1) Have the care, charge, control, and supervision of all parks and parkways acquired or set aside by the state for park or parkway purposes.

(2) Adopt policies, and adopt, issue, and enforce rules pertaining to the use, care, and administration of state parks and parkways. The commission shall cause a copy of the rules to be kept posted in a conspicuous place in every state park to which they are applicable, but failure to post or keep any rule posted shall be no defense to any prosecution for the violation thereof.

(3) Permit the use of state parks and parkways by the public under such rules as shall be adopted.

(4) Clear, drain, grade, seed, and otherwise improve or beautify parks and parkways, and erect structures, buildings, fireplaces, and comfort stations and build and maintain paths, trails, and roadways through or on parks and parkways.

(5) Grant concessions or leases in state parks and parkways, upon such rentals, fees, or percentage of income or profits and for such terms, in no event longer than fifty years, and upon such conditions as shall be approved by the commission: PROVIDED, That leases exceeding a twenty-year term shall require a unanimous vote of the commission: PROVIDED FURTHER, That if, during the term of any concession or lease, it is the opinion of the commission that it would be in the best interest of the state, the commission may, with the consent of the concessionaire or lessee, alter and amend the terms and conditions of such concession or

lease: PROVIDED FURTHER, That television station leases shall be subject to the provisions of RCW 79A.05.085, only: PROVIDED FURTHER, That the rates of such concessions or leases shall be renegotiated at five-year intervals. No concession shall be granted which will prevent the public from having free access to the scenic attractions of any park or parkway.

(6) Employ such assistance as it deems necessary. Commission expenses relating to its use of volunteer assistance shall be limited to premiums or assessments for the insurance of volunteers by the department of labor and industries, compensation of staff who assist volunteers, materials and equipment used in authorized volunteer projects, training, reimbursement of volunteer travel as provided in RCW 43.03.050 and 43.03.060, and other reasonable expenses relating to volunteer recognition. The commission, at its discretion, may waive commission fees otherwise applicable to volunteers. The commission shall not use volunteers to replace or supplant classified positions. The use of volunteers may not lead to the elimination of any employees or permanent positions in the bargaining unit.

(7) By majority vote of its authorized membership select and purchase or obtain options upon, lease, or otherwise acquire for and in the name of the state such tracts of land, including shore and tide lands, for park and parkway purposes as it deems proper. If the commission cannot acquire any tract at a price it deems reasonable, it may, by majority vote of its authorized membership, obtain title thereto, or any part thereof, by condemnation proceedings conducted by the attorney general as provided for the condemnation of rights-of-way for state highways. Option agreements executed under authority of this subsection shall be valid only if:

(a) The cost of the option agreement does not exceed one dollar; and

(b) Moneys used for the purchase of the option agreement are from (i) funds appropriated therefor, or (ii) funds appropriated for undesignated land acquisitions, or (iii) funds deemed by the commission to be in excess of the amount necessary for the purposes for which they were appropriated; and

(c) The maximum amount payable for the property upon exercise of the option does not exceed the appraised value of the property.

(8) Cooperate with the United States, or any county or city of this state, in any matter pertaining to the acquisition, development, redevelopment, renovation, care, control, or supervision of any park or parkway, and enter into contracts in writing to that end. All parks or parkways, to which the state contributed or in whose care, control, or supervision the state participated pursuant to the provisions of this section, shall be governed by the provisions hereof.

(9) Within allowable resources, maintain policies that increase the number of people who have access to free or low-cost recreational opportunities for physical activity, including noncompetitive physical activity.

(10) Adopt rules establishing the requirements for a criminal history record information search for the following: Job applicants, volunteers, and independent contractors who have unsupervised access to children or vulnerable adults, or who will be responsible for collecting or disbursing cash or processing credit/debit card transactions. These background checks will be done through the Washington state patrol

criminal identification section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. A permanent employee of the commission, employed as of July 24, 2005, is exempt from the provisions of this subsection. [2005 c 373 § 1; 2005 c 360 § 5. Prior: 1999 c 249 § 302; 1999 c 155 § 1; 1999 c 59 § 1; 1989 c 175 § 106; 1980 c 89 § 1; 1979 c 10 § 4; prior: 1977 ex.s. c 123 § 1; 1977 c 75 § 57; 1967 ex.s. c 90 § 1; 1965 c 8 § 43.51.040; prior: 1959 c 317 § 1; 1955 c 391 § 1; 1929 c 148 § 1; 1923 c 157 § 1; 1921 c 149 § 2; RRS § 10942. Formerly RCW 43.51.040.]

**Reviser's note:** This section was amended by 2005 c 360 § 5 and by 2005 c 373 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

*Inspection of recreational devices: Chapter 79A.40 RCW.*

**79A.05.035 Additional powers and duties.** (1) The commission shall:

(a) Manage timber and land under its jurisdiction to maintain and enhance aesthetic and recreational values;

(b) Apply modern conservation practices to maintain and enhance aesthetic, recreational, and ecological resources; and

(c) Designate and preserve certain forest areas throughout the state as natural forests or natural areas for interpretation, study, and preservation purposes.

(2) Trees may be removed from state parks:

(a) When hazardous to persons, property, or facilities;

(b) As part of a park maintenance or development project, or conservation practice;

(c) As part of a road or utility easement; or

(d) When damaged by a catastrophic forest event.

(3) Tree removal under subsection (2) of this section shall be done by commission personnel, unless the personnel lack necessary expertise. Except in emergencies and when feasible, significant trees shall be removed only after they have been marked or appraised by a professional forester. The removal of significant trees from a natural forest may take place only after a public hearing has been held, except in emergencies.

(4) When feasible, felled timber shall be left on the ground for natural purposes or used for park purposes including, but not limited to, building projects, trail mulching, and firewood. In natural forest areas, first consideration shall be given to leaving timber on the ground for natural purposes.

(5) The commission may issue permits to individuals under RCW 4.24.210 and 79A.05.090 for the removal of wood debris from state parks for personal firewood use.

(6) Only timber that qualifies for cutting or removal under subsection (2) of this section may be sold. Timber shall be sold only when surplus to the needs of the park.

(7) Net revenue derived from timber sales shall be deposited in the state parks renewal and stewardship account created in RCW 79A.05.215. [1999 c 249 § 303; 1984 c 82 § 1; 1981 c 271 § 3. Formerly RCW 43.51.045.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.040 Director's duties.** In addition to other duties the commission may from time to time impose, it is the duty of the director to:

(1) Ensure the control of weeds in parks to the extent required by RCW 17.04.160 and 17.10.205; and

(2) Participate in the operations of the environmental enhancement and job creation task force under chapter 43.21J RCW.

The director has the power reasonably necessary to carry out these duties. [1999 c 249 § 401.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.045 Waste reduction and recycling.** (1) The commission shall provide waste reduction and recycling information in each state park campground and day-use area.

(2) The commission shall provide recycling receptacles in the day-use and campground areas of at least forty state parks. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin. The commission shall endeavor to provide recycling receptacles in parks that are near urban centers or in heavily used parks.

(3) The commission shall provide daily maintenance of such receptacles from April through September of each year.

(4) The commission is authorized to enter into agreements with any person, company, or nonprofit organization to provide for the collection and transport of recyclable materials and related activities under this section. [1999 c 249 § 304; 1991 c 11 § 1. Formerly RCW 43.51.046.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

*Marinas and airports: RCW 70.93.095.*

**79A.05.050 Community restitution for littering in state parks—Policy and procedures.** (1) The commission shall establish a policy and procedures for supervising and evaluating community restitution activities that may be imposed under RCW 70.93.060(3) including a description of what constitutes satisfactory completion of community restitution.

(2) The commission shall inform each state park of the policy and procedures regarding community restitution activities, and each state park shall then notify the commission as to whether or not the park elects to participate in the community restitution program. The commission shall transmit a list notifying the district courts of each state park that elects to participate. [2002 c 175 § 52; 1996 c 263 § 3. Formerly RCW 43.51.048.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**79A.05.055 Additional powers and duties.** The commission may:

(1) Study and appraise parks and recreational needs of the state and assemble and disseminate information relative to parks and recreation;

(2) Make provisions for the publication and sale of interpretive, recreational, and historical materials and literature. Proceeds from such sales shall be directed to the parks improvement account; and

(3) Coordinate the parks and recreational functions of the various state departments, and cooperate with state and fed-

eral agencies in the promotion of parks and recreational opportunities. [1997 c 137 § 1; 1987 c 225 § 1; 1965 c 8 § 43.51.050. Prior: 1955 c 391 § 2; 1947 c 271 § 4; RRS § 10768-3. Formerly RCW 43.51.050.]

**Effective date—1997 c 137:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 137 § 6.]

**79A.05.059 State parks education and enhancement account.** The state parks education and enhancement account is created in the custody of the state treasurer. All receipts from the sale of Washington state parks and recreation commission special license plates, after the deductions permitted by RCW 46.16.313(13), must be deposited into the account. Expenditures from the account may only be used to provide public educational opportunities and enhancement of Washington state parks. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 44 § 4.]

**79A.05.060 Parks improvement account—Transfers to state parks renewal and stewardship account.** (1) The parks improvement account is hereby established in the state treasury.

(2) The commission shall deposit all moneys received from the sale of interpretive, recreational, and historical literature and materials in this account. Moneys in the account may be spent only for development, production, and distribution costs associated with literature and materials.

(3) Disbursements from the account shall be on the authority of the director, or the director's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW. No appropriation is required for disbursement of moneys to be used for support of further production of materials provided for in RCW 79A.05.055(2). The director may transfer a portion of the moneys in this account to the state parks renewal and stewardship account and may expend moneys so transferred for any purpose provided for in RCW 79A.05.215. [1999 c 249 § 402; 1997 c 137 § 2; 1987 c 225 § 2. Formerly RCW 43.51.052.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1997 c 137:** See note following RCW 79A.05.055.

**79A.05.065 Park passes—Eligibility.** (1)(a) The commission shall grant to any person who meets the eligibility requirements specified in this section a senior citizen's pass which shall: (i) Entitle such a person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) The commission shall grant a senior citizen's pass to any person who applies for the senior citizen's pass and who meets the following requirements:

(i) The person is at least sixty-two years of age;

(ii) The person is a domiciliary of the state of Washington and meets reasonable residency requirements prescribed by the commission; and

(iii) The person and his or her spouse have a combined income that would qualify the person for a property tax exemption pursuant to RCW 84.36.381. The financial eligibility requirements of this subsection (1)(b)(iii) apply regardless of whether the applicant for a senior citizen's pass owns taxable property or has obtained or applied for such property tax exemption.

(c) Each senior citizen's pass granted pursuant to this section is valid as long as the senior citizen meets the requirements of (b)(ii) of this subsection. A senior citizen meeting the eligibility requirements of this section may make a voluntary donation for the upkeep and maintenance of state parks.

(d) A holder of a senior citizen's pass shall surrender the pass upon request of a commission employee when the employee has reason to believe the holder fails to meet the criteria in (b) of this subsection. The holder shall have the pass returned upon providing proof to the satisfaction of the director that the holder meets the eligibility criteria for obtaining the senior citizen's pass.

(2)(a) Any resident of Washington who is disabled as defined by the social security administration and who receives social security benefits for that disability, or any other benefits for that disability from any other governmental or nongovernmental source, or who is entitled to benefits for permanent disability under RCW 71A.10.020(3) due to unemployment full time at the minimum wage, or who is legally blind or profoundly deaf, or who has been issued a card, decal, or special license plate for a permanent disability under RCW 46.16.381 shall be entitled to receive, regardless of age and upon making application therefor, a disability pass at no cost to the holder. The pass shall: (i) Entitle such a person, and members of his or her camping unit, to a fifty percent reduction in the campsite rental fee prescribed by the commission; and (ii) entitle such a person to free admission to any state park.

(b) A card, decal, or special license plate issued for a permanent disability under RCW 46.16.381 may serve as a pass for the holder to entitle that person and members of the person's camping unit to a fifty percent reduction in the campsite rental fee prescribed by the commission, and to allow the holder free admission to state parks.

(3) Any resident of Washington who is a veteran and has a service-connected disability of at least thirty percent shall be entitled to receive a lifetime veteran's disability pass at no cost to the holder. The pass shall: (a) Entitle such a person, and members of his or her camping unit, to free use of any campsite within any state park; (b) entitle such a person to free admission to any state park; and (c) entitle such a person to an exemption from any reservation fees.

(4)(a) Any Washington state resident who provides out-of-home care to a child, as either a licensed foster-family home or a person related to the child, is entitled to a foster home pass.

(b) An applicant for a foster home pass must request a pass in the manner required by the commission. Upon receipt of a properly submitted request, the commission shall verify with the department of social and health services that the applicant qualifies under (a) of this subsection. Once issued, a foster home pass is valid for the period, which may not be less than one year, designated by the commission.

(c) When accompanied by a child receiving out-of-home care from the pass holder, a foster home pass: (i) Entitles such a person, and members of his or her camping unit, to free use of any campsite within any state park; and (ii) entitles such a person to free admission to any state park.

(d) For the purposes of this subsection (4):

(i) "Out-of-home care" means placement in a foster-family home or with a person related to the child under the authority of chapter 13.32A, 13.34, or 74.13 RCW;

(ii) "Foster-family home" has the same meaning as defined in RCW 74.15.020; and

(iii) "Person related to the child" means those persons referred to in RCW 74.15.020(2)(a) (i) through (vi).

(5) All passes issued pursuant to this section are valid at all parks any time during the year. However, the pass is not valid for admission to concessionaire operated facilities.

(6) The commission shall negotiate payment and costs, to allow holders of a foster home pass free access and usage of park campsites, with the following nonoperated, non-state-owned parks: Central Ferry, Chief Timothy, Crow Butte, and Lyons Ferry. The commission shall seek state general fund reimbursement on a biennial basis.

(7) The commission may deny or revoke any Washington state park pass issued under this section for cause, including but not limited to the following:

(a) Residency outside the state of Washington;

(b) Violation of laws or state park rules resulting in eviction from a state park;

(c) Intimidating, obstructing, or assaulting a park employee or park volunteer who is engaged in the performance of official duties;

(d) Fraudulent use of a pass;

(e) Providing false information or documentation in the application for a state parks pass;

(f) Refusing to display or show the pass to park employees when requested; or

(g) Failing to provide current eligibility information upon request by the agency or when eligibility ceases or changes.

(8) This section shall not affect or otherwise impair the power of the commission to continue or discontinue any other programs it has adopted for senior citizens.

(9) The commission may engage in a mutually agreed upon reciprocal or discounted program for all or specific pass programs with other outdoor recreation agencies.

(10) The commission shall adopt those rules as it finds appropriate for the administration of this section. Among other things, the rules shall prescribe a definition of "camping unit" which will authorize a reasonable number of persons traveling with the person having a pass to stay at the campsite rented by such a person, a minimum Washington residency requirement for applicants for a senior citizen's pass, and an application form to be completed by applicants for a senior citizen's pass. [2008 c 238 § 1; 2007 c 441 § 1; 1999 c 249 § 305; 1997 c 74 § 1; 1989 c 135 § 1; 1988 c 176 § 909; 1986 c 6 § 1; 1985 c 182 § 1; 1979 ex.s. c 131 § 1; 1977 ex.s. c 330 § 1. Formerly RCW 43.51.055.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Severability—1988 c 176:** See RCW 71A.10.900.

**79A.05.070 Further powers—Director of parks and recreation—Salaries.** The commission may:

(1) Make rules and regulations for the proper administration of its duties;

(2) Accept any grants of funds made with or without a matching requirement by the United States, or any agency thereof, for purposes in keeping with the purposes of this chapter; accept gifts, bequests, devises and endowments for purposes in keeping with such purposes; enter into cooperative agreements with and provide for private nonprofit groups to use state park property and facilities to raise money to contribute gifts, grants, and support to the commission for the purposes of this chapter. The commission may assist the nonprofit group in a cooperative effort by providing necessary agency personnel and services, if available. However, none of the moneys raised may inure to the benefit of the nonprofit group, except in furtherance of its purposes to benefit the commission as provided in this chapter. The agency and the private nonprofit group shall agree on the nature of any project to be supported by such gift or grant prior to the use of any agency property or facilities for raising money. Any such gifts may be in the form of recreational facilities developed or built in part or in whole for public use on agency property, provided that the facility is consistent with the purposes of the agency;

(3) Require certification by the commission of all parks and recreation workers employed in state aided or state controlled programs;

(4) Act jointly, when advisable, with the United States, any other state agencies, institutions, departments, boards, or commissions in order to carry out the objectives and responsibilities of this chapter;

(5) Grant franchises and easements for any legitimate purpose on parks or parkways, for such terms and subject to such conditions and considerations as the commission shall specify;

(6) Charge such fees for services, utilities, and use of facilities as the commission shall deem proper. The commission may not charge fees for general park access or parking;

(7) Enter into agreements whereby individuals or companies may rent undeveloped parks or parkway land for grazing, agricultural, or mineral development purposes upon such terms and conditions as the commission shall deem proper, for a term not to exceed forty years;

(8) Determine the qualifications of and employ a director of parks and recreation who shall receive a salary as fixed by the governor in accordance with the provisions of RCW 43.03.040 and determine the qualifications and salary of and employ such other persons as may be needed to carry out the provisions hereof; and

(9) Without being limited to the powers hereinbefore enumerated, the commission shall have such other powers as in the judgment of a majority of its members are deemed necessary to effectuate the purposes of this chapter: PROVIDED, That the commission shall not have power to supervise directly any local park or recreation district, and no funds shall be made available for such purpose. [2006 c 141 § 1; 2003 c 186 § 1; 1999 c 249 § 307; 1995 c 211 § 3; 1993 c 156 § 1; 1987 c 225 § 3; 1980 c 89 § 2; 1969 c 99 § 1; 1965 c 8 § 43.51.060. Prior: 1961 c 307 § 12; 1955 c 391 § 3; 1947 c 271 § 5; RRS § 10768-4. Formerly RCW 43.51.060.]

**Effective date—2006 c 141:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 9, 2006." [2006 c 141 § 2.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Findings—Intent—1995 c 211:** "The legislature finds that during the past fourteen years, the Washington state parks and recreation commission has endured a steady erosion of general fund operating support, which has caused park closures, staff reductions, and growing backlog of deferred maintenance projects. The legislature also finds that the growth of parks revenue has been constrained by staff limitations and by transfers of that revenue into the general fund.

The legislature intends to reverse the decline in operating support to its state parks, stabilize the system's level of general fund support, and inspire system employees and park visitors to enhance these irreplaceable resources and ensure their continuing availability to current and future state citizens and visitors. To achieve these goals, the legislature intends to dedicate park revenues to park operations, developing and renovating park facilities, undertaking deferred maintenance, and improving park stewardship. The legislature clearly intends that such revenues shall complement, not supplant, future general fund support." [1995 c 211 § 1.]

**Effective date—1995 c 211:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 211 § 8.]

**Severability—1995 c 211:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 211 § 9.]

**Effective date—1969 c 99:** "This 1969 amendatory act shall take effect July 1, 1969." [1969 c 99 § 12.]

**79A.05.075 Delegation of commission's powers and duties to director.** No provision of law relating to the commission shall prevent the commission from delegating to the director such powers and duties of the commission as they may deem proper. [1999 c 249 § 306; 1969 ex.s. c 31 § 2. Formerly RCW 43.51.061.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.080 Lease of park lands for television stations.** The state parks and recreation commission is hereby authorized to lease the use of such areas in Mount Spokane state park, Steptoe Butte state park, Kamiak Butte state park or any other state park for television stations as the commission may decide are suitable for that purpose: PROVIDED, That this authority shall not extend to school lands or lands held by the state of Washington for educational purposes. [1965 c 8 § 43.51.062. Prior: 1953 c 39 § 1. Formerly RCW 43.51.062.]

**Validating—1953 c 39:** "Any lease authorizing the use of any portion of Mount Spokane state park for a television station which the state parks and recreation commission has already made is hereby validated and confirmed, and the parties thereto are bound by the terms thereof." [1953 c 39 § 2.]

**Construction—1953 c 39:** "The authority conferred by this act is in addition to the powers and authority now conferred upon the state parks and recreation commission, and this act shall not be construed to repeal or limit, by implication or otherwise, any authority or power now conferred by law upon the state parks and recreation commission." [1953 c 39 § 3.]

**79A.05.085 Lease of park lands for television stations—Lease rental rates, terms—Attachment of antennae.** The commission shall determine the fair market value for television station leases based upon independent appraisals and existing leases for television stations shall be extended at said fair market rental for at least one period of

not more than twenty years: PROVIDED, That the rates in said leases shall be renegotiated at five year intervals: PROVIDED FURTHER, That said stations shall permit the attachment of antennae of publicly operated broadcast and microwave stations where electronically practical to combine the towers: PROVIDED FURTHER, That notwithstanding any term to the contrary in any lease, this section shall not preclude the commission from prescribing new and reasonable lease terms relating to the modification, placement or design of facilities operated by or for a station, and any extension of a lease granted under this section shall be subject to this proviso: PROVIDED FURTHER, That notwithstanding any other provision of law the director in his discretion may waive any requirement that any environmental impact statement or environmental assessment be submitted as to any lease negotiated and signed between January 1, 1974 and December 31, 1974. [1974 ex.s. c 151 § 1. Formerly RCW 43.51.063.]

**79A.05.090 Exemption of persons over sixty-five from fees for collection in state parks of wood debris for personal use.** Persons over the age of sixty-five are exempt from any permit or other administrative fee imposed by the commission for the collection of wood debris in state parks, if such wood is for personal use. [1983 c 193 § 1. Formerly RCW 43.51.065.]

**79A.05.095 Donations of land for park purposes.** The commission may receive and accept donations of lands for state park purposes, and shall be responsible for the management and control of all lands so acquired. It may from time to time recommend to the legislature the acquisition of lands for park purposes by purchase or condemnation. [1999 c 249 § 901; 1965 c 8 § 43.51.070. Prior: 1913 c 113 § 2; RRS § 10940. Formerly RCW 43.51.070.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.100 Bequests and donations of money.** The commission may receive in trust any money donated or bequeathed to it, and carry out the terms of such donation or bequest, or, in the absence of such terms, expend the same as it may deem advisable for park or parkway purposes.

Money so received shall be deposited in the state parks renewal and stewardship account. [1997 c 137 § 3; 1969 c 99 § 2; 1965 c 8 § 43.51.090. Prior: 1923 c 157 § 2; 1921 c 149 § 3; RRS § 10943. Formerly RCW 43.51.090.]

**Effective date—1997 c 137:** See note following RCW 79A.05.055.

**79A.05.105 Withdrawal of granted lands on public highways.** Inasmuch as the value of land with standing timber is increasing and will continue to increase from year to year and no loss will be caused to the common school fund or other fund into which the proceeds of the sale of any land held by the state would be paid by postponing the sale thereof, the commissioner of public lands may, upon his own motion, and shall, when directed so to do by the state parks and recreation commission, withdraw from sale any land held by the state abutting on any public highway and certify to the commission that such land is withheld from sale pursuant to the terms of this section.

Such lands shall not be sold until directed by the legislature, and shall in the meantime be under the care, charge, control, and supervision of the commission. [1965 c 8 § 43.51.100. Prior: 1921 c 149 § 4; RRS § 10944. Formerly RCW 43.51.100.]

**79A.05.110 Withdrawal of other lands—Exchange for lands on highway.** The commissioner of public lands may, upon his or her own motion, and shall, when directed so to do by the commission, withdraw from sale any land held by the state and not acquired directly from the United States with reservations as to the manner of sale thereof and the purposes for which it may be sold, and certify to the commission that such land is withheld from sale pursuant to the terms of this section.

All such land shall be under the care, charge, control, and supervision of the commission, and after appraisal in such manner as the commission directs may be exchanged for land of equal value, and to this end the chair and secretary of the commission may execute deeds of conveyance in the name of the state. [1999 c 249 § 902; 1965 c 8 § 43.51.110. Prior: 1921 c 149 § 5; RRS § 10945. Formerly RCW 43.51.110.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.115 Cross-state trail facility. (*Contingent expiration date.*)** (1) The commission shall develop and maintain a cross-state trail facility with appropriate appurtenances.

(2) This section expires July 1, 2009, if the department of transportation does not enter into a franchise agreement for a rail line over the portions of the Milwaukee Road corridor between Ellensburg and Lind by July 1, 2009. [2006 c 160 § 1; 1999 c 301 § 1; 1996 c 129 § 2. Formerly RCW 43.51.112.]

**Effective date—1999 c 301:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 13, 1999]." [1999 c 301 § 6.]

**Intent—1996 c 129:** "The legislature intends to complete a cross-state trail system while maintaining long-term ownership of the Milwaukee Road corridor. In order to accomplish this, it will be beneficial to change the management and control of certain portions of the Milwaukee Road corridor currently managed and controlled by several state agencies and to provide a franchise to establish and maintain a rail line. It is the intent of the legislature that if a franchise is not agreed upon, no changes in the current management and control shall occur." [1996 c 129 § 1.]

**Effective date—1996 c 129:** "This act takes effect July 1, 1996." [1996 c 129 § 10.]

**Severability—1996 c 129:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 129 § 12.]

**79A.05.120 Cross-state trail—Transfer of lands in Milwaukee Road corridor. (*Contingent expiration date.*)**

(1) To facilitate completion of a cross-state trail under the management of the parks and recreation commission, management and control of lands known as the Milwaukee Road corridor shall be transferred between state agencies as follows on the date a franchise agreement is entered into for a rail line over portions of the Milwaukee Road corridor:

(a) Portions owned by the state between Ellensburg and the Columbia river that are managed by the parks and recre-

ation commission are transferred to the department of transportation;

(b) Portions owned by the state between the west side of the Columbia river and Royal City Junction and between Warden and Lind that are managed by the department of natural resources are transferred to the department of transportation; and

(c) Portions owned by the state between Lind and the Idaho border that are managed by the department of natural resources are transferred to the parks and recreation commission as of June 7, 2006.

(2) The department of natural resources may, by mutual agreement with the parks and recreation commission, transfer management authority over portions of the Milwaukee Road corridor to the state parks and recreation commission, at any time prior to the department of transportation entering into a franchise agreement.

(3) This section expires July 1, 2009, and no transfers shall occur if the department of transportation does not enter into a franchise agreement for a rail line over the portions of the Milwaukee Road corridor between Ellensburg and Lind by July 1, 2009. [2006 c 160 § 2; 1999 c 301 § 2; 1996 c 129 § 3. Formerly RCW 43.51.1121.]

**Effective date—1999 c 301:** See note following RCW 79A.05.115.

**Intent—Effective date—Severability—1996 c 129:** See notes following RCW 79A.05.115.

**79A.05.125 Cross-state trail—Rail line franchise negotiations by department of transportation. (*Contingent expiration date.*)**

(1) The department of transportation shall negotiate a franchise with a rail carrier to establish and maintain a rail line over portions of the Milwaukee Road corridor owned by the state between Ellensburg and Lind. The department of transportation may negotiate such a franchise with any qualified rail carrier. Criteria for negotiating the franchise and establishing the right-of-way include:

(a) Assurances that resources from the franchise will be sufficient to compensate the state for use of the property, including completion of a cross-state trail between Easton and the Idaho border;

(b) Types of payment for use of the franchise, including payment for the use of federally granted trust lands in the transportation corridor;

(c) Standards for maintenance of the line;

(d) Provisions ensuring that both the conventional and intermodal rail service needs of local shippers are met. Such accommodations may comprise agreements with the franchisee to offer or maintain adequate service or to provide service by other carriers at commercially reasonable rates;

(e) Provisions requiring the franchisee, upon reasonable request of any other rail operator, to provide rail service and interchange freight over what is commonly known as the Stampede Pass rail line from Cle Elum to Auburn at commercially reasonable rates;

(f) If any part of the franchise agreement is invalidated by actions or rulings of the federal surface transportation board or a court of competent jurisdiction, the remaining portions of the franchise agreement are not affected;

(g) Compliance with environmental standards; and

(h) Provisions for insurance and the coverage of liability.

(2) The franchise may provide for periodic review of financial arrangements under the franchise.

(3) The department of transportation, in consultation with the parks and recreation commission and the senate and house transportation committees, shall negotiate the terms of the franchise, and shall present the agreement to the parks and recreation commission for approval of as to terms and provisions affecting the cross-state trail or affecting the commission.

(4) This section expires July 1, 2009, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 2009. [2006 c 160 § 3; 2005 c 319 § 134; 1999 c 301 § 3; 1996 c 129 § 4. Formerly RCW 43.51.113.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—1999 c 301:** See note following RCW 79A.05.115.

**Review and approval of franchise—Report to the legislature:** "(1) Before entering into a final agreement to issue a franchise negotiated in accordance with RCW 43.51.113, the department of transportation shall submit the franchise to the legislative transportation committee for review and approval.

(2) If the department of transportation has not entered into a final agreement to franchise a rail line over portions of the Milwaukee Road corridor by December 1, 1998, a report of the progress and obstacles to such an agreement shall be made. The report shall be submitted by December 15, 1998, to appropriate committees of the legislature." [1996 c 129 § 6.]

**Intent—Effective date—Severability—1996 c 129:** See notes following RCW 79A.05.115.

**79A.05.130 Cross-state trail account—Land acquisition—Rules describing trail. (Contingent expiration date.)**

(1) The cross-state trail account is created in the custody of the state treasurer. Eleven million five hundred thousand dollars is provided to the state parks and recreation commission to acquire, construct, and maintain a cross-state trail. This amount may consist of: (a) Legislative appropriations intended for trail development; (b) payments for the purchase of federally granted trust lands; and (c) franchise fees derived from use of the rail corridor. The legislature intends that any amounts provided from the transportation fund are to be repaid to the transportation fund from franchise fees.

(2) The department shall deposit franchise fees from use of the rail corridor according to the following priority: (a) To the department of transportation for actual costs incurred in administering the franchise; (b) to the department of natural resources as compensation for use of federally granted trust lands in the rail corridor; (c) to the transportation fund to reimburse any amounts transferred or appropriated from that fund by the legislature for trail development; (d) to the cross-state trail account, not to exceed eleven million five hundred thousand dollars, provided that this amount shall be reduced proportionate with any funds transferred or appropriated by the 1996 legislature or paid from franchise fees for the purchase of federally granted trust lands or for trail development; and (e) the remainder to the essential rail assistance account, created under RCW 47.76.250. Expenditures from the cross-state trail account may be used only for the acquisition, development, operation, and maintenance of the cross-state trail. Only the director of the state parks and recreation commission or the director's designee may authorize expenditures from the account. The account is subject to allotment

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procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The commission may acquire land from willing sellers for the cross-state trail, but not by eminent domain.

(4) The commission shall adopt rules describing the cross-state trail.

(5) This section expires July 1, 2009, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 2009. [2006 c 160 § 4; 1999 c 301 § 4; 1996 c 129 § 5. Formerly RCW 43.51.114.]

**Effective date—1999 c 301:** See note following RCW 79A.05.115.

**Intent—Effective date—Severability—1996 c 129:** See notes following RCW 79A.05.115.

**79A.05.135 Dedication as parks and parkways.** All state parks and parkways, subject to the provisions of this chapter are set apart and dedicated as public parks and parkways for the benefit and enjoyment of all the people of this state. [1965 c 8 § 43.51.120. Prior: 1921 c 149 § 6; RRS § 10946. Formerly RCW 43.51.120.]

**79A.05.140 Permits for improvement of parks—Limitations.** The state parks and recreation commission may grant permits to individuals, groups, churches, charities, organizations, agencies, clubs, or associations to improve any state park or parkway, or any lands belonging to the state and withdrawn from sale under the provisions of this chapter. These improvements shall not interfere with access to or use of such public lands or facilities by the general public and shall benefit the public in terms of safety, recreation, aesthetics, or wildlife or natural area preservation. These improvements on public lands and facilities shall be for the use of all members of the general public. [1999 c 59 § 2; 1982 c 156 § 1; 1965 c 8 § 43.51.130. Prior: 1929 c 83 § 1; RRS § 10946-1. Formerly RCW 43.51.130.]

**79A.05.145 Application for permit.** Any such individual, group, organization, agency, club, or association desiring to obtain such permit shall make application therefor in writing to the commission, describing the lands proposed to be improved and stating the nature of the proposed improvement. [1999 c 59 § 3; 1982 c 156 § 2; 1965 c 8 § 43.51.140. Prior: 1929 c 83 § 2; RRS § 10946-2. Formerly RCW 43.51.140.]

**79A.05.150 Plans and specifications.** If the state parks and recreation commission determines that the proposed improvement will substantially alter a park, parkway, or park land, it shall require the applicant to submit detailed plans and specifications of the proposed improvement, which, as submitted, or as modified by the state parks and recreation commission, shall be incorporated in the permit when granted. [1982 c 156 § 3; 1965 c 8 § 43.51.150. Prior: 1929 c 83 § 3; RRS § 10946-3. Formerly RCW 43.51.150.]

**79A.05.155 Surety bond.** If the commission determines it necessary, the applicant shall execute and file with the secretary of state a bond payable to the state, in such penal sum as the commission shall require, with good and sufficient

sureties to be approved by the commission, conditioned that the grantee of the permit will make the improvement in accordance with the plans and specifications contained in the permit, and, in case the improvement is made upon lands withdrawn from sale under the provisions of RCW 79A.05.105, will pay into the state treasury to the credit of the fund to which the proceeds of the sale of such lands would belong, the appraised value of all merchantable timber and material on the land, destroyed, or used in making such improvement. [2000 c 11 § 31; 1982 c 156 § 4; 1965 c 8 § 43.51.160. Prior: 1929 c 83 § 4; RRS § 10946-4. Formerly RCW 43.51.160.]

**79A.05.160 Police powers vested in commission and employees.** The members of the state parks and recreation commission and such of its employees as the commission may designate shall be vested with police powers to enforce the laws of this state. [1965 c 8 § 43.51.170. Prior: 1921 c 149 § 7; RRS § 10947. Formerly RCW 43.51.170.]

**79A.05.165 Penalties. (Expires December 1, 2010.)**

(1) Every person is guilty of a misdemeanor who:

(a) Cuts, breaks, injures, destroys, takes, or removes any tree, shrub, timber, plant, or natural object in any park or parkway except as authorized in section 1, chapter 83, Laws of 2008 or in accordance with such rules as the commission may prescribe; or

(b) Kills, or pursues with intent to kill, any bird or animal in any park or parkway except in accordance with a research pass, permit, or other approval issued by the commission, pursuant to rule, for scientific research purposes; or

(c) Takes any fish from the waters of any park or parkway, except in conformity with such general rules as the commission may prescribe; or

(d) Willfully mutilates, injures, defaces, or destroys any guidepost, notice, tablet, fence, inclosure, or work for the protection or ornamentation of any park or parkway; or

(e) Lights any fire upon any park or parkway, except in such places as the commission has authorized, or willfully or carelessly permits any fire which he or she has lighted or which is under his or her charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments, or improvements upon any park or parkway, or leaves any campfire which he or she has lighted or which has been left in his or her charge, unattended by a competent person, without extinguishing it; or

(f) Places within any park or parkway or affixes to any object therein contained, without a written license from the commission, any word, character, or device designed to advertise any business, profession, article, thing, exhibition, matter, or event.

(2)(a) Except as provided in (b) of this subsection, a person who violates any rule adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter is guilty of a misdemeanor.

(b) The commission may specify by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW. [2008 c 83 § 2; 2007 c 441 § 2; 2003 c 53 § 382; 1997 c 214 § 1; 1987 c 380

§ 15; 1965 c 8 § 43.51.180. Prior: 1921 c 149 § 8; RRS § 10948. Formerly RCW 43.51.180.]

**Expiration date—2008 c 83:** "This act expires December 1, 2010." [2008 c 83 § 3.]

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

**Effective date—Severability—1987 c 380:** See RCW 7.84.900 and 7.84.901.

**79A.05.165 Penalties. (Effective December 1, 2010.)**

(1) Every person is guilty of a misdemeanor who:

(a) Cuts, breaks, injures, destroys, takes, or removes any tree, shrub, timber, plant, or natural object in any park or parkway except in accordance with such rules as the commission may prescribe; or

(b) Kills, or pursues with intent to kill, any bird or animal in any park or parkway except in accordance with a research pass, permit, or other approval issued by the commission, pursuant to rule, for scientific research purposes; or

(c) Takes any fish from the waters of any park or parkway, except in conformity with such general rules as the commission may prescribe; or

(d) Willfully mutilates, injures, defaces, or destroys any guidepost, notice, tablet, fence, inclosure, or work for the protection or ornamentation of any park or parkway; or

(e) Lights any fire upon any park or parkway, except in such places as the commission has authorized, or willfully or carelessly permits any fire which he or she has lighted or which is under his or her charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments, or improvements upon any park or parkway, or leaves any campfire which he or she has lighted or which has been left in his or her charge, unattended by a competent person, without extinguishing it; or

(f) Places within any park or parkway or affixes to any object therein contained, without a written license from the commission, any word, character, or device designed to advertise any business, profession, article, thing, exhibition, matter, or event.

(2)(a) Except as provided in (b) of this subsection, a person who violates any rule adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter is guilty of a misdemeanor.

(b) The commission may specify by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 7.84 RCW. [2007 c 441 § 2; 2003 c 53 § 382; 1997 c 214 § 1; 1987 c 380 § 15; 1965 c 8 § 43.51.180. Prior: 1921 c 149 § 8; RRS § 10948. Formerly RCW 43.51.180.]

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

**Effective date—Severability—1987 c 380:** See RCW 7.84.900 and 7.84.901.

**79A.05.170 Transfer of surplus land—Reversionary clause required—Release—Parkland acquisition account.** (1) Any lands owned by the state parks and recreation commission, which are determined to be surplus to the needs of the state for development for state park purposes and which the commission proposes to deed to a local government or other entity, shall be accompanied by a clause requir-

ing that if the land is not used for outdoor recreation purposes, ownership of the land shall revert to the state parks and recreation commission.

(2) The state parks and recreation commission, in cases where land subject to such a reversionary clause is proposed for use or disposal for purposes other than recreation, shall require that, if the land is surplus to the needs of the commission for park purposes at the time the commission becomes aware of its proposed use for nonrecreation purposes, the holder of the land or property shall reimburse the commission for the release of the reversionary interest in the land. The reimbursement shall be in the amount of the fair market value of the reversionary interest as determined by a qualified appraiser agreeable to the commission. Appraisal costs shall be borne by the local entity which holds title to the land.

(3) Any funds generated under a reimbursement under this section shall be deposited in the parkland acquisition account which is hereby created in the state treasury. Moneys in this account are to be used solely for the purchase or acquisition of property for use as state park property by the commission, as directed by the legislature; all such funds shall be subject to legislative appropriation. [1991 sp.s. c 13 § 23; 1985 c 57 § 33; 1984 c 87 § 1. Formerly RCW 43.51.200.]

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

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

**79A.05.175 Disposal of land not needed for park purposes.** Whenever the commission finds that any land under its control cannot advantageously be used for park purposes, it is authorized to dispose of such land by the method provided in this section or by the method provided in RCW 79A.05.170. If such lands are school or other grant lands, control thereof shall be relinquished by resolution of the commission to the proper state officials. If such lands were acquired under restrictive conveyances by which the state may hold them only so long as they are used for park purposes, they may be returned to the donor or grantors by the commission. All other such lands may be either sold by the commission to the highest bidder or exchanged for other lands of equal value by the commission, and all conveyance documents shall be executed by the governor. All such exchanges shall be accompanied by a transfer fee, to be set by the commission and paid by the other party to the transfer; such fee shall be paid into the parkland acquisition account established under RCW 79A.05.170. The commission may accept sealed bids, electronic bids, or oral bids at auction. Bids on all sales shall be solicited at least twenty days in advance of the sale date by an advertisement appearing at least once a week for two consecutive weeks in a newspaper of general circulation in the county in which the land to be sold is located. If the commission feels that no bid received adequately reflects the fair value of the land to be sold, it may reject all bids, and may call for new bids. All proceeds derived from the sale of such park property shall be paid into the park land acquisition account. All land considered for exchange shall be evaluated by the commission to determine its adaptability to park usage. The equal value of all lands exchanged shall first be determined by the appraisals to the satisfaction of the commission. No sale or exchange of state park lands shall be made without the unanimous consent of

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the commission. [2007 c 145 § 1; 1999 c 249 § 601; 1998 c 42 § 1; 1984 c 87 § 2; 1971 ex.s. c 246 § 1; 1969 c 99 § 3; 1965 c 8 § 43.51.210. Prior: 1953 c 64 § 1; 1947 c 261 § 1; RRS § 10951a. Formerly RCW 43.51.210.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.178 Real property disposal—Disputed land—Manner—Notice and hearing—Suit for noncompliance.** (1) Notwithstanding any other provision of this chapter, the commission may directly dispose of up to ten contiguous acres of real property, without public auction, to resolve trespass, property ownership disputes, and boundary adjustments with adjacent private property owners. Real property to be disposed of under this section may be disposed of only after appraisal and for at least fair market value, and only if the transaction is in the best interest of the state. The commission shall cooperate with potential purchasers to arrive at a mutually agreeable sales price. If necessary, determination of fair market value may include the use of separate independent appraisals by each party and the review of the appraisals, as agreed upon by the parties. All conveyance documents shall be executed by the governor. All proceeds from the disposal of the property shall be paid into the park land acquisition account. No disposal of real property may be made without the unanimous consent of the commission.

(2) Prior to the disposal of any real property under subsection (1) of this section, the commission shall hold a public hearing on the proposal in the county where the real property, or the greatest portion of the real property, is located. At least ten days, but not more than twenty-five days, prior to the hearing, the commission shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the real property is located. A news release concerning the public hearing must be disseminated among print and electronic media in the area where the real property is located. The public notice and news release shall also identify the real property involved in the proposed disposal and describe the purpose of the proposed disposal. A summary of the testimony presented at the public hearing shall be prepared for the commission's consideration when reviewing the proposed disposal of real property.

(3) If there is a failure to substantially comply with the procedures set out under this section, then the agreement to dispose of the real property is subject to being declared invalid by a court of competent jurisdiction. Such a suit must be brought within one year of the date of the real property disposal agreement. [2000 c 42 § 1.]

**79A.05.179 Notification requirements.** Actions under this chapter are subject to the notification requirements of RCW 43.17.400. [2007 c 62 § 11.]

**Finding—Intent—Severability—2007 c 62:** See notes following RCW 43.17.400.

**79A.05.180 Exchange of state land by commission—Public notice—News release—Hearing—Procedure.** Before the director of parks and recreation presents a pro-

posed exchange to the parks and recreation commission involving an exchange of state land pursuant to this chapter, the director shall hold a public hearing on the proposal in the county where the state lands or the greatest proportion thereof is located. Ten days but not more than twenty-five days prior to such hearing, the director shall publish a paid public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing, at least once in one or more daily newspapers of general circulation in the county and at least once in one or more weekly newspapers circulated in the area where the state owned land is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the state land is located. The public notice and news release also shall identify lands involved in the proposed exchange and describe the purposes of the exchange and proposed use of the lands involved. A summary of the testimony presented at the hearings shall be prepared for the commission's consideration when reviewing the director's exchange proposal. If there is a failure to substantially comply with the procedures set forth in this section, then the exchange agreement shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the exchange agreement. [1998 c 42 § 2; 1975 1st ex.s. c 107 § 1. Formerly RCW 43.51.215.]

*Exchange of land under control of department of natural resources, procedure: RCW 79.17.050.*

**79A.05.185 Small boat facilities for Puget Sound authorized.** To encourage the development of the Puget Sound country as a recreational boating area, the commission is authorized to establish landing, launch ramp, and other facilities for small pleasure boats at places on Puget Sound frequented by such boats and where the commission shall find such facilities will be of greatest advantage to the users of pleasure boats. The commission is authorized to acquire land or to make use of lands belonging to the state for such purposes, and to construct the necessary floats, launch ramp, and other desirable structures and to make such further development of any area used in connection therewith as in the judgment of the commission is best calculated to facilitate the public enjoyment thereof. [1999 c 249 § 904; 1965 c 8 § 43.51.220. Prior: 1949 c 154 § 1; RRS § 10768-4d. Formerly RCW 43.51.220.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.190 Recreational metal detectors—Available land.** (1) By September 1, 1997, the commission shall increase the area available for use by recreational metal detectors by at least two hundred acres.

(2) Beginning September 1, 1998, and each year thereafter until August 31, 2003, the commission shall increase the area of land available for use by recreational metal detectors by at least fifty acres. [1997 c 150 § 2. Formerly RCW 43.51.235.]

**Intent—1997 c 150:** "It is the intent of the legislature that those significant historic archaeological resources on state park lands that are of importance to the history of our state, or its communities, be protected for the people of the state. At the same time, the legislature also recognizes that the recreational use of metal detectors in state parks is a legitimate form of recreation that can be compatible with the protection of significant historic archaeological resources." [1997 c 150 § 1.]

**79A.05.195 Identification of historic archaeological resources in state parks—Plan—Availability of land for use by recreational metal detectors.** (1) The commission shall develop a cost-effective plan to identify historic archaeological resources in at least one state park containing a military fort located in Puget Sound. The plan shall include the use of a professional archaeologist and volunteer citizens.

(2) Any park land that is made available for use by recreational metal detectors under this section shall count toward the requirements established in RCW 79A.05.190. [1999 c 249 § 905; 1997 c 150 § 3. Formerly RCW 43.51.237.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.200 Certain tidelands transferred to commission.** The powers, functions, and duties heretofore exercised by the department of fish and wildlife, or its director, respecting the management, control, and operation of the following enumerated tidelands, which are presently suitable for public recreational use, are hereby transferred to the parks and recreation commission which shall also have respecting such tidelands all the powers conferred by this chapter, as now or hereafter amended, respecting parks and parkways:

Parcel No. 1. (Toandos Peninsula) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, and 3, section 5, lots 1, 2, and 3, section 4, and lot 1, section 3, all in township 25 north, range 1 west, W.M., with a frontage of 158.41 lineal chains, more or less.

Parcel No. 2. (Shine) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 2, 3 and that portion of lot 4 lying north of the south 8.35 chains thereof as measured along the government meander line, all in section 35, township 28 north, range 1 east, W.M., with a frontage of 76.70 lineal chains, more or less.

Subject to an easement for right-of-way for county road granted to Jefferson county December 8, 1941 under application No. 1731, records of department of public lands.

Parcel No. 3. (Mud Bay - Lopez Island) The tidelands of the second class, owned by the state of Washington situate in front of, adjacent to, or abutting upon lots 5, 6 and 7, section 18, lot 5, section 7 and lots 3, 4, and 5, section 8, all in township 34 north, range 1 west, W.M., with a frontage of 172.11 lineal chains, more or less.

Excepting, however, any tideland of the second class in front of said lot 3, section 8 conveyed through deeds issued April 14, 1909 pursuant to the provisions of chapter 24, Laws of 1895 under application No. 4985, records of department of public lands.

Parcel No. 4. (Spencer Spit) The tidelands of the second class, owned by the state of Washington, situate in front of, adjacent to, or abutting upon lots 1, 3, and 4, section 7, and lot 5, section 18 all in township 35 north, range 1 west, W.M., with a frontage of 118.80 lineal chains, more or less.

Parcel No. 5. (Lilliwaup) The tidelands of the second class, owned by the state of Washington, lying easterly of the east line of vacated state oyster reserve plat No. 133 produced southerly and situate in front of, adjacent to or abutting upon lot 9, section 30, lot 8, section 19 and lot 5 and the south 20 acres of lot 4, section 20, all in township 23 north, range 3 west, W.M., with a frontage of 62.46 lineal chains, more or

less. [2000 c 11 § 32; 1967 ex.s. c 96 § 1. Formerly RCW 43.51.240.]

**Severability—1967 ex.s. c 96:** "If any provision of this 1967 act, or its application to any person or circumstance is held invalid, the remainder of this 1967 act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 96 § 3.]

*Certain tidelands reserved for recreational use:* RCW 79.125.740.

**79A.05.205 Certain tidelands transferred to commission—Access to and from tidelands.** The state parks and recreation commission may take appropriate action to provide public and private access, including roads and docks, to and from the tidelands described in RCW 79A.05.200. [2000 c 11 § 33; 1967 ex.s. c 96 § 2. Formerly RCW 43.51.250.]

**79A.05.210 Sale of state trust lands—Terms and conditions.** (1) The department of natural resources and the commission shall have authority to negotiate sales to the commission, for park and outdoor recreation purposes, of trust lands at fair market value.

(2) The department of natural resources and the commission shall negotiate a sale to the commission of the lands and timber thereon identified in the joint study under section 4, chapter 163, Laws of 1985, and commonly referred to as the Point Lawrence trust property, San Juan county — on the extreme east point of Orcas Island. Timber conservation and management practices provided for in RCW 79A.05.035 and 79A.05.305 shall govern the management of land and timber transferred under this subsection as of the effective date of the transfer, upon payment for the property, and nothing in this chapter shall be construed as restricting or otherwise modifying the department of natural resources' management, control, or use of such land and timber until such date. [1999 c 249 § 906; 1995 c 211 § 4; 1992 c 185 § 1; 1988 c 79 § 1; 1987 c 466 § 1; 1985 c 163 § 1; 1981 c 271 § 1; 1980 c 4 § 1; 1971 ex.s. c 210 § 1. Formerly RCW 43.51.270.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Findings—Intent—Effective date—Severability—1995 c 211:** See notes following RCW 79A.05.070.

*Withdrawal of state trust lands for park and recreational purpose:* RCW 79A.50.080 through 79A.50.100.

**79A.05.215 State parks renewal and stewardship account.** The state parks renewal and stewardship account is created in the state treasury. Except as otherwise provided in this chapter, all receipts from user fees, concessions, leases, donations collected under RCW 46.16.076, and other state park-based activities shall be deposited into the account. Expenditures from the account may be used for operating state parks, developing and renovating park facilities, undertaking deferred maintenance, enhancing park stewardship, and other state park purposes. Expenditures from the account may be made only after appropriation by the legislature. [2007 c 340 § 2; 1995 c 211 § 7. Formerly RCW 43.51.275.]

**Findings—Intent—Effective date—Severability—1995 c 211:** See notes following RCW 79A.05.070.

**79A.05.220 Trust lands—Periodic review to identify parcels appropriate for transfer to commission.** The parks and recreation commission and the department of natural resources may periodically conduct a joint review of trust

lands managed by the department to identify those parcels which may be appropriate for transfer to the commission for public recreation purposes. [1987 c 466 § 3. Formerly RCW 43.51.285.]

*Escheat land suitable for park purposes:* RCW 79.10.030.

**79A.05.225 Winter recreational facilities—Commission duties—Liability.** In addition to its other powers, duties, and functions the commission may:

(1) Plan, construct, and maintain suitable facilities for winter recreational activities on lands administered or acquired by the commission or as authorized on lands administered by other public agencies or private landowners by agreement;

(2) Provide and issue upon payment of the proper fee, under RCW 79A.05.230, 79A.05.240, and 46.61.585, with the assistance of such authorized agents as may be necessary for the convenience of the public, special permits to park in designated winter recreational area parking spaces;

(3) Administer the snow removal operations for all designated winter recreational area parking spaces; and

(4) Compile, publish, and distribute maps indicating such parking spaces, adjacent trails, and areas and facilities suitable for winter recreational activities.

The commission may contract with any public or private agency for the actual conduct of such duties, but shall remain responsible for the proper administration thereof. The commission is not liable for unintentional injuries to users of lands administered for winter recreation purposes under this section or under RCW 46.10.210, whether the lands are administered by the commission, by other public agencies, or by private landowners through agreement with the commission. Nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. A road covered with snow and groomed for the purposes of winter recreation consistent with this chapter and chapter 46.10 RCW shall not be presumed to be a known dangerous artificial latent condition for the purposes of this chapter. [1999 c 249 § 1401. Prior: 1990 c 136 § 2; 1990 c 49 § 2; 1982 c 11 § 1; 1975 1st ex.s. c 209 § 1. Formerly RCW 43.51.290.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Severability—1975 1st ex.s. c 209:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 209 § 9.]

**79A.05.230 Winter recreational area parking permits—Fee—Expiration.** The fee for the issuance of special winter recreational area parking permits shall be determined by the commission after consultation with the winter recreation advisory committee. If the person making application therefor is also the owner of a snowmobile registered pursuant to chapter 46.10 RCW, there shall be no fee for the issuance of an annual permit. All special winter recreational area parking permits shall commence and expire on the dates established by the commission. [1990 c 49 § 3; 1986 c 47 § 1; 1982 c 11 § 2; 1975 1st ex.s. c 209 § 2. Formerly RCW 43.51.300.]

**Severability—1975 1st ex.s. c 209:** See note following RCW 79A.05.225.

**79A.05.235 Winter recreational program account—Deposit of parking permit fees—Winter recreation programs by public and private agencies.** There is hereby created the winter recreational program account in the state treasury. Special winter recreational area parking permit fees collected under this chapter shall be remitted to the state treasurer to be deposited in the winter recreational program account and shall be appropriated only to the commission for nonsnowmobile winter recreation purposes including the administration, acquisition, development, operation, planning, and maintenance of winter recreation facilities and the development and implementation of winter recreation, safety, enforcement, and education programs. The commission may accept gifts, grants, donations, or moneys from any source for deposit in the winter recreational program account.

Any public agency in this state may develop and implement winter recreation programs. The commission may make grants to public agencies and contract with any public or private agency or person to develop and implement winter recreation programs. [1991 sp.s. c 13 § 6; 1985 c 57 § 35; 1982 c 11 § 3; 1975 1st ex.s. c 209 § 3. Formerly RCW 43.51.310.]

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

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

**Severability—1975 1st ex.s. c 209:** See note following RCW 79A.05.225.

**79A.05.240 Winter recreational parking areas—Restriction of overnight parking.** The commission may, after consultation with the winter recreation advisory committee, adopt rules and regulations prohibiting or restricting overnight parking at any special state winter recreational parking areas owned or administered by it. Where such special state winter recreational parking areas are administered by the commission pursuant to an agreement with other public agencies, such agreement may provide for prohibition or restriction of overnight parking. [1982 c 11 § 4; 1975 1st ex.s. c 209 § 4. Formerly RCW 43.51.320.]

**Severability—1975 1st ex.s. c 209:** See note following RCW 79A.05.225.

**79A.05.245 Penalty for violation of RCW 79A.05.240 or 46.61.585.** See RCW 46.61.587.

**79A.05.250 Winter recreational parking areas—Rules.** The commission may adopt such rules as are necessary to implement and enforce RCW 79A.05.225 through 79A.05.240 and 46.61.585 after consultation with the winter recreation advisory committee. [2000 c 11 § 34; 1982 c 11 § 5; 1975 1st ex.s. c 209 § 7. Formerly RCW 43.51.330.]

**Severability—1975 1st ex.s. c 209:** See note following RCW 79A.05.225.

**79A.05.255 Winter recreation advisory committee—Generally.** (1) There is created a winter recreation advisory committee to advise the parks and recreation commission in the administration of this chapter and to assist and advise the

commission in the development of winter recreation facilities and programs.

(2) The committee shall consist of:

(a) Six representatives of the nonsnowmobiling winter recreation public appointed by the commission, including a resident of each of the six geographical areas of this state where nonsnowmobiling winter recreation activity occurs, as defined by the commission.

(b) Three representatives of the snowmobiling public appointed by the commission.

(c) One representative of the department of natural resources, one representative of the department of fish and wildlife, and one representative of the Washington state association of counties, each of whom shall be appointed by the director of the particular department or association.

(3) The terms of the members appointed under subsection (2)(a) and (b) of this section shall begin on October 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies for the remainder of the unexpired term: PROVIDED, That the first of these members shall be appointed for terms as follows: Three members shall be appointed for one year, three members shall be appointed for two years, and three members shall be appointed for three years.

(4) Members of the committee shall be reimbursed from the winter recreational program account created by RCW 79A.05.235 for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The committee shall meet at times and places it determines not less than twice each year and additionally as required by the committee chair or by majority vote of the committee. The chair of the committee shall be chosen under procedures adopted by the committee. The committee shall adopt any other procedures necessary to govern its proceedings.

(6) The director of parks and recreation or the director's designee shall serve as secretary to the committee and shall be a nonvoting member. [2000 c 48 § 1; 2000 c 11 § 35; 1994 c 264 § 19; 1990 c 49 § 1; 1989 c 175 § 107; 1988 c 36 § 16; 1987 c 330 § 1101; 1986 c 47 § 2; 1982 c 11 § 6; 1975 1st ex.s. c 209 § 8. Formerly RCW 43.51.340.]

**Reviser's note:** This section was amended by 2000 c 11 § 35 and by 2000 c 48 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1989 c 175:** See note following RCW 34.05.010.

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

**Severability—1975 1st ex.s. c 209:** See note following RCW 79A.05.225.

**79A.05.260 Sun Lakes state park—"Vic Meyers Golf Course" designation—"Vic Meyers Lake" designation.** The legislature hereby names the golf course located at Sun Lakes State Park the "Vic Meyers Golf Course", and Rainbow Lake shall be re-named "Vic Meyers Lake". The state shall provide and install a proper marker in a suitable location in the main activity area of the park which will set forth the key role Victor Aloysius Meyers had in the development of Sun Lakes State Park and the important part he had for many years in the political and governmental history of the state. In

addition, the name hereby established for the golf course shall be prominently displayed at the golf course club house.

The legislature finds it appropriate to so honor Victor Aloysius Meyers for his long and dedicated service to the people of this state. [1977 ex.s. c 266 § 1. Formerly RCW 43.51.350.]

**79A.05.265 Hostels—Legislative declaration of intent.** The legislature finds that there is a need for hostels in the state for the safety and welfare of transient persons with limited resources. It is the intent of RCW 79A.05.265 through 79A.05.275 that such facilities be established using locally donated structures. It is the further intent of RCW 79A.05.265 through 79A.05.275 that the state dispense any available federal or other moneys for such related projects and provide assistance where possible. [2000 c 11 § 36; 1977 ex.s. c 281 § 1. Formerly RCW 43.51.360.]

**79A.05.270 "Hostel" defined.** For purposes of \*this chapter, "hostel" means a simple basic structure that serves as a safe, low-cost accommodation for mobile people of all ages from this country and abroad. [1977 ex.s. c 281 § 2. Formerly RCW 43.51.365.]

**\*Reviser's note:** "This chapter" apparently refers to RCW 43.51.360 through 43.51.375; which were subsequently recodified as RCW 79A.05.265 through 79A.05.280 pursuant to 1999 c 249 § 1601.

**79A.05.275 Hostels—Authority of political subdivisions to establish.** Any political subdivision of the state is authorized to establish hostels within its jurisdiction. The facilities and services shall include, but not be limited to:

- (1) Short term sleeping accommodations including adequate restroom and bathing facilities; and
- (2) Information and referral services, including, but not limited to availability of employment and health services.

Details of operations and regulations, including the establishment of appropriate fees to recover actual operating and maintenance costs, shall be within the discretion of the operating authority: PROVIDED, That the consumption of alcoholic beverages or the possession or use of a controlled substance in violation of chapter 69.50 RCW shall be prohibited. [1977 ex.s. c 281 § 3. Formerly RCW 43.51.370.]

**79A.05.280 Hostels—Commission authorized to accept grants or moneys for the support thereof—Rules required.** The parks and recreation commission is authorized to accept grants or moneys from any federal or private source for support of hostels. The commission at its discretion is directed to apportion and transfer any such moneys to contracting agencies or political subdivisions which operate hostels: PROVIDED, That the commission shall establish rules and regulations for the operation of hostels which are substantially similar to the operating standards and customs established by the American Youth Hostels Incorporated. [1977 ex.s. c 281 § 4. Formerly RCW 43.51.375.]

**79A.05.285 Land evaluation, acquisition.** The commission is authorized to evaluate and acquire land under \*RCW 79.01.612 in cooperation with the department of natural resources. [1999 c 249 § 907.]

**\*Reviser's note:** RCW 79.01.612 was recodified as RCW 79.10.030 pursuant to 2003 c 334 § 555.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.290 Acquisition of land held by department of natural resources.** The commission may select land held by the department of natural resources for acquisition under RCW 79A.50.010 et seq. [1999 c 249 § 908.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.300 Establishment of urban area state parks by parks and recreation commission.** For the reasons specified in RCW 79A.25.250, the state parks and recreation commission shall place a high priority on the establishment of urban area state parks and shall revise its plan for future state parks to achieve this priority. This section shall be implemented by January 1, 1981. [2000 c 11 § 37; 1980 c 89 § 4. Formerly RCW 43.51.385.]

**79A.05.305 Declaration of policy—Lands for public park purposes.** The legislature declares that it is the continuing policy of the state of Washington to set aside and manage certain lands within the state for public park purposes. To comply with public park purposes, these lands shall be acquired and managed to:

- (1) Maintain and enhance ecological, aesthetic, and recreational purposes;
- (2) Preserve and maintain mature and old-growth forests containing trees of over ninety years and other unusual ecosystems as natural forests or natural areas, which may also be used for interpretive purposes;
- (3) Protect cultural and historical resources, locations, and artifacts, which may also be used for interpretive purposes;
- (4) Provide a variety of recreational opportunities to the public, including but not limited to use of developed recreation areas, trails, and natural areas;
- (5) Preserve and maintain habitat which will protect and promote endangered, threatened, and sensitive plants, and endangered, threatened, and sensitive animal species; and
- (6) Encourage public participation in the formulation and implementation of park policies and programs. [1984 c 82 § 2. Formerly RCW 43.51.395.]

**79A.05.310 Powers and duties—Program of boating safety education—Casualty and accident reporting program.** The state parks and recreation commission shall:

- (1) Coordinate a statewide program of boating safety education using to the maximum extent possible existing programs offered by the United States power squadron and the United States coast guard auxiliary;
- (2) Adopt rules in accordance with chapter 34.05 RCW, consistent with United States coast guard regulations, standards, and precedents, as needed for the efficient administration and enforcement of this section;
- (3) Enter into agreements aiding the administration of this chapter;
- (4) Adopt and administer a casualty and accident reporting program consistent with United States coast guard regulations;

(5) Adopt and enforce recreational boating safety rules, including but not necessarily limited to equipment and navigating requirements, consistent with United States coast guard regulations;

(6) Coordinate with local and state agencies the development of biennial plans and programs for the enhancement of boating safety, safety education, and enforcement of safety rules and laws; allocate money appropriated to the commission for these programs as necessary; and accept and administer any public or private grants or federal funds which are obtained for these purposes under chapter 43.88 RCW; and

(7) Take additional actions necessary to gain acceptance of a program of boating safety for this state under the federal boating safety act of 1971. [1998 c 245 § 66; 1994 c 151 § 3; 1984 c 183 § 4; 1983 2nd ex.s. c 3 § 52. Formerly RCW 43.51.400.]

*Penalties for violations: RCW 88.02.110.*

**79A.05.315 Milwaukee Road corridor—Transfer of management control to commission.** Management control of the portion of the Milwaukee Road corridor, beginning at the western terminus near Easton and concluding at the west end of the bridge structure over the Columbia river, which point is located in section 34, township 16 north, range 23 east, W.M., inclusive of the northerly spur line therefrom, shall be transferred by the department of natural resources to the state parks and recreation commission at no cost to the commission. [1989 c 129 § 1; (2000 c 11 § 38; 1996 c 129 § 7 expired July 1, 2006); 1984 c 174 § 2. Formerly RCW 43.51.405.]

**Contingent expiration date—1996 c 129 §§ 7 and 8:** "Sections 7 and 8, chapter 129, Laws of 1996 expire July 1, 2006, if the department of transportation does not enter into a franchise agreement for a rail line over portions of the Milwaukee Road corridor by July 1, 2006." [1999 c 301 § 5; 1996 c 129 § 11.]

**Construction—1989 c 129:** "Nothing in this act shall be construed to affect any existing or reversionary interests in the real property lying within the Milwaukee Road corridor." [1989 c 129 § 4.]

**Purpose—1984 c 174:** "The purpose of RCW 43.51.405 through 43.51.411 and 79.08.275 through 79.08.283 is to set forth the state's policy regarding the approximately two hundred thirteen-mile corridor of land purchased by the state from the Milwaukee Railroad Company under section 17(21), chapter 143, Laws of 1981." [1984 c 174 § 1.]

**79A.05.320 Milwaukee Road corridor—Duties.** The state parks and recreation commission shall do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Manage the corridor as a recreational trail except when closed under RCW 79A.05.325;

(2) Close the corridor to hunting;

(3) Close the corridor to all motorized vehicles except: (a) Emergency or law enforcement vehicles; (b) vehicles necessary for access to utility lines; and (c) vehicles necessary for maintenance of the corridor, or construction of the trail;

(4) Comply with legally enforceable conditions contained in the deeds for the corridor;

(5) Control weeds under the applicable provisions of chapters 17.04, 17.06, and 17.10 RCW; and

(6) Clean and maintain culverts. [2000 c 11 § 39; 1987 c 438 § 39; 1984 c 174 § 3. Formerly RCW 43.51.407.]

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79A.05.325 Milwaukee Road corridor—Additional duties.** The state parks and recreation commission may do the following with respect to the portion of the Milwaukee Road corridor under its control:

(1) Enter into agreements to allow the realignment or modification of public roads, farm crossings, water conveyance facilities, and other utility crossings;

(2) Regulate activities and restrict uses, including, but not limited to, closing portions of the corridor to reduce fire danger or protect public safety;

(3) Place hazard warning signs and close hazardous structures;

(4) Renegotiate deed restrictions upon agreement with affected parties; and

(5) Approve and process the sale or exchange of lands or easements if such a sale or exchange will not adversely affect the recreational potential of the corridor; and

(6) Manage the portion of the Milwaukee Road corridor lying between the eastern corporate limits of the city of Kittitas and the eastern end of the corridor under commission control for recreational access limited to holders of permits issued by the commission. The commission shall, for the purpose of issuing permits for corridor use, adopt rules necessary for the orderly and safe use of the corridor and the protection of adjoining landowners, which may include restrictions on the total numbers of permits issued, numbers in a permitted group, and periods during which the corridor is available for permitted users. The commission may increase recreational management of this portion of the corridor and eliminate the permit system as it determines in its discretion based upon available funding and other resources. [1989 c 129 § 3; 1984 c 174 § 4. Formerly RCW 43.51.409.]

**Construction—1989 c 129:** See note following RCW 79A.05.315.

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79A.05.330 Recreation trail on Milwaukee Road corridor.** The state parks and recreation commission shall identify opportunities and encourage volunteer work, private contributions, and support from tax-exempt foundations to develop, operate, and maintain the recreation trail on the portion of the Milwaukee Road under its control. [1984 c 174 § 5. Formerly RCW 43.51.411.]

**Purpose—1984 c 174:** See note following RCW 79A.05.315.

**79A.05.335 Environmental interpretation—Authority of commission.** The legislature finds that the lands owned and managed by the state parks and recreation commission are a significant collection of valuable natural, historical, and cultural resources for the citizens of Washington state. The legislature further finds that if citizens understand and appreciate the state park ecological resources, they will come to appreciate and understand the ecosystems and natural resources throughout the state. Therefore, the state parks and recreation commission may increase the use of its facilities and resources to provide environmental interpretation throughout the state parks system. [1991 c 107 § 1. Formerly RCW 43.51.415.]

**79A.05.340 Environmental interpretation—Scope of activities.** The state parks and recreation commission may

provide environmental interpretative activities for visitors to state parks that:

- (1) Explain the functions, history, and cultural aspects of ecosystems;
- (2) Explain the relationship between human needs, human behaviors and attitudes, and the environment; and
- (3) Offer experiences and information to increase citizen appreciation and stewardship of the environment and its multiple uses. [1991 c 107 § 2. Formerly RCW 43.51.417.]

**79A.05.345 Environmental interpretation—Assistance from other organizations.** The state parks and recreation commission may consult and enter into agreements with and solicit assistance from private sector organizations and other governmental agencies that are interested in conserving and interpreting Washington's environment. The commission shall not permit commercial advertising in state park lands or interpretive centers as a condition of such agreements. Logos or credit lines for sponsoring organizations may be permitted. The commission shall maintain an accounting of all monetary gifts provided, and expenditures of monetary gifts shall not be used to increase personnel. [1991 c 107 § 3. Formerly RCW 43.51.419.]

**79A.05.351 Outdoor education and recreation grant program—Creation—Establish and implement program by rule—Advisory committee—Account.** (1) The outdoor education and recreation grant program is hereby created, subject to the availability of funds in the outdoor education and recreation account. The commission shall establish and implement the program by rule to provide opportunities for public agencies, private nonprofit organizations, formal school programs, nonformal after-school programs, and community-based programs to receive grants from the account. Programs that provide outdoor education opportunities to schools shall be fully aligned with the state's essential academic learning requirements.

(2) The program shall be phased in beginning with the schools and students with the greatest needs in suburban, rural, and urban areas of the state. The program shall focus on students who qualify for free and reduced-price lunch, who are most likely to fail academically, or who have the greatest potential to drop out of school.

(3) The director shall set priorities and develop criteria for the awarding of grants to outdoor environmental, ecological, agricultural, or other natural resource-based education and recreation programs considering at least the following:

- (a) Programs that contribute to the reduction of academic failure and dropout rates;
- (b) Programs that make use of research-based, effective environmental, ecological, agricultural, or other natural resource-based education curriculum;
- (c) Programs that contribute to healthy life styles through outdoor recreation and sound nutrition;
- (d) Various Washington state parks as venues and use of the commission's personnel as a resource;
- (e) Programs that maximize the number of participants that can be served;
- (f) Programs that will commit matching and in-kind resources;

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(g) Programs that create partnerships with public and private entities;

(h) Programs that provide students with opportunities to directly experience and understand nature and the natural world; and

(i) Programs that include ongoing program evaluation, assessment, and reporting of their effectiveness.

(4) The director shall create an advisory committee to assist and advise the commission in the development and administration of the outdoor education and recreation program. The director should solicit representation on the committee from the office of the superintendent of public instruction, the department of fish and wildlife, the business community, outdoor organizations with an interest in education, and any others the commission deems sufficient to ensure a cross section of stakeholders. When the director creates such an advisory committee, its members shall be reimbursed from the outdoor education and recreation program account for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The outdoor education and recreation program account is created in the custody of the state treasurer. Funds deposited in the outdoor education and recreation program account shall be transferred only to the commission to be used solely for the commission's outdoor education and recreation program purposes identified in this section including the administration of the program. The director may accept gifts, grants, donations, or moneys from any source for deposit in the outdoor education and recreation program account. Any public agency in this state may develop and implement outdoor education and recreation programs. The director may make grants to public agencies and contract with any public or private agency or person to develop and implement outdoor education and recreation programs. The outdoor education and recreation program account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2007 c 176 § 2.]

**Intent—2007 c 176:** "It is the intent of the legislature to establish an outdoor education and recreation program to provide a large number of underserved students with quality opportunities to directly experience the natural world. It is the intent of the program to improve students' overall academic performance, self-esteem, personal responsibility, community involvement, personal health, and understanding of nature. Further, it is the intent of the program to empower local communities to engage students in outdoor education and recreation experiences." [2007 c 176 § 1.]

## UNDERWATER PARKS

**79A.05.355 Underwater parks—Lead agency.** The state parks and recreation commission shall act as the lead agency for the establishment of underwater parks in state waters and for environmental reviews of projects necessary to establish underwater parks. The commission may enter into interagency agreements to facilitate timely receipt of necessary permits from other state agencies and local governments. [1993 c 267 § 1. Formerly RCW 43.51.430.]

**79A.05.360 Underwater parks—Authority to establish—Powers and duties.** The commission may establish a system of underwater parks to provide for diverse recreational diving opportunities and to conserve and protect

unique marine resources of the state of Washington. In establishing and maintaining an underwater park system, the commission may:

- (1) Plan, construct, and maintain underwater parks;
- (2) Acquire property and enter management agreements with other units of state government for the management of lands, tidelands, and bedlands as underwater parks;
- (3) Construct artificial reefs and other underwater features to enhance marine life and recreational uses of an underwater park;
- (4) Accept gifts and donations for the benefit of underwater parks;
- (5) Facilitate private efforts to construct artificial reefs and underwater parks;
- (6) Work with the federal government, local governments and other appropriate agencies of state government, including but not limited to: The department of natural resources, the department of fish and wildlife and the natural heritage council to carry out the purposes of this chapter; and
- (7) Contract with other state agencies or local governments for the management of an underwater park unit. [1999 c 249 § 1301; 1994 c 264 § 20; 1993 c 267 § 2. Formerly RCW 43.51.432.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.370 Underwater parks—Diverse recreational opportunity.** In establishing an underwater park system, the commission shall seek to create diverse recreational opportunities in areas throughout Washington state. The commission shall place a high priority upon creating units that possess unique or diverse marine life or underwater natural or artificial features such as shipwrecks. [1993 c 267 § 4. Formerly RCW 43.51.436.]

**79A.05.375 Underwater parks—Liability.** The commission is not liable for unintentional injuries to users of underwater parks, whether the facilities are administered by the commission or by another entity or person. However, nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. [1993 c 267 § 5. Formerly RCW 43.51.438.]

#### WATER TRAIL RECREATION PROGRAM

**79A.05.380 Water trail recreation program—Created.** The legislature recognizes the increase in water-oriented recreation by users of human and wind-powered, beachable vessels such as kayaks, canoes, or day sailors on Washington's waters. These recreationists frequently require overnight camping facilities along the shores of public or private beaches. The legislature now creates a water trail recreation program, to be administered by the Washington state parks and recreation commission. The legislature recognizes that the effort to develop water trail sites is a continuing need and that the commission provides beneficial expertise and consultation to water trail user groups, agencies, and private landowners for the existing Cascadia marine trail and Wil-

lapa Bay water trail. [2003 c 338 § 1; 1993 c 182 § 1. Formerly RCW 43.51.440.]

**79A.05.385 Water trail recreation program—Powers and duties.** In addition to its other powers, duties, and functions, the commission may:

- (1) Plan, construct, and maintain suitable facilities for water trail activities on lands administered or acquired by the commission or as authorized on lands administered by tribes or other public agencies or private landowners by agreement.
- (2) Compile, publish, distribute, and charge a fee for maps or other forms of public information indicating areas and facilities suitable for water trail activities.
- (3) Contract with a public agency, private entity, or person for the actual conduct of these duties.
- (4) Work with individuals or organizations who wish to volunteer their time to support the water trail recreation program.
- (5) Provide expertise and consultation to individuals, agencies, and organizations in the continued development of water trail sites in this state. [2003 c 338 § 2; 2003 c 126 § 601; 1993 c 182 § 2. Formerly RCW 43.51.442.]

**Reviser's note:** This section was amended by 2003 c 126 § 601 and by 2003 c 338 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Part headings not law—2003 c 126:** "Part headings used in this act are not any part of the law." [2003 c 126 § 1001.]

**Effective date—2003 c 126:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 126 § 1003.]

**79A.05.390 Water trail recreation program—Grants.** The commission may make water trail program grants to public agencies or tribal governments and may contract with any public agency, tribal government, entity, or person to develop and implement water trail programs. [1993 c 182 § 3. Formerly RCW 43.51.444.]

**79A.05.395 Water trail recreation program—Liability.** The commission is not liable for unintentional injuries to users of facilities administered for water trail purposes under this chapter, whether the facilities are administered by the commission or by any other entity or person. However, nothing in this section prevents the liability of the commission for injuries sustained by a user by reason of a known dangerous artificial latent condition for which warning signs have not been conspicuously posted. [1993 c 182 § 4. Formerly RCW 43.51.446.]

**79A.05.400 Water trail recreation program—Permits.**

**Reviser's note:** RCW 79A.05.400 was amended by 2003 c 126 § 602 without reference to its repeal by 2003 c 338 § 5. It has been decodified for publication purposes under RCW 1.12.025.

**79A.05.410 Water trail recreation program—Rules.** The commission may adopt rules to administer the water trail program and facilities on areas owned or administered by the commission. Where water trail facilities administered by other public or private entities are incorporated into the water

trail system, the rules adopted by those entities shall prevail. The commission is not responsible or liable for enforcement of these alternative rules. [2003 c 338 § 3; 2003 c 126 § 603; 1993 c 182 § 7. Formerly RCW 43.51.452.]

**Part headings not law—Effective date—2003 c 126:** See notes following RCW 79A.05.385.

**79A.05.415 Water trail recreation program—Violation.** Violation of the provisions of the commission's rules governing the use of water trail facilities and property shall constitute a civil infraction, punishable as provided under chapter 7.84 RCW. [1993 c 182 § 8. Formerly RCW 43.51.454.]

**79A.05.425 Water trail recreation program—Disposition of funds.** Any unspent balance of funds in the water trail program account created in \*RCW 79A.05.405 as of June 30, 2003, must be transferred to the state parks renewal and stewardship account created in RCW 79A.05.215. All receipts from sales of materials under RCW 79A.05.385 and all monetary civil penalties collected under RCW 79A.05.415 must be deposited in the state parks renewal and stewardship account. Any gifts, grants, donations, or moneys from any source received by the commission for the water trail program must also be deposited in the state parks renewal and stewardship account. Funds transferred or deposited into the state parks renewal and stewardship account under this section must be used solely for water trail program purposes. [2003 c 338 § 4.]

**\*Reviser's note:** RCW 79A.05.405 was repealed by 2003 c 338 § 5.

#### YOUTH DEVELOPMENT AND CONSERVATION CORPS

**79A.05.500 Declaration of purpose.** The purpose of RCW 79A.05.500 through 79A.05.530 is to provide: (1) The opportunity for healthful employment of youths in programs of conservation, developing, improving, and maintaining natural and artificial recreational areas for the welfare of the general public; (2) the opportunity for our youths to learn vocational and work skills, develop good work habits and a sense of responsibility and contribution to society, improvement in personal physical and moral well being, and an understanding and appreciation of nature. [2000 c 11 § 42; 1969 ex.s. c 96 § 1; 1965 c 8 § 43.51.500. Prior: 1961 c 215 § 1. Formerly RCW 43.51.500.]

**79A.05.505 Youth development and conservation division established—Supervisory personnel.** There is hereby created and established a youth development and conservation division within the commission. The commission shall appoint such supervisory personnel as necessary to carry out the purposes of RCW 79A.05.500 through 79A.05.530. [1999 c 249 § 1201; 1965 c 8 § 43.51.510. Prior: 1961 c 215 § 2. Formerly RCW 43.51.510.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.510 Composition of youth corps—Qualifications, conditions, period of enrollment, etc.** Composition of the corps shall consist of youths who are citizens of the

United States and residents of the state of Washington of good character and health, and who are not more than twenty-one years of age. In order to enroll, an individual must agree to comply with rules and regulations promulgated by the commission. The period of enrollment shall be for thirty, sixty or ninety days or for such shorter period as determined by the commission. If permitted by the commission an individual may reenroll. Enrollment shall basically be allocated on a percentage basis to each of the forty-nine legislative districts on the basis of the ratio that the population of each district bears to the total population of the state of Washington, but the commission may also take into account problems of substantial unemployment in certain areas. [1975 c 7 § 1; 1969 ex.s. c 96 § 3; 1965 c 8 § 43.51.530. Prior: 1961 c 215 § 3. Formerly RCW 43.51.530.]

**79A.05.515 Compensation—Quarters—Hospital services, etc.** (1) The minimum compensation shall be at the rate of twenty-five dollars per week, except that up to the minimum state wage may be paid on the basis of assigned leadership responsibilities or special skills.

(2) Enrollees shall be furnished quarters, subsistence, medical and hospital services, transportation, equipment, as the commission may deem necessary and appropriate for their needs. Such quarters, subsistence, and equipment may be furnished by any governmental or public agency.

(3) The compensation of enrollees of any program under this chapter may be paid biweekly. [1999 c 249 § 1202; 1982 c 70 § 1; 1975 c 7 § 2; 1965 c 8 § 43.51.540. Prior: 1961 c 215 § 5. Formerly RCW 43.51.540.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.520 Laws relating to hours, conditions of employment, civil service, etc., not applicable.** Existing provisions of law with respect to hours of work, rate of compensation, sick leave, vacation, civil service and unemployment compensation shall not be applicable to enrollees or temporary employees working under the provisions of RCW 79A.05.500 through 79A.05.530. [2000 c 11 § 43; 1965 c 8 § 43.51.550. Prior: 1961 c 215 § 6. Formerly RCW 43.51.550.]

**79A.05.525 Expenditures, gifts, government surplus materials.** The commission may expend such amounts as necessary for supplies, material and equipment to be used by enrollees in connection with their work, recreation, health, or welfare; the commission shall purchase government surplus materials, supplies and equipment when available and as needed.

The commission may accept any gifts, grants or contributions of money, material, lands, or personal property as it deems appropriate and may administer and dispose of them as it determines to be in the interests of the general public. [1965 c 8 § 43.51.560. Prior: 1961 c 215 § 7. Formerly RCW 43.51.560.]

**79A.05.530 Agreements with private persons to enroll additional people—Commercial activities prohibited—Authorized closures of area.** The commission may, by agreement with an individual or company enroll and

supervise additional young persons, who shall be furnished compensation, subsistence, quarters, supplies and materials by the cooperating private company or individual, to develop, maintain or improve natural and artificial recreational areas for the health and happiness of the general public. The corps shall not be engaged in the development, improvement or maintenance of a commercial recreational area or resort, and the individual or corporation entering such agreement with the commission shall make such improved areas available to the general public without cost for a period of at least five years. Private individuals may reserve the right to close the area during periods of fire hazard or during periods when excess damage would be caused by public use. [1975 c 7 § 3; 1973 1st ex.s. c 154 § 85; 1965 c 8 § 43.51.570. Prior: 1961 c 215 § 8. Formerly RCW 43.51.570.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**79A.05.535 Agreements with and acceptance of grants from federal government authorized.** The state parks and recreation commission is authorized to enter into agreements with and accept grants from the federal government for the support of any program within the purposes of RCW 79A.05.500 through 79A.05.530. [2000 c 11 § 44; 1965 ex.s. c 48 § 1. Formerly RCW 43.51.580.]

**79A.05.540 Agreements with and acceptance of grants from federal government authorized—Length of enrollment and compensation in accordance with federal standards authorized.** Notwithstanding the provisions of RCW 79A.05.510 and 79A.05.515, the commission may determine the length of enrollment and the compensation of enrollees in accordance with the standards of any federal act or regulation under which an agreement is made with, or a grant is received from the federal government pursuant to RCW 79A.05.535. [2000 c 11 § 45; 1965 ex.s. c 48 § 2. Formerly RCW 43.51.590.]

**79A.05.545 Conservation corps.** The commission shall cooperate in implementing and operating the conservation corps as required by chapter 43.220 RCW. [1999 c 249 § 701.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

## SEASHORE CONSERVATION AREA

**79A.05.600 Declaration of principles.** The beaches bounding the Pacific Ocean from the Straits of Juan de Fuca to Cape Disappointment at the mouth of the Columbia River constitute some of the last unspoiled seashore remaining in the United States. They provide the public with almost unlimited opportunities for recreational activities, like swimming, surfing and hiking; for outdoor sports, like hunting, fishing, clamming, and boating; for the observation of nature as it existed for hundreds of years before the arrival of white men; and for relaxation away from the pressures and tensions of modern life. In past years, these recreational activities have been enjoyed by countless Washington citizens, as well as by tourists from other states and countries. The number of people wishing to participate in such recreational activities grows annually. This increasing public pressure makes it nec-

essary that the state dedicate the use of the ocean beaches to public recreation and to provide certain recreational and sanitary facilities. Nonrecreational use of the beach must be strictly limited. Even recreational uses must be regulated in order that Washington's unrivaled seashore may be saved for our children in much the same form as we know it today. [1967 c 120 § 1. Formerly RCW 43.51.650.]

**Repeal and savings—1967 c 120:** "Chapter 78, Laws of 1929 (unmodified) is hereby repealed: PROVIDED, That the title of anyone who has purchased property under this act shall not be affected." [1967 c 120 § 10.]

**79A.05.605 Seashore conservation area—Established.** There is established for the recreational use and enjoyment of the public the Washington State Seashore Conservation Area. It shall include all lands now or hereafter under state ownership or control lying between Cape Disappointment and Leadbetter Point; between Toke Point and the South jetty on Point Chehalis; and between Damon Point and the Makah Indian Reservation and occupying the area between the line of ordinary high tide and the line of extreme low tide, as these lines now are or may hereafter be located, and, where applicable, between the Seashore Conservation Line, as established by survey of the Washington state parks and recreation commission and the line of extreme low tide, as these lines now are or may hereafter be located; and shall also include all state-owned nontrust accreted lands along the ocean: PROVIDED, That no such conservation area shall include any lands within the established boundaries of any Indian reservation. [1969 ex.s. c 55 § 1; 1967 c 120 § 2. Formerly RCW 43.51.655.]

**Construction—1969 ex.s. c 55:** "No provision of this 1969 amendatory act shall be construed as affecting any private or public property rights." [1969 ex.s. c 55 § 8.]

**79A.05.610 Jurisdiction over and administration of area.** Except as otherwise provided in RCW 79A.05.600 through 79A.05.630, the Washington State Seashore Conservation Area shall be under the jurisdiction of the Washington state parks and recreation commission, which shall administer RCW 79A.05.600 through 79A.05.630 in accordance with the powers granted it herein and under the appropriate provisions of this chapter. [2000 c 11 § 46; 1969 ex.s. c 55 § 2; 1967 c 120 § 3. Formerly RCW 43.51.660.]

**Construction—1969 ex.s. c 55:** See note following RCW 79A.05.605.

**79A.05.615 Principles and purposes to be followed in administering area.** The Washington state parks and recreation commission shall administer the Washington State Seashore Conservation Area in harmony with the broad principles set forth in RCW 79A.05.600. Where feasible, the area shall be preserved in its present state; everywhere it shall be maintained in the best possible condition for public use. All forms of public outdoor recreation shall be permitted and encouraged in the area, unless specifically excluded or limited by the commission. While the primary purpose in the establishment of the area is to preserve the coastal beaches for public recreation, other uses shall be allowed as provided in RCW 79A.05.600 through 79A.05.630, or when found not inconsistent with public recreational use by the Washington state parks and recreation commission. [2000 c 11 § 47; 1969 ex.s. c 55 § 3; 1967 c 120 § 4. Formerly RCW 43.51.665.]

**Construction—1969 ex.s. c 55:** See note following RCW 79A.05.605.

**79A.05.620 Cooperation and assistance of federal, state, and local agencies.** In administering the Washington State Seashore Conservation Area, the Washington state parks and recreation commission shall seek the cooperation and assistance of federal agencies, other state agencies, and local political subdivisions. All state agencies, and the governing officials of each local subdivision shall cooperate with the commission in carrying out its duties. Except as otherwise provided in RCW 79A.05.600 through 79A.05.630, and notwithstanding any other provision of law, other state agencies and local subdivisions shall perform duties in the Washington State Seashore Conservation Area which are within their normal jurisdiction, except when such performance clearly conflicts with the purposes of RCW 79A.05.600 through 79A.05.630. [2000 c 11 § 48; 1969 ex.s. c 55 § 4; 1967 c 120 § 5. Formerly RCW 43.51.670.]

**Construction—1969 ex.s. c 55:** See note following RCW 79A.05.605.

**79A.05.625 Powers and authority of department of fish and wildlife not interfered with.** Nothing in RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 shall be construed to interfere with the powers, duties and authority of the department of fish and wildlife to regulate the conservation or taking of food fish and shellfish. Nor shall anything in RCW 79A.05.600 through 79A.05.630 and 79A.05.635 through 79A.05.695 be construed to interfere with the powers, duties and authority of the department of fish and wildlife to regulate, manage, conserve, and provide for the harvest of wildlife within such area: PROVIDED, HOWEVER, That no hunting shall be permitted in any state park. [2000 c 11 § 49; 1994 c 264 § 22; 1988 c 75 § 17; 1987 c 506 § 92; 1983 c 3 § 109; 1969 ex.s. c 55 § 5; 1967 c 120 § 6. Formerly RCW 43.51.675.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Construction—1969 ex.s. c 55:** See note following RCW 79A.05.605.

**79A.05.630 Sale, lease, and disposal of lands within the Seashore Conservation Area.** Lands within the Seashore Conservation Area shall not be sold, leased, or otherwise disposed of, except as herein provided. The commission may, under authority granted in RCW 79A.05.175 and 79A.05.180, exchange state park lands in the Seashore Conservation Area for lands of equal value to be managed by the commission consistent with this chapter. Only state park lands lying east of the Seashore Conservation Line, as it is located at the time of exchange, may be so exchanged. The department of natural resources may lease the lands within the Washington State Seashore Conservation Area as well as the accreted lands along the ocean in state ownership for the exploration and production of oil and gas: PROVIDED, That oil drilling rigs and equipment will not be placed on the Seashore Conservation Area or state-owned accreted lands.

Sale of sand from accretions shall be made to supply the needs of cranberry growers for cranberry bogs in the vicinity and shall not be prohibited if found by the commission to be reasonable, and not generally harmful or destructive to the

character of the land: PROVIDED, That the commission may grant leases and permits for the removal of sands for construction purposes from any lands within the Seashore Conservation Area if found by the commission to be reasonable and not generally harmful or destructive to the character of the land: PROVIDED FURTHER, That net income from such leases shall be deposited in the state parks renewal and stewardship account. [2000 c 11 § 50; (2003 1st sp.s. c 26 § 929 expired June 30, 2005); 1997 c 137 § 4; 1995 c 203 § 1; 1988 c 75 § 18; 1969 ex.s. c 55 § 6; 1967 c 120 § 8. Formerly RCW 43.51.685.]

**Expiration date—Severability—Effective dates—2003 1st sp.s. c 26:** See notes following RCW 43.135.045.

**Effective date—1997 c 137:** See note following RCW 79A.05.055.

**Effective date—1995 c 203:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 203 § 2.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**Construction—1969 ex.s. c 55:** See note following RCW 79A.05.605.

**79A.05.635 Ocean beach recreation management plans—Cooperative program.** A cooperative program to provide recreation management plans for the ocean beaches that comprise the Seashore Conservation Area established by RCW 79A.05.605 is created. [2000 c 11 § 51; 1988 c 75 § 1. Formerly RCW 43.51.695.]

**Effective date—1988 c 75:** "This act shall take effect January 1, 1989." [1988 c 75 § 20.]

**79A.05.640 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply to RCW 79A.05.600 through 79A.05.695.

(1) "Local government" means a county, city, or town.

(2) "Ocean beaches" include the three ocean beaches described in RCW 79A.05.605.

(3) "Pedestrian use" means any use that does not involve a motorized vehicle. [2000 c 11 § 52; 1988 c 75 § 2. Formerly RCW 43.51.700.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.645 Local recreation management plans.** Local governments having a portion of the Seashore Conservation Area within their boundaries may, individually or through an agreement with other local governments located on the same ocean beach, adopt a recreation management plan which meets the requirements of RCW 79A.05.600 through 79A.05.695 for that portion of the ocean beach. The legislature hereby encourages adoption of a single plan for each beach. [2000 c 11 § 53; 1988 c 75 § 3. Formerly RCW 43.51.705.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.650 Reservation for pedestrian use—Restrictions on motorized traffic.** (1) Except as provided in RCW 79A.05.655 and 79A.05.660, a total of forty percent of the length of the beach subject to the recreation management plan shall be reserved for pedestrian use under this section and RCW 79A.05.665. Restrictions on motorized traffic under this section shall be from April 15th to the day following Labor day of each year. Local jurisdictions may adopt

provisions within recreation management plans that exceed the requirements of this section. The commission shall not require that a plan designate for pedestrian use more than forty percent of the land subject to the plan.

(2) In designating areas to be reserved for pedestrian use, the plan shall consider the following:

- (a) Public safety;
- (b) Statewide interest in recreational use of the ocean beaches;
- (c) Protection of shorebird and marine mammal habitats;
- (d) Preservation of native beach vegetation;
- (e) Protection of sand dune topography;
- (f) Prudent management of clam beds;
- (g) Economic impacts to the local community; and
- (h) Public access and parking availability. [2000 c 11 § 54; 1988 c 75 § 4. Formerly RCW 43.51.710.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.655 Areas reserved for pedestrian use—Exception.** Notwithstanding RCW 79A.05.650(1), recreation management plans may make provision for vehicular traffic on areas otherwise reserved for pedestrian use in order to:

- (1) Facilitate clam digging;
- (2) Accommodate organized recreational events of not more than seven consecutive days duration;
- (3) Provide for removal of wood debris under RCW 4.24.210 and 79A.05.035(5); and
- (4) Accommodate removal of sand located upland from the Seashore Conservation Area or removal of sand within the Seashore Conservation Area under the terms of a covenant, easement, or deed. [2000 c 11 § 55; 1988 c 75 § 5. Formerly RCW 43.51.715.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.660 Public vehicles.** Recreation management plans shall not prohibit or restrict public vehicles operated in the performance of official duties, vehicles responding to an emergency, or vehicles specially authorized by the director or the director's designee. [1999 c 249 § 1101; 1988 c 75 § 6. Formerly RCW 43.51.720.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.665 Land adjoining national wildlife refuges and state parks—Pedestrian use—Exception.** Recreation management plans shall, upon request of the commission, reserve on a permanent, seasonal, or temporary basis, land adjoining national wildlife refuges and state parks for pedestrian use. After a plan is approved, the commission may require local jurisdictions to adopt amendments to the plan governing driving on land adjoining wildlife refuges and state parks. Land reserved for pedestrian use under this section for at least the period from April 15th through the day following Labor Day of each year shall be included when determining compliance with the requirements of RCW 79A.05.650. [2000 c 11 § 56; 1988 c 75 § 7. Formerly RCW 43.51.725.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.670 Consultation with government agencies required.** In preparing, adopting, or approving a recreation management plan, local jurisdictions and the commission shall consult with the department of fish and wildlife and the United States fish and wildlife service. [1999 c 249 § 1102; 1988 c 75 § 8. Formerly RCW 43.51.730.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.675 Compliance with federal and state laws required.** Recreation management plans shall comply with all applicable federal and state laws. [1988 c 75 § 9. Formerly RCW 43.51.735.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.680 Hearings.** Before adopting a recreation management plan, or amendments to an existing plan, local jurisdictions shall conduct a public hearing. Notice of the hearing shall be published in a newspaper of general circulation in each jurisdiction adopting the plan as well as in a newspaper of general statewide circulation on at least two occasions not less than fourteen days before the first day of the hearing. When a proposed recreation management plan has been prepared by more than one jurisdiction, joint hearings may be conducted. [1988 c 75 § 10. Formerly RCW 43.51.740.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.685 Adoption of plans—Approval—Procedure.** Recreation management plans shall be adopted by each participating jurisdiction and submitted to the commission by September 1, 1989. The commission shall approve the proposed plan if, in the commission's judgment, the plan adequately fulfills the requirements of RCW 79A.05.600 through 79A.05.695.

If the proposed plan is not approved, the commission shall suggest modifications to the participating local governments. Local governments shall have ninety days after receiving the suggested modifications to resubmit a recreation management plan. Thereafter, if the commission finds that a plan does not adequately fulfill the requirements of RCW 79A.05.600 through 79A.05.695, the commission may amend the proposal or adopt an alternative plan.

If a plan for all or any portion of the Seashore Conservation Area is not submitted in accordance with RCW 79A.05.635 through 79A.05.695, the commission shall adopt a recreation management plan for that site.

Administrative rules adopted by the commission under \*RCW 43.51.680 shall remain in effect for all or any portion of each ocean beach until a recreation management plan for that site is adopted or approved by the commission.

The commission shall not adopt a recreation management plan for all or any portion of an ocean beach while appeal of a commission decision regarding that site is pending. [2000 c 11 § 57; 1988 c 75 § 11. Formerly RCW 43.51.745.]

**\*Reviser's note:** RCW 43.51.680 was repealed by 1988 c 75 § 19, effective January 1, 1989.

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.688 Appeal.** Any individual, partnership, corporation, association, organization, cooperative, local government, or state agency aggrieved by a decision of the commission under this chapter may appeal under chapter 34.05 RCW. [1999 c 249 § 1103; 1988 c 75 § 12. Formerly RCW 43.51.750.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.690 Cooperation for law enforcement.** The commission shall cooperate with state and local law enforcement agencies in meeting the need for law enforcement within the Seashore Conservation Area. [1988 c 75 § 13. Formerly RCW 43.51.755.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.693 Ocean beaches in Seashore Conservation Area declared public highways.** The ocean beaches within the Seashore Conservation Area are hereby declared a public highway and shall remain forever open to the use of the public as provided in RCW 79A.05.635 through 79A.05.695. [2000 c 11 § 58; 1988 c 75 § 14. Formerly RCW 43.51.760.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

**79A.05.695 Amendments to plan—Approval—Procedure.** Amendments to the recreation management plan may be adopted jointly by each local government participating in the plan and submitted to the commission for approval. The commission shall approve a proposed amendment if, in the commission's judgment, the amendment adequately fulfills the requirements of RCW 79A.05.600 through 79A.05.695.

After a plan is approved, the commission may require local jurisdictions to adopt amendments to the plan if the commission finds that such amendments are necessary to protect public health and safety, or to protect significant natural resources as determined by the agency having jurisdiction over the resource. [2000 c 11 § 59; 1988 c 75 § 15. Formerly RCW 43.51.765.]

**Effective date—1988 c 75:** See note following RCW 79A.05.635.

#### GREEN RIVER GORGE CONSERVATION AREA

**79A.05.700 Declaration.** The Green River Gorge, between the town of Kanasket and the Kummer bridge in King county, is a twelve mile spectacularly winding gorge with steep to overhanging rock walls reaching heights of from one hundred fifty to three hundred feet. The beauty and natural features of the gorge are generally confined within the canyon rim. This twelve mile gorge area contains many examples of unique biological and geological features for educational and recreational interpretation, almost two miles of Eocene sediment rocks and fossils are exposed revealing one of the most complete stratigraphic sections to be found in the region. The area, a unique recreational attraction with more than one million seven hundred thousand people living within an hour's driving time, is presently used by hikers, geologists, fishermen, kayakers and canoeists, picnickers and swimmers, and those seeking the solitude offered by this unique area. Abutting and adjacent landowners generally

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have kept the gorge lands in their natural state; however, economic and urbanization pressures for development are rapidly increasing. Local and state outdoor recreation plans show a regional need for resources and facilities which could be developed in this area. A twelve mile strip incorporating the visual basins of the Green River from the Kummer bridge to Palmer needs to be acquired and developed as a conservation area to preserve this unique area for the recreational needs of the region. [1969 ex.s. c 162 § 1. Formerly RCW 43.51.900.]

**79A.05.705 Green River Gorge conservation area created.** There is hereby created a Washington state parks and recreation commission conservation area to be known as "Green River Gorge conservation area". [1969 ex.s. c 162 § 2. Formerly RCW 43.51.910.]

**79A.05.710 Acquisition of real property, easements, or rights authorized.** In addition to all other powers and duties prescribed by law, the state parks and recreation commission is authorized and directed to acquire such real property, easements, or rights in the Green River Gorge in King county, together with such real property, easements, and rights as is necessary for such park and conservation purposes in any manner authorized by law for the acquisition of lands for parks and parkway purposes. Except for such real property as is necessary and convenient for development of picnicking or camping areas and their related facilities, it is the intent of this section that such property shall be acquired to preserve, as much as possible, the gorge within the canyon rim in its natural pristine state. [1969 ex.s. c 162 § 3. Formerly RCW 43.51.920.]

**79A.05.715 Acquisition of real property, easements, or rights authorized—Rights of other state agencies not to be infringed upon.** Nothing herein shall be construed as authorizing or directing the state parks and recreation commission to acquire any real property, easements, or rights in the Green River Gorge in King county which are now held by any state agency for the purposes of outdoor recreation, conservation, fish, or wildlife management or public hunting or fishing without the approval of such agency. [1969 ex.s. c 162 § 4. Formerly RCW 43.51.930.]

#### MOUNT SI CONSERVATION AREA

**79A.05.725 Legislative declaration.** Mt. Si and Little Si in King county offer unique scenic, natural, and geological features which can be viewed from the I-90 highway. They also afford outstanding recreational opportunities enjoyed by the citizens of this state and tourists alike. The legislature recognizes the importance of guarding portions of this area from those types of development which would permanently alter the area's natural form and beauty. It further recognizes the necessity of setting forth procedures to manage the area, to enhance the opportunities afforded the state's citizens, one-half of whom live within one-half hour driving time of Mt. Si, and to safeguard to the extent possible the scenic, natural, geological, game habitat, and recreational values therein, and to safeguard and promote the upper Snoqualmie River val-

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ley's economy in which the recreational use of Mt. Si plays a pivotal role. Therefore, the legislature declares this area to be of statewide significance for the foregoing purposes to be enhanced and safeguarded in accordance with the procedures set forth in chapter 306, Laws of 1977 ex. sess. [1977 ex.s. c 306 § 1; 1975-'76 2nd ex.s. c 88 § 1. Formerly RCW 43.51.940.]

**79A.05.730 "Mt. Si conservation area"—Created.** There is hereby created a "Mt. Si conservation area" to include approximately twenty-five hundred acres of state, United States government, and privately owned lands within Sections 25, 26, 35, and 36, Township 24 North, Range 8 East, W.M., and Sections 2, 3, 10, 11, and 12 of Township 23 North, Range 8 East, W.M., as identified for inclusion in the conservation area and described more specifically by the Mt. Si citizen advisory subcommittee in their published report of December 6, 1976, to the Washington state department of natural resources and the Washington state parks and recreation commission as contained in the report filed by those agencies to the house and senate committees on parks and recreation, filed December 1976. [1977 ex.s. c 306 § 2. Formerly RCW 43.51.942.]

*Designation of Mt. Si conservation area as Mt. Si natural resources conservation area: RCW 79.71.100.*

**79A.05.735 Mt. Si conservation area—Management.** The state department of natural resources and the state parks and recreation commission have joined together in excellent cooperation in the conducting of this study along with the citizen advisory subcommittee and have joined together in cooperation with the department of fish and wildlife to accomplish other projects of multidisciplinary concern, and because it may be in the best interests of the state to continue such cooperation, the state parks and recreation commission, the department of natural resources, and the department of fish and wildlife are hereby directed to consider both short and long term objectives, the expertise of each agency's staff, and alternatives such as reasonably may be expected to safeguard the conservation area's values as described in RCW 79A.05.725 giving due regard to efficiency and economy of management: PROVIDED, That the interests conveyed to or by the state agencies identified in this section shall be managed by the department of natural resources until such time as the state parks and recreation commission or other public agency is managing public recreation areas and facilities located in such close proximity to the conservation area described in RCW 79A.05.730 so as to make combined management of those areas and facilities and transfer of management of the conservation area more efficient and economical than continued management by the department of natural resources. At that time the department of natural resources is directed to negotiate with the appropriate public agency for the transfer of those management responsibilities for the interests obtained within the conservation area under RCW 79A.05.725 through 79A.05.745: PROVIDED FURTHER, That the state agencies identified in this section may, by mutual agreement, undertake management of portions of the conservation area as they may from time to time determine in accordance with those rules and regulations established for natural area preserves under chapter 79.70 RCW, for natural

and conservation areas under present WAC 352-16-020(3) and (6), and under chapter 77.12 RCW. [2000 c 11 § 60; 1994 c 264 § 23; 1988 c 36 § 17; 1977 ex.s. c 306 § 3. Formerly RCW 43.51.943.]

**79A.05.740 Mt. Si conservation area—Valuation of included lands.** The full market value for department of natural resources' managed trust lands or interest therein within the conservation area shall be determined by the department of natural resources for any lands or interests to be dedicated or leased as provided herein. The department of natural resources shall determine the value of dedicating such lands or interests in lands as it may determine to be necessary to carry out the purposes of chapter 306, Laws of 1977 ex. sess. either by execution of fifty-five year scenic or development easements or by execution of fifty-five year leases, including such conditions as may be necessary to carry out the purposes of chapter 306, Laws of 1977 ex. sess. Any lease issued pursuant to chapter 306, Laws of 1977 ex. sess. may be subject to renewal under the provisions of \*RCW 79.01.276 as presently existing or hereafter amended. Nothing in chapter 306, Laws of 1977 ex. sess. shall be deemed to alter or affect normal management on lands owned by the state for which no dedication by easement or lease has been made and it is further recognized that no restrictions on management of such lands shall be required unless the applicable trust relating to such lands shall have been compensated. [1998 c 245 § 67; 1977 ex.s. c 306 § 4. Formerly RCW 43.51.944.]

\*Reviser's note: RCW 79.01.276 was repealed by 1979 1st ex.s. c 109 § 23.

**79A.05.745 Eminent domain—Use prohibited.** No property or interest in property shall be acquired for the purpose of chapter 306, Laws of 1977 ex. sess. by the exercise of the power of eminent domain. [1977 ex.s. c 306 § 6. Formerly RCW 43.51.945.]

#### WASHINGTON STATE YAKIMA RIVER CONSERVATION AREA

**79A.05.750 Legislative declaration.** It is the intent of RCW 79A.05.750 through 79A.05.795 to establish and recognize the Yakima river corridor from Selah Gap (Yakima Ridge) to Union Gap (Rattlesnake Hills) as a uniquely valuable recreation, conservation, and scenic resource in the state of Washington. [2000 c 11 § 61; 1977 ex.s. c 75 § 1. Formerly RCW 43.51.946.]

**79A.05.755 "Washington State Yakima river conservation area"—Created.** There is hereby created an area to be known as the "Washington State Yakima river conservation area". This area designation may be used as a common reference by all state and local agencies, municipalities, and federal agencies. [1977 ex.s. c 75 § 3. Formerly RCW 43.51.947.]

**79A.05.760 Yakima river conservation area—Size prescribed.** For the purposes of RCW 79A.05.750 through 79A.05.795, the Yakima river conservation area is to contain no more than the area delineated in appendix D on pages D-

3, D-4, D-6, D-7, D-9, and D-10 of the report entitled "The Yakima River Regional Greenway" which resulted from the Yakima river study authorized in section 170, chapter 269, Laws of 1975, first extraordinary session. This area is also defined as sections 12 and 17, township 13 north, range 18 east totaling approximately 18.0 acres, sections 7, 17, 18, 20, 21, 28, 29, 32, 33, township 13 north, range 19 east totaling approximately 936.0 acres, and sections 4, 5, 8, 9, 17, township 12 north, range 19 east totaling approximately 793.7 acres. [1999 c 249 § 1001; 1977 ex.s. c 75 § 2. Formerly RCW 43.51.948.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.05.765 Yakima river conservation area—Authority of Yakima county commissioners.** The Yakima county commissioners are authorized to coordinate the acquisition, development, and operation of the Yakima river conservation area in accordance with the purposes of RCW 79A.05.750 through 79A.05.795 and in cooperation with public parks, conservation and resource managing agencies. [2000 c 11 § 62; 1977 ex.s. c 75 § 4. Formerly RCW 43.51.949.]

**79A.05.770 Yakima river conservation area—Land acquisition.** The Yakima county commissioners are authorized to acquire such real property, easements or rights in river-related lands in the Yakima river conservation area, together with such real property, easements, and rights as are necessary for such conservation and parks purposes in any manner authorized by law for the acquisition of lands for conservation, parks and parkway purposes: PROVIDED, That only the Yakima county commissioners shall have the power of eminent domain for the purposes of this chapter. [1977 ex.s. c 75 § 5. Formerly RCW 43.51.950.]

**79A.05.775 Intent to preserve river wetlands in their natural state.** Except for such property as is necessary or suitable for the development of recreational areas and their related facilities, it is the intent of this section that such property shall be acquired to preserve, as much as possible, the river wetlands in their natural state. [1977 ex.s. c 75 § 6. Formerly RCW 43.51.951.]

**79A.05.780 Yakima river conservation area—Consultation between commission and Yakima county commissioners.** The Washington state parks and recreation commission is directed to consult with the Yakima county commissioners in the acquisition, development, and operation of the Yakima river conservation area in accordance with the purposes of RCW 79A.05.750 through 79A.05.795 and the Yakima river study authorized in section 170, chapter 269, Laws of 1975, first extraordinary session. [2000 c 11 § 63; 1977 ex.s. c 75 § 7. Formerly RCW 43.51.952.]

**79A.05.785 Yakima river conservation area—Recreation and conservation funding board directed to assist Yakima county commissioners.** The recreation and conservation funding board is directed to assist the Yakima county commissioners in obtaining state, federal, and private funding for the acquisition, development, and operation of the

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Yakima river conservation area. [2007 c 241 § 25; 1977 ex.s. c 75 § 8. Formerly RCW 43.51.953.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.05.790 County or city zoning and/or permitted land uses not affected.** Nothing herein shall be construed as affecting nor being in conflict with existing county or city zoning and/or permitted land uses and the right to develop, build or expand existing uses in accordance with the said zoning or permitted land uses within the Yakima river conservation area. [1977 ex.s. c 75 § 9. Formerly RCW 43.51.954.]

**79A.05.793 Department of fish and wildlife, fish and wildlife commission—Powers, duties, and authority—No hunting in any state park.** Nothing in RCW 79A.05.750 through 79A.05.795 shall be construed to interfere with the powers, duties, and authority of the state department of fish and wildlife or the state fish and wildlife commission to regulate, manage, conserve, and provide for the harvest of wildlife within such area: PROVIDED, HOWEVER, That no hunting shall be permitted in any state park. [2000 c 11 § 64; 1993 sp.s. c 2 § 19; 1987 c 506 § 93; 1977 ex.s. c 75 § 10. Formerly RCW 43.51.955.]

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**79A.05.795 Acquisition of real property, etc., of another agency by Yakima county commissioners—Agency approval required.** Nothing herein shall be construed as authorizing or directing the Yakima county commissioners to acquire any real property, easements, or rights in the Yakima river conservation area which are now held by any other agency without the approval of that agency. [1977 ex.s. c 75 § 11. Formerly RCW 43.51.956.]

## Chapter 79A.10 RCW

### OUTDOOR RECREATIONAL FACILITIES

#### Sections

79A.10.010	General obligation bonds authorized.
79A.10.020	Disposition of proceeds of sale.
79A.10.030	Bonds payable from proceeds of corporation fees.
79A.10.040	Outdoor recreational bond redemption fund.
79A.10.050	Remedies of bondholders.
79A.10.060	Legislature may provide additional means of support.
79A.10.070	Bonds legal investment for funds of state and municipal corporations.
79A.10.090	Consent of world fair bondholders prerequisite to issuance of bonds authorized by this chapter.

**79A.10.010 General obligation bonds authorized.** For the purpose of providing funds for the development of outdoor recreational facilities in the state, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of ten million dollars, or so much thereof as shall be required to finance the program for which these bonds are being authorized: PROVIDED, That funds realized from the sale of such bonds shall be used solely for

the acquisition of land and attached appurtenances and such property shall be for outdoor recreational use.

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

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. [1965 c 8 § 43.98.010. Prior: 1963 ex.s. c 12 § 1. Formerly RCW 43.98.010.]

**79A.10.020 Disposition of proceeds of sale.** The proceeds from the sale of the bonds authorized herein shall be deposited in the parks and parkways account of the general fund or such other account or fund as shall be established for this purpose. Any agency or commission charged with the administration of the account or fund is authorized to use or permit the use of any funds derived from the sale of bonds authorized under this chapter as matching funds in any case where federal or other funds are made available on a matching basis for projects within the purposes of this chapter. [1965 c 8 § 43.98.020. Prior: 1963 ex.s. c 12 § 2. Formerly RCW 43.98.020.]

*Outdoor recreation account, deposit of proceeds in: RCW 79A.25.060.*

*Parks and parkways account abolished: RCW 43.79.405.*

**79A.10.030 Bonds payable from proceeds of corporation fees.** The bonds issued under the provisions of this chapter shall be payable from the proceeds of one-half of the corporation fees collected under all the provisions of chapter 70, Laws of 1937, as now or hereafter amended. The bonds and interest shall, so long as any portion thereof remains unpaid, constitute a prior and exclusive claim, subject only to amounts previously pledged for the payment of interest on and retirement of bonds heretofore issued, upon that portion of the corporation fees so collected. [1965 c 8 § 43.98.030. Prior: 1963 ex.s. c 12 § 3. Formerly RCW 43.98.030.]

**Reviser's note:** Chapter 70, Laws of 1937 referred to above is affected by chapter 53, Laws of 1965 which enacts a new corporations code effective July 1, 1967 (Title 23A RCW). Section 166 thereof repeals it subject to the savings and continuation provision contained in section 165 which reads as follows: "Nothing contained in this act shall be construed as an impairment of any obligation of the state as evidenced by bonds held for any purpose, and subsections 2 and 13 of section 135, subsections 1 and 2 of section 136, and sections 137, 138, 139, 140, 141, 142, 146, and 147 shall be deemed to be a continuation of chapter 70, Laws of 1937, as amended, for the purpose of payment of:

(1) world's fair bonds authorized by chapter 174, Laws of 1957 as amended by chapter 152, Laws of 1961, and

(2) outdoor recreation bonds authorized by referendum bill number 11 (chapter 12, Laws of 1963 extraordinary session), approved by the people on November 3, 1964."

**79A.10.040 Outdoor recreational bond redemption fund.** The outdoor recreational bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by this chapter. [1965 c 8 § 43.98.040. Prior: 1963 ex.s. c 12 § 4. Formerly RCW 43.98.040.]

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**79A.10.050 Remedies of bondholders.** The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1965 c 8 § 43.98.050. Prior: 1963 ex.s. c 12 § 5. Formerly RCW 43.98.050.]

**79A.10.060 Legislature may provide additional means of support.** The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and this chapter shall not be deemed to provide an exclusive method for such payment. [1965 c 8 § 43.98.060. Prior: 1963 ex.s. c 12 § 6. Formerly RCW 43.98.060.]

**79A.10.070 Bonds legal investment for funds of state and municipal corporations.** The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1965 c 8 § 43.98.070. Prior: 1963 ex.s. c 12 § 7. Formerly RCW 43.98.070.]

**79A.10.090 Consent of world fair bondholders prerequisite to issuance of bonds authorized by this chapter.** No bonds authorized by this chapter shall be issued until there shall first be obtained and filed in the office of the state finance committee the written consent of the holders of all outstanding bonds issued under authority of chapter 174, Laws of 1957, as amended by chapter 152, Laws of 1961, to the changes effected by this chapter and the 1963 amendments of \*RCW 43.31.620 and 43.31.740 in the order of priority of payment of said world fair bonds out of the proceeds of the corporation fees collected under chapter 70, Laws of 1937 as amended. [1965 c 8 § 43.98.090. Prior: 1963 ex.s. c 12 § 10. Formerly RCW 43.98.090.]

**Reviser's note:** \*(1) RCW 43.31.620 and 43.31.740 were decodified by 1985 c 466 § 75, effective June 30, 1985.

(2) See note following RCW 79A.10.030.

## Chapter 79A.15 RCW

### ACQUISITION OF HABITAT CONSERVATION AND OUTDOOR RECREATION LANDS

#### Sections

- 79A.15.005 Findings.
- 79A.15.010 Definitions.
- 79A.15.020 Habitat conservation account.
- 79A.15.030 Allocation and use of moneys—Grants.
- 79A.15.040 Habitat conservation account—Distribution and use of moneys.
- 79A.15.050 Outdoor recreation account—Distribution and use of moneys.
- 79A.15.060 Habitat conservation account—Acquisition policies and priorities.
- 79A.15.065 Grants through habitat conservation account—Statement of environmental benefits—Development of outcome-focused performance measures.
- 79A.15.070 Acquisition and development priorities—Generally.
- 79A.15.080 Recommended project list—Board authority to obligate funds—Legislature's authority.
- 79A.15.090 Condemnation.
- 79A.15.100 Report to governor and standing committees.
- 79A.15.110 Review of proposed project application.
- 79A.15.120 Riparian protection account—Use of funds.
- 79A.15.130 Farmlands preservation account—Use of funds.
- 79A.15.140 Puget Sound partners.
- 79A.15.150 Administering funds—Preference to an evergreen community.
- 79A.15.900 Severability—1990 1st ex.s. c 14.

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**79A.15.005 Findings.** The legislature finds:

(1) That Washington possesses an abundance of natural wealth in the form of forests, mountains, wildlife, waters, and other natural resources, all of which help to provide an unparalleled diversity of outdoor recreation opportunities and a quality of life unmatched in this nation;

(2) That as the state's population grows, the demand on these resources is growing too, placing greater stress on today's already overcrowded public recreational lands and facilities, and resulting in a significant loss of wildlife habitat and lands of unique natural value;

(3) That public acquisition and development programs have not kept pace with the state's expanding population;

(4) That private investment and employment opportunities in general and the tourist industry in particular are dependent upon the continued availability of recreational opportunities and our state's unique natural environment;

(5) That if current trends continue, some wildlife species and rare ecosystems will be lost in the state forever and public recreational lands will not be adequate to meet public demands;

(6) That there is accordingly a need for the people of the state to reserve certain areas of the state, in rural as well as urban settings, for the benefit of present and future generations.

It is therefore the policy of the state to acquire as soon as possible the most significant lands for wildlife conservation and outdoor recreation purposes before they are converted to other uses, and to develop existing public recreational land and facilities to meet the needs of present and future generations. [1990 1st ex.s. c 14 § 1. Formerly RCW 43.98A.005.]

**79A.15.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Acquisition" means the purchase on a willing seller basis of fee or less than fee interests in real property. These interests include, but are not limited to, options, rights of first refusal, conservation easements, leases, and mineral rights.

(2) "Board" means the recreation and conservation funding board.

(3) "Critical habitat" means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.

(4) "Farmlands" means any land defined as "farm and agricultural land" in RCW 84.34.020(2).

(5) "Local agencies" means a city, county, town, federally recognized Indian tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state.

(6) "Natural areas" means areas that have, to a significant degree, retained their natural character and are important in preserving rare or vanishing flora, fauna, geological, natural historical, or similar features of scientific or educational value.

(7) "Riparian habitat" means land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and

wildlife species. Riparian habitat includes, but is not limited to, shorelines and near-shore marine habitat, estuaries, lakes, wetlands, streams, and rivers.

(8) "Special needs populations" means physically restricted people or people of limited means.

(9) "State agencies" means the state parks and recreation commission, the department of natural resources, the department of general administration, and the department of fish and wildlife.

(10) "Trails" means public ways constructed for and open to pedestrians, equestrians, or bicyclists, or any combination thereof, other than a sidewalk constructed as a part of a city street or county road for exclusive use of pedestrians.

(11) "Urban wildlife habitat" means lands that provide habitat important to wildlife in proximity to a metropolitan area.

(12) "Water access" means boat or foot access to marine waters, lakes, rivers, or streams. [2007 c 241 § 26; 2005 c 303 § 1; 1990 1st ex.s. c 14 § 2. Formerly RCW 43.98A.010.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** "Sections 1 through 14 of this act take effect July 1, 2007." [2005 c 303 § 17.]

**79A.15.020 Habitat conservation account.** The habitat conservation account is established in the state treasury. The board shall administer the account in accordance with chapter 79A.25 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the board. [2007 c 241 § 27; 2000 c 11 § 65; 1990 1st ex.s. c 14 § 3. Formerly RCW 43.98A.020.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.15.030 Allocation and use of moneys—Grants.** (1) Moneys appropriated for this chapter shall be divided as follows:

(a) Appropriations for a biennium of forty million dollars or less must be allocated equally between the habitat conservation account and the outdoor recreation account.

(b) If appropriations for a biennium total more than forty million dollars, the money must be allocated as follows: (i) Twenty million dollars to the habitat conservation account and twenty million dollars to the outdoor recreation account; (ii) any amount over forty million dollars up to fifty million dollars shall be allocated as follows: (A) Ten percent to the habitat conservation account; (B) ten percent to the outdoor recreation account; (C) forty percent to the riparian protection account; and (D) forty percent to the farmlands preservation account; and (iii) any amounts over fifty million dollars must be allocated as follows: (A) Thirty percent to the habitat conservation account; (B) thirty percent to the outdoor recreation account; (C) thirty percent to the riparian protection account; and (D) ten percent to the farmlands preservation account.

(2) Except as otherwise provided in chapter 303, Laws of 2005, moneys deposited in these accounts shall be invested as authorized for other state funds, and any earnings on them shall be credited to the respective account.

(3) All moneys deposited in the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts shall be allocated as provided under RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130 as grants to state or local agencies for acquisition, development, and renovation within the jurisdiction of those agencies, subject to legislative appropriation. The board may use or permit the use of any funds appropriated for this chapter as matching funds where federal, local, or other funds are made available for projects within the purposes of this chapter. Moneys appropriated to these accounts that are not obligated to a specific project may be used to fund projects from lists of alternate projects from the same account in biennia succeeding the biennium in which the moneys were originally appropriated.

(4) Projects receiving grants under this chapter that are developed or otherwise accessible for public recreational uses shall be available to the public.

(5) The board may make grants to an eligible project from the habitat conservation, outdoor recreation, riparian protection, and farmlands preservation accounts and any one or more of the applicable categories under such accounts described in RCW 79A.15.040, 79A.15.050, 79A.15.120, and 79A.15.130.

(6) The board may accept private donations to the habitat conservation account, the outdoor recreation account, the riparian protection account, and the farmlands preservation account for the purposes specified in this chapter.

(7) The board may apply up to three percent of the funds appropriated for this chapter for its office for the administration of the programs and purposes specified in this chapter.

(8) Habitat and recreation land and facilities acquired or developed with moneys appropriated for this chapter may not, without prior approval of the board, be converted to a use other than that for which funds were originally approved. The board shall adopt rules and procedures governing the approval of such a conversion. [2007 c 241 § 28; 2005 c 303 § 2; 2000 c 11 § 66; 1990 1st ex.s. c 14 § 4. Formerly RCW 43.98A.030.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

*Outdoor recreation account: Chapter 79A.25 RCW.*

**79A.15.040 Habitat conservation account—Distribution and use of moneys.** (1) Moneys appropriated for this chapter to the habitat conservation account shall be distributed in the following way:

(a) Not less than forty percent through June 30, 2011, at which time the amount shall become forty-five percent, for the acquisition and development of critical habitat;

(b) Not less than thirty percent for the acquisition and development of natural areas;

(c) Not less than twenty percent for the acquisition and development of urban wildlife habitat; and

(d) Not less than ten percent through June 30, 2011, at which time the amount shall become five percent, shall be used by the board to fund restoration and enhancement projects on state lands. Only the department of natural resources and the department of fish and wildlife may apply

for these funds to be used on existing habitat and natural area lands.

(2)(a) In distributing these funds, the board retains discretion to meet the most pressing needs for critical habitat, natural areas, and urban wildlife habitat, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the habitat conservation account to meet the percentages described in subsection (1) of this section in any biennium, the board retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only state agencies may apply for acquisition and development funds for natural areas projects under subsection (1)(b) of this section.

(4) State and local agencies may apply for acquisition and development funds for critical habitat and urban wildlife habitat projects under subsection (1)(a) and (c) of this section.

(5)(a) Any lands that have been acquired with grants under this section by the department of fish and wildlife are subject to an amount in lieu of real property taxes and an additional amount for control of noxious weeds as determined by RCW 77.12.203.

(b) Any lands that have been acquired with grants under this section by the department of natural resources are subject to payments in the amounts required under the provisions of RCW 79.70.130 and 79.71.130.

(6) Except as otherwise conditioned by RCW 79A.15.140 or 79A.15.150, the board in its evaluating process shall consider the following in determining distribution priority:

(a) Whether the entity applying for funding is a Puget Sound partner, as defined in RCW 90.71.010;

(b) Effective one calendar year following the development and statewide availability of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030; and

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310.

(7) After January 1, 2010, any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2008 c 299 § 29. Prior: 2007 c 341 § 34; 2007 c 241 § 29; 2005 c 303 § 3; 1999 c 379 § 917; 1997 c 235 § 718; 1990 1st ex.s. c 14 § 5. Formerly RCW 43.98A.040.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect immediately [May 18, 1999]." [1999 c 379 § 949.]

**Severability—1997 c 235:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 235 § 901.]

**Effective date—1997 c 235:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 26, 1997]." [1997 c 235 § 902.]

**79A.15.050 Outdoor recreation account—Distribution and use of moneys.** (1) Moneys appropriated for this chapter to the outdoor recreation account shall be distributed in the following way:

(a) Not less than thirty percent to the state parks and recreation commission for the acquisition and development of state parks, with at least fifty percent of the money for acquisition costs;

(b) Not less than thirty percent for the acquisition, development, and renovation of local parks, with at least fifty percent of this money for acquisition costs;

(c) Not less than twenty percent for the acquisition, renovation, or development of trails;

(d) Not less than fifteen percent for the acquisition, renovation, or development of water access sites, with at least seventy-five percent of this money for acquisition costs; and

(e) Not less than five percent for development and renovation projects on state recreation lands. Only the department of natural resources and the department of fish and wildlife may apply for these funds to be used on their existing recreation lands.

(2)(a) In distributing these funds, the board retains discretion to meet the most pressing needs for state and local parks, trails, and water access sites, and is not required to meet the percentages described in subsection (1) of this section in any one biennium.

(b) If not enough project applications are submitted in a category within the outdoor recreation account to meet the percentages described in subsection (1) of this section in any biennium, the board retains discretion to distribute any remaining funds to the other categories within the account.

(3) Only local agencies may apply for acquisition, development, or renovation funds for local parks under subsection (1)(b) of this section.

(4) Only state and local agencies may apply for funds for trails under subsection (1)(c) of this section.

(5) Only state and local agencies may apply for funds for water access sites under subsection (1)(d) of this section. [2007 c 241 § 30; 2005 c 303 § 4; 2003 c 184 § 1; 1999 c 379 § 941; 1999 c 379 § 920; 1990 1st ex.s. c 14 § 6. Formerly RCW 43.98A.050.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**79A.15.060 Habitat conservation account—Acquisition policies and priorities.** (1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(4) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(5) The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

(6) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

(a) For critical habitat and natural areas proposals:

(i) Community support for the project;

(ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort, and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

(iv) Immediacy of threat to the site;

(v) Uniqueness of the site;

(vi) Diversity of species using the site;

(vii) Quality of the habitat;

(viii) Long-term viability of the site;

(ix) Presence of endangered, threatened, or sensitive species;

(x) Enhancement of existing public property;

(xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(xii) Educational and scientific value of the site;

(xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;

(xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

(i) Population of, and distance from, the nearest urban area;

(ii) Proximity to other wildlife habitat;

(iii) Potential for public use; and

(iv) Potential for use by special needs populations.

(7) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2007 c 241 § 31; 2005 c 303 § 8; 2000 c 11 § 67; 1999 c 379 § 918; 1997 c 235 § 719; 1990 1st ex.s. c 14 § 7. Formerly RCW 43.98A.060.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**Severability—Effective date—1997 c 235:** See notes following RCW 79A.15.040.

**79A.15.065 Grants through habitat conservation account—Statement of environmental benefits—Development of outcome-focused performance measures.** In providing grants through the habitat conservation account, the board shall require grant applicants to incorporate the environmental benefits of the project into their grant applications, and the board shall utilize the statement of environmental benefits in the grant application and review process. The board shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the board should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The board shall consult with affected interest groups in implementing this section. [2007 c 241 § 32; 2001 c 227 § 8.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Findings—Intent—2001 c 227:** See note following RCW 43.41.270.

**79A.15.070 Acquisition and development priorities—Generally.** (1) In determining which state parks proposals and local parks proposals to fund, the board shall use existing policies and priorities.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition and development, including, but not limited to, surveying expenses, fencing, and signing.

(4) The board may not approve a project of a local agency where the share contributed by the local agency is less than the amount to be awarded from the outdoor recreation account.

(5) The board may adopt rules establishing acquisition policies and priorities for the acquisition and development of

trails and water access sites to be financed from moneys in the outdoor recreation account.

(6) In determining the acquisition and development priorities, the board shall consider, at a minimum, the following criteria:

(a) For trails proposals:

(i) Community support for the project;

(ii) Immediacy of threat to the site;

(iii) Linkage between communities;

(iv) Linkage between trails;

(v) Existing or potential usage;

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;

(vii) Availability of water access or views;

(viii) Enhancement of wildlife habitat; and

(ix) Scenic values of the site.

(b) For water access proposals:

(i) Community support for the project;

(ii) Distance from similar water access opportunities;

(iii) Immediacy of threat to the site;

(iv) Diversity of possible recreational uses;

(v) Public demand in the area; and

(vi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130.

(7) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.050(1) (a), (b), (c), and (d). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project. [2007 c 241 § 33; 2005 c 303 § 9; 2000 c 11 § 68; 1999 c 379 § 919; 1997 c 235 § 720; 1990 1st ex.s. c 14 § 8. Formerly RCW 43.98A.070.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**Effective date—1999 c 379:** See note following RCW 79A.15.040.

**Severability—Effective date—1997 c 235:** See notes following RCW 79A.15.040.

**79A.15.080 Recommended project list—Board authority to obligate funds—Legislature's authority.** The board shall not sign contracts or otherwise financially obligate funds from the habitat conservation account, the outdoor recreation account, the riparian protection account, or the farmlands preservation account as provided in this chapter before the legislature has appropriated funds for a specific list of projects. The legislature may remove projects from the list recommended by the governor. [2007 c 241 § 34; 2005 c 303 § 10; 1990 1st ex.s. c 14 § 9. Formerly RCW 43.98A.080.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.090 Condemnation.** Moneys made available under this chapter for land acquisition shall not be used to acquire land through condemnation. [1990 1st ex.s. c 14 § 10. Formerly RCW 43.98A.090.]

**79A.15.100 Report to governor and standing committees.** On or before November 1st of each odd-numbered year, the board shall submit to the governor and the standing committees of the legislature dealing with fiscal affairs, fish and wildlife, and natural resources a report detailing the acquisitions and development projects funded under this chapter during the immediately preceding biennium. [2007 c 241 § 35; 1990 1st ex.s. c 14 § 11. Formerly RCW 43.98A.100.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.15.110 Review of proposed project application.** A state or local agency shall review the proposed project application with the county or city with jurisdiction over the project area prior to applying for funds for the acquisition of property under this chapter. The appropriate county or city legislative authority may, at its discretion, submit a letter to the board identifying the authority's position with regard to the acquisition project. The board shall make the letters received under this section available to the governor and the legislature when the prioritized project list is submitted under RCW 79A.15.120, 79A.15.060, and 79A.15.070. [2007 c 241 § 36; 2005 c 303 § 5.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.120 Riparian protection account—Use of funds.** (1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection (10)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW may apply for acquisition and enhancement or restoration funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(7) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

(8) The board may not approve a local project where the local agency share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's share.

(9) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

(10) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2007 c 241 § 37; 2005 c 303 § 6.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.130 Farmlands preservation account—Use of funds.** (1) The farmlands preservation account is established in the state treasury. The board will administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board. Moneys appropriated for this chapter to the farmlands preservation account must be distributed for the acquisition and preservation of farmlands in order to maintain the opportunity for agricultural activity upon these lands.

(2)(a) Moneys appropriated for this chapter to the farmlands preservation account may be distributed for (i) the fee simple or less than fee simple acquisition of farmlands; (ii) the enhancement or restoration of ecological functions on those properties; or (iii) both. In order for a farmland preservation grant to provide for an environmental enhancement or restoration project, the project must include the acquisition of a real property interest.

(b) If a city or county acquires a property through this program in fee simple, the city or county shall endeavor to secure preservation of the property through placing a conservation easement, or other form of deed restriction, on the property which dedicates the land to agricultural use and retains one or more property rights in perpetuity. Once an easement or other form of deed restriction is placed on the property, the city or county shall seek to sell the property, at fair market value, to a person or persons who will maintain the property in agricultural production. Any moneys from the sale of the property shall either be used to purchase interests in additional properties which meet the criteria in subsection (9) of this section, or to repay the grant from the state which was originally used to purchase the property.

(3) Cities and counties may apply for acquisition and enhancement or restoration funds for farmland preservation projects within their jurisdictions under subsection (1) of this section.

(4) The board may adopt rules establishing acquisition and enhancement or restoration policies and priorities for distributions from the farmlands preservation account.

(5) The acquisition of a property right in a project under this section by a county or city does not provide a right of access to the property by the public unless explicitly provided for in a conservation easement or other form of deed restriction.

(6) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a city or county to fund operation or maintenance of areas acquired under this chapter.

(7) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

(8) The board may not approve a local project where the local agency's share is less than the amount to be awarded from the farmlands preservation account. In-kind contributions, including contributions of a real property interest in land, may be used to satisfy the local agency's share.

(9) In determining the acquisition priorities, the board must consider, at a minimum, the following criteria:

- (a) Community support for the project;
- (b) A recommendation as part of a limiting factors or critical pathways analysis, a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort;
- (c) The likelihood of the conversion of the site to nonagricultural or more highly developed usage;
- (d) Consistency with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;
- (e) Benefits to salmonids;
- (f) Benefits to other fish and wildlife habitat;
- (g) Integration with recovery efforts for endangered, threatened, or sensitive species;
- (h) The viability of the site for continued agricultural production, including, but not limited to:
  - (i) Soil types;
  - (ii) On-site production and support facilities such as barns, irrigation systems, crop processing and storage facilities, wells, housing, livestock sheds, and other farming infrastructure;
  - (iii) Suitability for producing different types or varieties of crops;
  - (iv) Farm-to-market access;
  - (v) Water availability; and
- (i) Other community values provided by the property when used as agricultural land, including, but not limited to:
  - (i) Viewshed;
  - (ii) Aquifer recharge;
  - (iii) Occasional or periodic collector for storm water runoff;

- (iv) Agricultural sector job creation;
- (v) Migratory bird habitat and forage area; and
- (vi) Educational and curriculum potential.

(10) In allotting funds for environmental enhancement or restoration projects, the board will require the projects to meet the following criteria:

(a) Enhancement or restoration projects must further the ecological functions of the farmlands;

(b) The projects, such as fencing, bridging watercourses, replanting native vegetation, replacing culverts, clearing of waterways, etc., must be less than fifty percent of the acquisition cost of the project including any in-kind contribution by any party;

(c) The projects should be based on accepted methods of achieving beneficial enhancement or restoration results; and

(d) The projects should enhance the viability of the preserved farmland to provide agricultural production while conforming to any legal requirements for habitat protection.

(11) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of all projects to be funded under this section. The governor may remove projects from the list recommended by the board and must submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement. [2007 c 241 § 38; 2005 c 303 § 7.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—2005 c 303 §§ 1-14:** See note following RCW 79A.15.010.

**79A.15.140 Puget Sound partners.** When administering funds under this chapter, the committee shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 35.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**79A.15.150 Administering funds—Preference to an evergreen community.** When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under RCW 35.105.030 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2008 c 299 § 34.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**79A.15.900 Severability—1990 1st ex.s. c 14.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances

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is not affected. [1990 1st ex.s. c 14 § 12. Formerly RCW 43.98A.900.]

## Chapter 79A.20 RCW

### WILDLIFE AND RECREATION LANDS— FUNDING OF MAINTENANCE AND OPERATIONS

#### Sections

79A.20.005	Findings.
79A.20.010	Definitions.
79A.20.030	Allocation and distribution of moneys.
79A.20.900	Short title.
79A.20.901	Severability—1992 c 153.
79A.20.902	Captions not law—1992 c 153.

#### **79A.20.005 Findings.** (1) The legislature finds that:

(a) The state of Washington owns and maintains a wide variety of fish and wildlife habitat, natural areas, parks, and other recreation lands;

(b) The state of Washington is responsible for managing these lands for the benefit of the citizens, wildlife, and other natural resources of the state;

(c) The state of Washington has recently significantly enhanced its efforts to acquire critical habitat, natural areas, parks, and other recreation lands and to transfer suitable lands from school trust to conservation and park purposes;

(d) Recent unprecedented population growth has greatly increased the threat to the state's fish and wildlife habitat and the demands placed on the lands under (a) of this subsection;

(e) The importance of this habitat and these lands to the state is continuing to increase as more people depend on them to satisfy their needs and more plant and animal species require state-owned lands for their survival;

(f) By itself, public ownership cannot guarantee that resources will be protected, or that appropriate recreational opportunities will be provided;

(g) Only through ongoing, responsible management can fish and wildlife habitat, sensitive ecosystems, and recreational values be protected;

(h) The operation and maintenance funding for state-owned fish and wildlife habitat, natural areas, parks, and other recreation lands has not kept pace with increasing demands placed upon such lands;

(i) Many needed operation and maintenance projects have been deferred due to insufficient funding, resulting in increased costs when the projects are finally undertaken; and

(j) An increase in operation and maintenance funding is necessary to bring state-owned lands and facilities up to acceptable standards and to protect the state's investment in its fish and wildlife habitat, natural areas, parks, and other recreation lands.

(2) Therefore, it is the policy of the state to provide adequate and continuing funding for operation and maintenance needs of state-owned fish and wildlife habitat, natural areas, parks, and other recreation lands to protect the state's investment in such lands, and it is the purpose of this chapter to create a mechanism for doing so. [1992 c 153 § 2. Formerly RCW 43.98B.005.]

**79A.20.010 Definitions.** The definitions set forth in this section apply throughout this chapter.

(1) "Basic stewardship" means the costs associated with holding and protecting property to maintain the functions for which the property was acquired. It includes, but is not limited to, costs associated with statutorily required in-lieu property taxes, weed and pest control, fire protection, fence maintenance, cultural and archaeological site protection, basic research related to maintenance of natural area preserves and natural resource conservation areas, basic resource and environmental protection, and meeting applicable legal requirements.

(2) "Improved or developed resources" means the costs associated with the built or manipulated environment. It includes, but is not limited to, costs associated with maintaining buildings, grounds, roads, trails, water access sites, and utility systems. Also included are improvements to habitat such as bank stabilization, range rehabilitation, and food and water sources.

(3) "Human use management" means the costs associated with visitor management, education, and protection.

(4) "Administration" means state agency costs necessary to support subsections (1) through (3) of this section. It includes, but is not limited to, budget and accounting, personnel support services, volunteer programs, and training. [1992 c 153 § 3. Formerly RCW 43.98B.010.]

#### 79A.20.030 Allocation and distribution of moneys.

(1) Moneys appropriated for this chapter from the \*state wildlife and recreation lands management account shall be expended in the following manner:

- (a) Not less than thirty percent for basic stewardship;
- (b) Not less than twenty percent for improved or developed resources;
- (c) Not less than fifteen percent for human use management; and
- (d) Not more than fifteen percent for administration.
- (e) The remaining twenty to thirty-five percent shall be considered unallocated.

(2) In the event that moneys appropriated for this chapter to the \*state wildlife and recreation lands management account under the initial allocation prove insufficient to meet basic stewardship needs, the unallocated amount shall be used to fund basic stewardship needs.

(3) Each eligible agency is not required to meet this specific percentage distribution. However, funding across agencies should meet these percentages during each biennium.

(4) It is intended that moneys disbursed from this account not replace existing operation and maintenance funding levels from other state sources.

(5) Agencies eligible to receive funds from this account are the departments of fish and wildlife and natural resources, and the state parks and recreation commission.

(6) Moneys appropriated for this chapter from the \*state wildlife and recreation lands management account shall be distributed in the following manner:

- (a) Not less than twenty-five percent to the state parks and recreation commission.
- (b) Not less than twenty-five percent to the department of natural resources.
- (c) Not less than twenty-five percent to the department of fish and wildlife.

(d) The remaining funds shall be allocated to eligible agencies based upon an evaluation of remaining unfunded needs.

(7) The office of financial management shall review eligible state agency requests and make recommendations on the allocation of funds provided under this chapter as part of the governor's operating budget request to the legislature. [1994 c 264 § 30; 1992 c 153 § 5. Formerly RCW 43.98B.030.]

**\*Reviser's note:** This account was created in RCW 79A.20.020 which was repealed by 2000 c 150 § 2, effective July 1, 2001.

**79A.20.900 Short title.** This chapter shall be known as the state wildlife and recreation lands management act. [1992 c 153 § 1. Formerly RCW 43.98B.900.]

**79A.20.901 Severability—1992 c 153.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 153 § 7. Formerly RCW 43.98B.910.]

**79A.20.902 Captions not law—1992 c 153.** Section headings as used in this chapter do not constitute any part of the law. [1992 c 153 § 8. Formerly RCW 43.98B.920.]

## Chapter 79A.25 RCW

### RECREATION AND CONSERVATION FUNDING BOARD

(Formerly: Interagency committee for outdoor recreation)

#### Sections

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#### YOUTH OR COMMUNITY ATHLETIC FACILITIES

- 79A.25.800 Intent.
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- 79A.25.830 Gifts, grants, or endowments.

#### CONSTRUCTION

- 79A.25.901 Severability—1965 c 5.
- 79A.25.902 Short title.

**79A.25.005 Policy—Mission of board.** (1) As Washington begins its second century of statehood, the legislature recognizes that renewed efforts are needed to preserve, conserve, and enhance the state's recreational resources. Rapid population growth and increased urbanization have caused a decline in suitable land for recreation and resulted in overcrowding and deterioration of existing facilities. Lack of adequate recreational resources directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves.

It is therefore the policy of the state and its agencies to preserve, conserve, and enhance recreational resources and open space. In carrying out this policy, the mission of the recreation and conservation funding board and its office is to (a) create and work actively for the implementation of a unified statewide strategy for meeting the recreational needs of Washington's citizens, (b) represent and promote the interests of the state on recreational issues in concert with other state and local agencies and the governor, (c) encourage and provide interagency and regional coordination, and interaction between public and private organizations, (d) administer recreational grant-in-aid programs and provide technical assistance, and (e) serve as a repository for information, studies, research, and other data relating to recreation.

(2) Washington is uniquely endowed with fresh and salt waters rich in scenic and recreational value. This outdoor heritage enriches the lives of citizens, attracts new residents and businesses to the state, and is a major support of its expanding tourist industry. Rising population, increased income and leisure time, and the rapid growth of boating and other water sports have greatly increased the demand for water related recreation, while waterfront land is rapidly rising in value and disappearing from public use. There is consequently an urgent need for the acquisition or improvement of waterfront land on fresh and salt water suitable for marine recreational use by Washington residents and visitors. To meet this need, it is necessary and proper that the portion of motor vehicle fuel taxes paid by boat owners and operators on fuel consumed in their watercraft and not reclaimed as

presently provided by law should be expended for the acquisition or improvement of marine recreation land on the Pacific Ocean, Puget Sound, bays, lakes, rivers, reservoirs and other fresh and salt waters of the state. [2007 c 241 § 39; 1989 c 237 § 1; 1965 c 5 § 1 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.010.]

**Intent—2007 c 241:** "The legislature intends to change the name of the interagency committee for outdoor recreation to the recreation and conservation funding board. Similarly, the office of the interagency committee is renamed the recreation and conservation office.

The legislature does not intend this act to make any substantive policy changes other than to change or clarify the names of the relevant entities.

The name changes in this act have no impact on the powers, duties, or responsibilities previously delegated to the interagency committee for outdoor recreation or the office of the interagency committee by statute, budget proviso, or executive order.

The name changes in this act have no impact on the validity of the documents, contracts, agreements, policies, and written decisions made, entered into, recorded, issued, or established before this name change by the interagency committee for outdoor recreation, its office, or director. Documents, contracts, agreements, policies, publications, and written decisions are not required to be changed to conform to the name changes, and the continued use of former names on documents made, recorded, issued, or established prior to the changes in this act does not affect the document's validity after the change." [2007 c 241 § 1.]

**Effective date—2007 c 241:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 241 § 76.]

**Effective date—1989 c 237:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on June 30, 1989." [1989 c 237 § 9.]

**79A.25.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Marine recreation land" means any land with or without improvements which (a) provides access to, or in whole or in part borders on, fresh or salt water suitable for recreational use by watercraft, or (b) may be used to create, add to, or make more usable, bodies of water, waterways, or land, for recreational use by watercraft.

(2) "Public body" means any county, city, town, port district, park and recreation district, metropolitan park district, or other municipal corporation which is authorized to acquire or improve public outdoor recreation land, and shall also mean Indian tribes now or hereafter recognized as such by the federal government for participation in the land and water conservation program.

(3) "Tax on marine fuel" means motor vehicle fuel tax which is (a) tax on fuel used in, or sold or distributed for use in, any watercraft, (b) refundable pursuant to chapter 82.36 RCW, and (c) paid to the director of licensing with respect to taxable sales, distributions, or uses occurring on or after December 3, 1964.

(4) "Watercraft" means any boat, vessel, or other craft used for navigation on or through water.

(5) "Board" means the recreation and conservation funding board.

(6) "Director" means the director of the recreation and conservation office.

(7) "Office," "recreation and conservation office," or "the office of recreation and conservation" means the state agency responsible for administration of programs and activ-

ities of the recreation and conservation funding board, the salmon recovery funding board, the invasive species council, and such other duties or boards, councils, or advisory groups as are or may be established or directed for administrative placement in the agency.

(8) "Council" means the Washington invasive species council created in RCW 79A.25.310. [2007 c 241 § 40; 2006 c 152 § 9; 1989 c 237 § 2; 1979 c 158 § 108; 1972 ex.s. c 56 § 1; 1965 c 5 § 2 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.020.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**Construction—1972 ex.s. c 56:** "The provisions of this 1972 amendatory act are intended to be remedial and procedural and shall be construed to apply retroactively." [1972 ex.s. c 56 § 2.]

**79A.25.020 Director's powers and duties.** The director shall have the following powers and duties:

(1) To supervise the administrative operations of the boards, office, and their staff;

(2) To administer recreation and conservation grant-in-aid programs and contracts, and provide technical assistance to state and local agencies;

(3) To prepare and update a strategic plan for the acquisition, renovation, and development of recreational resources and the preservation and conservation of open space. The plan shall be prepared in coordination with the office of the governor and the office of financial management, with participation of federal, state, and local agencies having recreational responsibilities, user groups, private sector interests, and the general public. The plan shall be submitted to the recreation and conservation funding board for review, and the board shall submit its recommendations on the plan to the governor. The plan shall include, but is not limited to: (a) an inventory of current resources; (b) a forecast of recreational resource demand; (c) identification and analysis of actual and potential funding sources; (d) a process for broad scale information gathering; (e) an assessment of the capabilities and constraints, both internal and external to state government, that affect the ability of the state to achieve the goals of the plan; (f) an analysis of strategic options and decisions available to the state; (g) an implementation strategy that is coordinated with executive policy and budget priorities; and (h) elements necessary to qualify for participation in or the receipt of aid from any federal program for outdoor recreation;

(4) To represent and promote the interests of the state on recreational issues and further the mission of the board and office;

(5) Upon approval of the relevant board, to enter into contracts and agreements with private nonprofit corporations to further state goals of preserving, conserving, and enhancing recreational resources and open space for the public benefit and use;

(6) To appoint such technical and other committees as may be necessary to carry out the purposes of this chapter;

(7) To create and maintain a repository for data, studies, research, and other information relating to recreation and conservation resources in the state, and to encourage the interchange of such information;

(8) To encourage and provide opportunities for inter-agency and regional coordination and cooperative efforts between public agencies and between public and private entities involved in the development and preservation of recreational and conservation resources; and

(9) To prepare the state trails plan, as required by RCW 79A.35.040. [2007 c 241 § 41; 2000 c 11 § 69; 1989 c 237 § 4. Formerly RCW 43.99.025.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**79A.25.030 Determination of proportion of motor vehicle fuel tax moneys derived from tax on marine fuel—Studies—Costs.** From time to time, but at least once each four years, the director of licensing shall determine the amount or proportion of moneys paid to him or her as motor vehicle fuel tax which is tax on marine fuel. The director of licensing shall make or authorize the making of studies, surveys, or investigations to assist him or her in making such determination, and shall hold one or more public hearings on the findings of such studies, surveys, or investigations prior to making his or her determination. The studies, surveys, or investigations conducted pursuant to this section shall encompass a period of twelve consecutive months each time. The final determination by the director of licensing shall be implemented as of the next biennium after the period from which the study data were collected. The director of licensing may delegate his or her duties and authority under this section to one or more persons of the department of licensing if he or she finds such delegation necessary and proper to the efficient performance of these duties. Costs of carrying out the provisions of this section shall be paid from the marine fuel tax refund account created in RCW 79A.25.040, upon legislative appropriation. [2007 c 241 § 42; 2000 c 11 § 70; 1995 c 166 § 1; 1979 c 158 § 109; 1975-'76 2nd ex.s. c 50 § 1; 1969 ex.s. c 74 § 1; 1965 c 5 § 3 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.030.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.040 Marine fuel tax refund account—Moneys derived from tax on marine fuel—Refunding and placement in account—Exception.** There is created the marine fuel tax refund account in the state treasury. The director of licensing shall request the state treasurer to refund monthly from the motor vehicle fund amounts which have been determined to be tax on marine fuel. The state treasurer shall refund such amounts and place them in the marine fuel tax refund account to be held for those entitled thereto pursuant to chapter 82.36 RCW and RCW 79A.25.050, except that he or she shall not refund and place in the marine fuel tax refund account for any period for which a determination has been made pursuant to RCW 79A.25.030 more than the greater of the following amounts: (1) An amount equal to two percent of all moneys paid to him or her as motor vehicle fuel tax for such period, (2) an amount necessary to meet all approved claims for refund of tax on marine fuel for such period. [2000 c 11 § 71; 1995 c 166 § 2; 1991 sp.s. c 13 § 42; 1985 c 57 § 53; 1979 c 158 § 110; 1965 c 5 § 4 (Initiative

Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.040.]

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

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

**79A.25.050 Marine fuel tax refund account—Claims for refunds paid from.** Claims submitted pursuant to chapter 82.36 RCW for refund of tax on marine fuel which has been placed in the marine fuel tax refund account shall, if approved, be paid from that account. [1965 c 5 § 5 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.050.]

**79A.25.060 Outdoor recreation account—Deposits.** The outdoor recreation account is created in the state treasury. Moneys in the account are subject to legislative appropriation. The board shall administer the account in accordance with chapter 79A.15 RCW and this chapter, and shall hold it separate and apart from all other money, funds, and accounts of the board.

Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation, may be deposited into the account. [2007 c 241 § 43; 2000 c 11 § 72; 1995 c 166 § 3; 1991 sp.s. c 13 § 52; 1985 c 57 § 54; 1967 ex.s. c 62 § 1; 1965 c 5 § 6 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.060.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

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

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

**79A.25.070 Recreation resource account, motor vehicle fund—Transfers of moneys from marine fuel tax account.** Upon expiration of the time limited by RCW 82.36.330 for claiming of refunds of tax on marine fuel, the state of Washington shall succeed to the right to such refunds. The director of licensing, after taking into account past and anticipated claims for refunds from and deposits to the marine fuel tax refund account and the costs of carrying out the provisions of RCW 79A.25.030, shall request the state treasurer to transfer monthly from the marine fuel tax refund account an amount equal to the proportion of the moneys in the account representing a motor vehicle fuel tax rate of: (1) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (2) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (3) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (4) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (5) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, to the recreation resource account and the remainder to the motor vehicle fund. [2003 c 361 § 409; 2000 c 11 § 73; 1995 c 166 § 4; 1990 c 42 § 116; 1979 c 158 § 111; 1965 c 5 § 7 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.070.]

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**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**79A.25.080 Recreation resource account—Distribution of moneys transferred.** Moneys transferred to the recreation resource account from the marine fuel tax refund account may be used when appropriated by the legislature, as well as any federal or other funds now or hereafter available, to pay the office and necessary administrative and coordinative costs of the recreation and conservation funding board established by RCW 79A.25.110. All moneys so transferred, except those appropriated as aforesaid, shall be divided into two equal shares and shall be used to benefit watercraft recreation in this state as follows:

(1) One share as grants to state agencies for (a) acquisition of title to, or any interests or rights in, marine recreation land, (b) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful, or (c) matching funds in any case where federal or other funds are made available on a matching basis for purposes described in (a) or (b) of this subsection;

(2) One share as grants to public bodies to help finance (a) acquisition of title to, or any interests or rights in, marine recreation land, or (b) capital improvement and renovation of marine recreation land, including periodic dredging in accordance with subsection (3) of this section, if needed, to maintain or make the facility more useful. A public body is authorized to use a grant, together with its own contribution, as matching funds in any case where federal or other funds are made available for purposes described in (a) or (b) of this subsection. The board may prescribe further terms and conditions for the making of grants in order to carry out the purposes of this chapter.

(3) For the purposes of this section "periodic dredging" is limited to dredging of materials that have been deposited in a channel due to unforeseen events. This dredging should extend the expected usefulness of the facility for at least five years. [2007 c 241 § 44; 2000 c 11 § 74; 1999 c 341 § 1; 1995 c 166 § 5; 1971 ex.s. c 140 § 1; 1965 ex.s. c 136 § 1; 1965 c 5 § 8 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.080.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.090 Interest on funds granted by board to be returned to source account.** Interest earned on funds granted or made available by the board shall not be expended by the recipient but shall be returned to the source account for disbursement by the board in accordance with general budget and accounting procedure. [2007 c 241 § 45; 1995 c 166 § 6; 1967 ex.s. c 62 § 7. Formerly RCW 43.99.095.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.100 Conversion of marine recreation land to other uses—Approval—Substitution.** Marine recreation

land with respect to which money has been expended under RCW 79A.25.080 shall not, without the approval of the board, be converted to uses other than those for which such expenditure was originally approved. The board shall only approve any such conversion upon conditions which will assure the substitution of other marine recreation land of at least equal fair market value at the time of conversion and of as nearly as feasible equivalent usefulness and location. [2007 c 241 § 46; 2000 c 11 § 75; 1965 c 5 § 10 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.100.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.110 Recreation and conservation funding board—Created—Membership—Terms—Compensation and travel expenses.** There is created the recreation and conservation funding board consisting of the commissioner of public lands, the director of parks and recreation, and the director of fish and wildlife, or their designees, and, by appointment of the governor with the advice and consent of the senate, five members from the public at large who have a demonstrated interest in and a general knowledge of outdoor recreation and conservation in the state. The terms of members appointed from the public at large shall commence on January 1st of the year of appointment and shall be for three years or until a successor is appointed, except in the case of appointments to fill vacancies which shall be for the remainder of the unexpired term. The governor shall appoint one of the members from the public at large to serve as chair of the board for the duration of the member's term. Members employed by the state shall serve without additional pay and participation in the work of the board shall be deemed performance of their employment. Members from the public at large shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement individually for travel expenses incurred in performance of their duties as members of the board in accordance with RCW 43.03.050 and 43.03.060. [2007 c 241 § 47; 1994 c 264 § 31; 1988 c 36 § 21; 1985 c 77 § 1; 1984 c 287 § 84. Prior: 1981 c 338 § 7; 1981 c 206 § 1; 1975-'76 2nd ex.s. c 34 § 125; 1971 c 60 § 1; 1967 ex.s. c 62 § 2; 1965 c 5 § 11 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.110.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

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

**Effective date—1981 c 206:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1981." [1981 c 206 § 4.]

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

*Construction and maintenance of outdoor recreation facilities by department of natural resources, review by recreation and conservation funding board: RCW 79.10.140.*

**79A.25.120 Plans for public outdoor recreation land acquisition or improvement—Contents—Submission—Recommendations.** Any public body or any agency of state government authorized to acquire or improve public outdoor

recreation land which desires funds from the outdoor recreation account, the recreation resource account, or the non-highway and off-road vehicle activities program account shall submit to the board a long-range plan for developing outdoor recreation facilities within its authority and detailed plans for the projects sought to be financed from these accounts, including estimated cost and such other information as the board may require. The board shall analyze all proposed plans and projects, and shall recommend to the governor for inclusion in the budget such projects as it may approve and find to be consistent with an orderly plan for the acquisition and improvement of outdoor recreation lands in the state. [2007 c 241 § 48; 1995 c 166 § 7; 1983 c 3 § 114; 1965 c 5 § 12 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.120.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.130 Participation in federal programs—Authority.** The board or director may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation or conservation. The board or director may enter into contracts and agreements with the United States or any appropriate agency thereof, keep financial and other records relating thereto, and furnish to appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to enable such officials and agencies to perform their duties under such programs. [2007 c 241 § 49; 1967 ex.s. c 62 § 5. Formerly RCW 43.99.124.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.140 Commitments or agreements forbidden unless sufficient funds available—Agreements with federal agencies on behalf of state or local agencies—Conditions.** The board or director shall not make any commitment or enter into any agreement until it is determined that sufficient funds are available to meet project costs. It is the legislative intent that, to such extent as may be necessary to assure the proper operation and maintenance of areas and facilities acquired or developed pursuant to any program participated in by this state under authority of this chapter, such areas and facilities shall be publicly maintained for outdoor recreation purposes. When requested by a state agency or public body, the board or director may enter into and administer agreements with the United States or any appropriate agency thereof for planning, acquisition, and development projects involving participating federal-aid funds on behalf of any state agency, public body, or subdivision of this state: PROVIDED, That recipients of funds give necessary assurances to the board or director that they have available sufficient matching funds to meet their shares, if any, of the cost of the project and that the acquired or developed areas will be operated and maintained at the expense of such state agency, public body, or subdivision for public outdoor recreation use. [2007 c 241 § 50; 1967 ex.s. c 62 § 6. Formerly RCW 43.99.126.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.150 Assistance furnished by state departments—Appointment of director and personnel—Civil service exemption.** When requested by the board, members employed by the state shall furnish assistance to the board from their departments for the analysis and review of proposed plans and projects, and such assistance shall be a proper charge against the appropriations to the several agencies represented on the board. Assistance may be in the form of money, personnel, or equipment and supplies, whichever is most suitable to the needs of the board.

The director of the recreation and conservation office shall be appointed by, and serve at the pleasure of, the governor. The governor shall select the director from a list of three candidates submitted by the board. However, the governor may request and the board shall provide an additional list or lists from which the governor may select the director. The lists compiled by the board shall not be subject to public disclosure. The director shall have background and experience in the areas of recreation and conservation management and policy. The director shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The director shall appoint such personnel as may be necessary to carry out the duties of the office. Not more than three employees appointed by the director shall be exempt from the provisions of chapter 41.06 RCW. [2007 c 241 § 51; 1989 c 237 § 3; 1981 c 206 § 2; 1967 ex.s. c 62 § 3; 1965 c 5 § 13 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.130.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**Effective date—1981 c 206:** See note following RCW 79A.25.110.

**79A.25.160 Washington state recreation trails system, duties of recreation and conservation funding board.** See chapter 79A.35 RCW.

**79A.25.170 Public parks and recreation sites guide.** In addition to its other powers and duties the director is authorized to coordinate the preparation of a comprehensive guide of public parks and recreation sites in the state of Washington. Such guide may include one or more maps showing the locations of such public parks and recreation areas, and may also include information as to the facilities and recreation opportunities available. All state agencies providing public recreational facilities shall participate. Cooperation of federal agencies providing public recreational facilities within the state shall be solicited.

The director shall determine the costs of providing and distributing such a guide and pursue the most feasible means of paying the costs of initial production. The guide shall be sold for an amount to cover the reasonable production and distribution costs involved, and the director may contract with any state agency, local government agency, or private firm as otherwise allowed by law for any part of such production or distribution. [1989 c 237 § 5; 1979 ex.s. c 24 § 1. Formerly RCW 43.99.142.]

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**Plan submittal:** "The committee shall submit a plan for production and distribution of the guide to the State Legislature on or before January 1, 1981." [1979 ex.s. c 24 § 3.]

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**79A.25.180 Public parks and recreation sites guide—Review and update.** The director shall periodically review and have updated the guide authorized by RCW 79A.25.170. [2000 c 11 § 76; 1989 c 237 § 6; 1979 ex.s. c 24 § 4. Formerly RCW 43.99.146.]

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**79A.25.190 Appropriations by subsequent legislatures.** The 1967 and subsequent legislatures may appropriate funds requested in the budget for grants to public bodies and state agencies from the recreation resource account to the board for allocation and disbursement. The board shall include a list of prioritized state agency projects to be funded from the recreation resource account with its biennial budget request. [2007 c 241 § 52; 1995 c 166 § 8; 1965 c 5 § 15 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.150.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.200 Recreation resource account.** The recreation resource account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The board shall administer the account in accordance with this chapter and chapter 79A.35 RCW and shall hold it separate and apart from all other money, funds, and accounts of the board. Moneys received from the marine fuel tax refund account under RCW 79A.25.070 shall be deposited into the account. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account. [2007 c 241 § 53; 2000 c 11 § 77; 1995 c 166 § 10. Formerly RCW 43.99.170.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.210 Firearms range account—Grant program—Rules.** The firearms range account is hereby created in the state general fund. Moneys in the account shall be subject to legislative appropriation and shall be used for purchase and development of land, construction or improvement of range facilities, including fixed structure construction or remodeling, equipment purchase, safety or environmental improvements, noise abatement, and liability protection for public and nonprofit firearm range training and practice facilities.

Grant funds shall not be used for expendable shooting supplies, or normal operating expenses. In making grants, the board shall give priority to projects for noise abatement or safety improvement. Grant funds shall not supplant funds for other organization programs.

The funds will be available to nonprofit shooting organizations, school districts, and state, county, or local governments on a match basis. All entities receiving matching funds must be open on a regular basis and usable by law enforcement personnel or the general public who possess Washington concealed pistol licenses or Washington hunting licenses or who are enrolled in a firearm safety class.

Applicants for a grant from the firearms range account shall provide matching funds in either cash or in-kind contri-

butions. The match must represent one dollar in value for each one dollar of the grant except that in the case of a grant for noise abatement or safety improvements the match must represent one dollar in value for each two dollars of the grant. In-kind contributions include but are not limited to labor, materials, and new property. Existing assets and existing development may not apply to the match.

Applicants other than school districts or local or state government must be registered as a nonprofit or not-for-profit organization with the Washington secretary of state. The organization's articles of incorporation must contain provisions for the organization's structure, officers, legal address, and registered agent.

Organizations requesting grants must provide the hours of range availability for public and law enforcement use. The fee structure will be submitted with the grant application.

Any nonprofit organization or agency accepting a grant under this program will be required to pay back the entire grant amount to the firearms range account if the use of the range facility is discontinued less than ten years after the grant is accepted.

Entities receiving grants must make the facilities for which grant funding is received open for hunter safety education classes and firearm safety classes on a regular basis for no fee.

Government units or school districts applying for grants must open their range facility on a regular basis for hunter safety education classes and firearm safety classes.

The board shall adopt rules to implement chapter 195, Laws of 1990, pursuant to chapter 34.05 RCW. [2007 c 241 § 54; 1996 c 96 § 1; 1994 sp.s. c 7 § 443; 1990 c 195 § 2. Formerly RCW 77.12.720.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Findings—1990 c 195:** "Firearms are collected, used for hunting, recreational shooting, and self-defense, and firearm owners as well as bow users need safe, accessible areas in which to shoot their equipment. Approved shooting ranges provide that opportunity, while at the same time, promote public safety. Interest in all shooting sports has increased while safe locations to shoot have been lost to the pressures of urban growth." [1990 c 195 § 1.]

#### **79A.25.220 Firearms range advisory committee. (1)**

A ten-member firearms range advisory committee is hereby created to provide advice and counsel to the board. The members shall be appointed by the director of the recreation and conservation office from the following groups:

- (a) Law enforcement;
- (b) Washington military department;
- (c) Black powder shooting sports;
- (d) Rifle shooting sports;
- (e) Pistol shooting sports;
- (f) Shotgun shooting sports;
- (g) Archery shooting sports;
- (h) Hunter education;
- (i) Hunters; and
- (j) General public.

(2) The firearms range advisory committee members shall serve two-year terms with five new members being selected each year beginning with the third year of the committee's existence. The firearms range advisory committee members shall not receive compensation from the firearms range account. However, travel and per diem costs shall be paid consistent with regulations for state employees.

(3) The office shall provide administrative, operational, and logistical support for the firearms range advisory committee. Expenses directly incurred for supporting this program may be charged by the office against the firearms range account. Expenses shall not exceed ten percent of the yearly income for the range account.

(4) The board shall in cooperation with the firearms range advisory committee:

- (a) Develop an application process;
- (b) Develop an audit and accountability program;
- (c) Screen, prioritize, and approve grant applications; and
- (d) Monitor compliance by grant recipients.

(5) The department of natural resources, the department of fish and wildlife, and the Washington military department are encouraged to provide land, facilitate land exchanges, and support the development of shooting range facilities. [2007 c 241 § 55; 1993 sp.s. c 2 § 71; 1990 c 195 § 3. Formerly RCW 77.12.730.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79:** See RCW 43.300.900.

**Severability—1993 sp.s. c 2:** See RCW 43.300.901.

**Findings—1990 c 195:** See note following RCW 79A.25.210.

#### **79A.25.230 Firearms range account—Gifts and grants.**

The board or director may accept gifts and grants upon such terms as the board shall deem proper. All monetary gifts and grants shall be deposited in the firearms range account of the general fund. [2007 c 241 § 56; 1990 c 195 § 4. Formerly RCW 77.12.740.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Findings—1990 c 195:** See note following RCW 79A.25.210.

#### **79A.25.240 Grants and loan administration.**

The recreation and conservation office shall provide necessary grants and loan administration support to the salmon recovery funding board as provided in RCW 77.85.120. The office shall also be responsible for tracking salmon recovery expenditures under RCW 77.85.140. The office shall provide all necessary administrative support to the salmon recovery funding board, and the salmon recovery funding board shall be located with the office. The office shall provide necessary coordination with the salmon recovery office. [2007 c 241 § 57; 2003 c 39 § 44; 2000 c 11 § 78; 1999 sp.s. c 13 § 17.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—Effective date—1999 sp.s. c 13:** See notes following RCW 75.46.005.

**79A.25.250 Acquisition, development, etc., of urban area parks by recreation and conservation funding board.** Recognizing the fact that the demand for park services is greatest in our urban areas, that parks should be accessible to all Washington citizens, that the urban poor cannot afford to travel to remotely located parks, that few state parks are located in or near urban areas, that a need exists to conserve energy, and that local governments having jurisdiction in urban areas cannot afford the costs of maintaining and operating the extensive park systems needed to service their large populations, the legislature hereby directs the recreation and conservation funding board to place a high priority on the acquisition, development, redevelopment, and renovation of parks to be located in or near urban areas and to be particularly accessible to and used by the populations of those areas. For purposes of RCW 79A.25.250 and 79A.05.300, "urban areas" means any incorporated city with a population of five thousand persons or greater or any county with a population density of two hundred fifty persons per square mile or greater. This section shall be implemented by January 1, 1981. [2007 c 241 § 58; 2000 c 11 § 79; 1980 c 89 § 3. Formerly RCW 43.51.380.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.260 Habitat and recreation lands coordinating group—Members—Progress reports—Duties. (Expires July 31, 2012.)** (1) The habitat and recreation lands coordinating group is established. The habitat and recreation lands coordinating group must include representatives from the \*committee, the state parks and recreation commission, the department of natural resources, and the Washington state department of fish and wildlife. The members of the habitat and recreation lands coordinating group must have subject matter expertise with the issues presented in this section. Representatives from appropriate stakeholder organizations and local government must also be considered for participation on the habitat and recreation lands coordinating group, but may only be appointed or invited by the director.

(2) To ensure timely completion of the duties assigned to the habitat and recreation lands coordinating group, the director shall submit yearly progress reports to the office of financial management.

(3) The habitat and recreation lands coordinating group must:

(a) Review agency land acquisition and disposal plans and policies to help ensure statewide coordination of habitat and recreation land acquisitions and disposals;

(b) Produce an interagency, statewide biennial forecast of habitat and recreation land acquisitions [acquisition] and disposal plans;

(c) Establish procedures for publishing the biennial forecast of acquisition and disposal plans on web sites or other centralized, easily accessible formats;

(d) Develop and convene an annual forum for agencies to coordinate their near-term acquisition and disposal plans;

(e) Develop a recommended method for interagency geographic information system-based documentation of habitat and recreation lands in cooperation with other state agencies using geographic information systems;

(f) Develop recommendations for standardization of acquisition and disposal recordkeeping, including identifying a preferred process for centralizing acquisition data;

(g) Develop an approach for monitoring the success of acquisitions;

(h) Identify and commence a dialogue with key state and federal partners to develop an inventory of potential public lands for transfer into habitat and recreation land management status;

(i) Review existing and proposed habitat conservation plans on a regular basis to foster statewide coordination and save costs.

(4) The group shall revisit the \*committee's and Washington wildlife and recreation program's planning requirements to determine whether coordination of state agency habitat and recreation land acquisition and disposal could be improved by modifying those requirements.

(5) The group must develop options for centralizing coordination of habitat and recreation land acquisition made with funds from federal grants. The advantages and drawbacks of the following options, at a minimum, must be developed:

(a) Requiring that agencies provide early communication on the status of federal grant applications to the \*committee, the office of financial management, or directly to the legislature;

(b) Establishing a centralized pass-through agency for federal funds, where individual agencies would be the primary applicants.

(6) This section expires July 31, 2012. Prior to January 1, 2012, the \*committee shall make a formal recommendation to the appropriate committees of the legislature as to whether the existence of the habitat and recreation lands coordinating group should be continued beyond July 31, 2012, and if so, whether any modifications to its enabling statute should be pursued. The \*committee shall involve all participants in the habitat and recreation lands coordinating group when developing the recommendations. [2007 c 247 § 1.]

**\*Reviser's note:** Chapter 241, Laws of 2007 amended RCW 79A.25.010, changing the definition of "committee" to "board."

**79A.25.300 Findings.** The legislature finds that:

(1) The land, water, and other resources of Washington are being severely impacted by the invasion of an increasing number of harmful invasive plant and animal species.

(2) These impacts are resulting in damage to Washington's environment and causing economic hardships.

(3) The multitude of public and private organizations with an interest in controlling and preventing the spread of harmful invasive species in Washington need a mechanism for cooperation, communication, collaboration, and developing a statewide plan of action to meet these threats. [2006 c 152 § 1.]

**79A.25.310 Washington invasive species council—Created.** (1) There is created the Washington invasive species council to exist until December 31, 2011. Staff support to the council shall be provided by the recreation and conservation office and from the agencies represented on the council.

cil. For administrative purposes, the council shall be located within the office.

(2) The purpose of the council is to provide policy level direction, planning, and coordination for combating harmful invasive species throughout the state and preventing the introduction of others that may be potentially harmful.

(3) The council is a joint effort between local, tribal, state, and federal governments, as well as the private sector and nongovernmental interests. The purpose of the council is to foster cooperation, communication, and coordinated approaches that support local, state, and regional initiatives for the prevention and control of invasive species.

(4) For the purposes of this chapter, "invasive species" include nonnative organisms that cause economic or environmental harm and are capable of spreading to new areas of the state. "Invasive species" does not include domestic livestock, intentionally planted agronomic crops, or nonharmful exotic organisms. [2007 c 241 § 61; 2006 c 152 § 2.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.25.320 Washington invasive species council—Membership.** (1) Membership in the council includes a representative from the following entities:

(a) The department of agriculture, represented by the director or the director's designee;

(b) The department of fish and wildlife, represented by the director or the director's designee;

(c) The department of ecology, represented by the director or the director's designee;

(d) The department of natural resources, represented by the commissioner or the commissioner's designee;

(e) The department of transportation, represented by the secretary or the secretary's designee;

(f) The Washington state noxious weed control board, appointed by the board;

(g) A county located east of the crest of the Cascade mountains, appointed by the other members of the council; and

(h) A county located west of the crest of the Cascade mountains, appointed by the other members of the council.

(2) The councilmembers may add members to the council as the councilmembers deem appropriate to accomplish its goals.

(3) The council must invite one representative each from the United States department of agriculture, the United States fish and wildlife service, the United States environmental protection agency, and the United States coast guard to participate on the council in a nonvoting, ex officio capacity.

(4) A representative of the office of the governor must convene the first meeting of the council and serve as chair until the council selects a chair. At the first meeting of the council, the council shall address issues including, but not limited to, voting methods, meeting schedules, and the need for and use of advisory and technical committees. [2006 c 152 § 3.]

**79A.25.330 Washington invasive species council—Goals.** The council's goals are to:

(1) Minimize the effects of harmful invasive species on Washington's citizens and ensure the economic and environmental well-being of the state;

(2) Serve as a forum for identifying and understanding invasive species issues from all perspectives;

(3) Serve as a forum to facilitate the communication, cooperation, and coordination of local, tribal, state, federal, private, and nongovernmental entities for the prevention, control, and management of nonnative invasive species;

(4) Serve as an avenue for public outreach and for raising public awareness of invasive species issues;

(5) Develop and implement a statewide invasive species strategic plan as described in this chapter;

(6) Review the current funding mechanisms and levels for state agencies to manage noxious weeds on the lands under their authority;

(7) Make recommendations for legislation necessary to carry out the purposes of this chapter;

(8) Establish criteria for the prioritization of invasive species response actions and projects; and

(9) Utilizing the process described in subsection (8) of this section, select at least one project per year from the strategic plan for coordinated action by the Washington invasive species councilmember entities. [2006 c 152 § 4.]

**79A.25.340 Washington invasive species council—Statewide strategic plan.** (1) The council shall develop and periodically update a statewide strategic plan for addressing invasive species. The strategic plan should incorporate the reports and activities of the aquatic nuisance species committee, the state noxious weed control board, and other appropriate reports and activities. In addition, the council must coordinate with the biodiversity council created in Executive Order 04-02 to ensure that a statewide strategy for the control of invasive species is integrated into the thirty-year strategy for biodiversity conservation that the biodiversity council must submit to the legislature in 2007.

(2) The strategic plan must, at a minimum, address:

(a) Statewide coordination and intergovernmental cooperation;

(b) Prevention of new biological invasions through deliberate or unintentional introduction;

(c) Inventory and monitoring of invasive species;

(d) Early detection of and rapid response to new invasions;

(e) Control, management, and eradication of established populations of invasive species;

(f) Projects that can be implemented during the period covered by the strategic plan for the control, management, and eradication of new or established populations of invasive species;

(g) Revegetation, reclamation, or restoration of native species following control or eradication of invasive species;

(h) Tools that can be made available to assist state agencies that are responsible for managing public land to control invasive noxious weeds and recommendations as to how the agencies should be held responsible for the failure to control invasive noxious weeds;

(i) Research and public education;

(j) Funding and resources available for invasive species prevention, control, and management; and

(k) Recommendations for legislation necessary to carry out the purposes of this chapter.

(3) The strategic plan must be updated at least once every three years following its initial development. The strategic plan must be submitted to the governor and appropriate committees of the legislature by September 15th of each applicable year. The council shall complete the initial strategic plan within two years of June 7, 2006.

(4) Each state department and agency named to the council shall, consistent with state law, make best efforts to implement elements of the completed plan that are applicable to the department or agency. [2006 c 152 § 5.]

**79A.25.350 Washington invasive species council—Annual report.** (1) The council shall submit an annual report of its activities to the governor and the relevant policy committees of the senate and house of representatives by December 15th of each year. The annual report must include an evaluation of progress made in the preceding year to implement or carry out the strategic plan and an identification of projects from the strategic plan that will be a focus for the following year.

(2) Prior to the start of the 2011 legislative session, the council must prepare a report to the appropriate committees of the legislature that makes recommendations as to the extension or modification of the council. [2006 c 152 § 6.]

**79A.25.360 Washington invasive species council—Advisory and technical committees authorized.** The council may establish advisory and technical committees that it considers necessary to aid and advise the council in the performance of its functions. The committees may be continuing or temporary committees. The council shall determine the representation, membership, terms, and organization of the committees and appoint their members. [2006 c 152 § 7.]

**79A.25.370 Washington invasive species council—Invasive species council account. (Expires December 31, 2011.)** The invasive species council account is created in the custody of the state treasurer. All receipts from appropriations, gifts, grants, and donations must be deposited into the account. Expenditures from the account may be used only to carry out the purposes of the council. The account is subject to allotment procedures under chapter 43.88 RCW and the approval of the director of the recreation and conservation office is required for expenditures. All expenditures must be directed by the council. [2007 c 241 § 62; 2006 c 152 § 8.]

**Expiration date—2007 c 241 § 62:** "Section 62 of this act expires December 31, 2011." [2007 c 241 § 75.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Expiration date—2006 c 152 § 8:** "Section 8 of this act expires December 31, 2011." [2006 c 152 § 10.]

## YOUTH OR COMMUNITY ATHLETIC FACILITIES

**79A.25.800 Intent. (Contingent expiration date.)** (1) The legislature recognizes that coordinated funding efforts are needed to maintain, develop, and improve the state's community outdoor athletic fields. Rapid population growth and increased urbanization have caused a decline in suitable

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outdoor fields for community athletic activities and has resulted in overcrowding and deterioration of existing surfaces. Lack of adequate community outdoor athletic fields directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves. Therefore, it is the policy of the state and its agencies to maintain, develop, fund, and improve youth or community athletic facilities, including but not limited to community outdoor athletic fields.

(2) In carrying out this policy, the legislature intends to promote the building of new community outdoor athletic fields, the upgrading of existing community outdoor athletic fields, and the maintenance of existing community outdoor athletic fields across the state of Washington. [2003 c 126 § 701; 2000 c 11 § 80; 1998 c 264 § 1. Formerly RCW 43.99.800.]

**Contingent expiration date—2003 c 126 §§ 701 and 702:** "Sections 701 and 702 of this act expire one year after \*RCW 82.14.0494 expires." [2003 c 126 § 1002.]

**\*Reviser's note:** RCW 82.14.0494 has a contingent expiration date. See RCW 82.14.0494(5).

**Part headings not law—Effective date—2003 c 126:** See notes following RCW 79A.05.385.

**Severability—1998 c 264:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 264 § 5.]

**Contingent expiration date—1998 c 264:** "Sections 1 through 4 of this act expire one year after RCW 82.14.0494 expires." [1998 c 264 § 6.]

**79A.25.820 Strategic plan—Funding eligibility—Regional coordination and cooperative efforts—Data collection and exchange. (Contingent expiration date.)** Subject to available resources, the recreation and conservation funding board may:

(1) Prepare and update a strategic plan for the development, maintenance, and improvement of community outdoor athletic fields in the state. In the preparation of such plan, the board may use available data from federal, state, and local agencies having community outdoor athletic responsibilities, user groups, private sector interests, and the general public. The plan may include, but is not limited to:

(a) An inventory of current community outdoor athletic fields;

(b) A forecast of demand for these fields;

(c) An identification and analysis of actual and potential funding sources; and

(d) Other information the board deems appropriate to carry out the purposes of RCW 79A.25.800 through 79A.25.830;

(2) Determine the eligibility requirements for cities, counties, and qualified nonprofit organizations to access funding from the youth athletic facility account created in RCW 43.99N.060(4);

(3) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public entities and nonprofit organizations involved in the maintenance, development, and improvement of community outdoor athletic fields; and

(4) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields in

the state, and to encourage the exchange of this information. [2007 c 241 § 59; 2003 c 126 § 702; 2000 c 11 § 81; 1998 c 264 § 3. Formerly RCW 43.99.820.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Contingent expiration date—2003 c 126 §§ 701 and 702:** See note following RCW 79A.25.800.

**Part headings not law—Effective date—2003 c 126:** See notes following RCW 79A.05.385.

**Severability—Contingent expiration date—1998 c 264:** See notes following RCW 79A.25.800.

**79A.25.830 Gifts, grants, or endowments. (Contingent expiration date.)** The recreation and conservation funding board or office may receive gifts, grants, or endowments from public and private sources that are made from time to time, in trust or otherwise, for the use and benefit of the purposes of RCW 79A.25.800 through 79A.25.830 and spend gifts, grants, or endowments or income from the public or private sources according to their terms, unless the receipt of the gifts, grants, or endowments violates RCW 42.17.710. [2007 c 241 § 60; 2000 c 11 § 82; 1998 c 264 § 4. Formerly RCW 43.99.830.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—Contingent expiration date—1998 c 264:** See notes following RCW 79A.25.800.

## CONSTRUCTION

**79A.25.901 Severability—1965 c 5.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 5 § 17 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.900.]

**79A.25.902 Short title.** This chapter shall be known and may be cited as the Marine Recreation Land Act of 1964. [1965 c 5 § 18 (Initiative Measure No. 215, approved November 3, 1964). Formerly RCW 43.99.910.]

## Chapter 79A.30 RCW

### WASHINGTON STATE HORSE PARK

#### Sections

79A.30.005	Findings—Purpose.
79A.30.010	Definitions.
79A.30.020	Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance.
79A.30.030	Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.
79A.30.040	Washington state horse park authority—Powers.
79A.30.050	Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities.
79A.30.900	Severability—1995 c 200.

**79A.30.005 Findings—Purpose.** The legislature finds that:

(1) Horses are part of a large, highly diverse, and vital industry which provides significant economic, employment,

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recreational, and educational contributions to residents of and visitors to the state of Washington;

(2) Currently there is no adequate facility in the Pacific Northwest with the acreage, services, and capacity to host large regional horse shows, national championships, or Olympics-quality events to showcase and promote this important Washington industry;

(3) Establishing a first-class horse park facility in Washington would meet important needs of the state's horse industry, attract investment, enhance recreational opportunities, and bring new exhibitors and tourists to the state from throughout the region and beyond; and

(4) A unique opportunity exists to form a partnership between state, county, and private interests to create a major horse park facility that will provide public recreational opportunities and statewide economic and employment benefits.

It is the purpose of this legislation to create the framework for such a partnership to facilitate development of the Washington state horse park. It is further the intent of the legislature that the state horse park shall be developed in stages, based on factors such as the availability of funds, equipment, and other materials donated by private sources; the availability and willingness of volunteers to work on park development; and the availability of revenues generated by the state horse park as it is developed and utilized. [1995 c 200 § 1. Formerly RCW 67.18.005.]

**79A.30.010 Definitions.** Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Authority" means the Washington state horse park authority authorized to be created in RCW 79A.30.030.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Horses" includes all domesticated members of the taxonomic family Equidae, including but not limited to horses, donkeys, and mules.

(4) "State horse park" means the Washington state horse park established in RCW 79A.30.020. [2000 c 11 § 83; 1995 c 200 § 2. Formerly RCW 67.18.010.]

**79A.30.020 Park established—Site approval—Ownership of land—Development, promotion, operation, management, and maintenance.** (1) The Washington state horse park is hereby established, to be located at a site approved by the commission. In approving a site for the state horse park, the commission shall consider areas with large blocks of land suitable for park development, the distance to various population centers in the state, the ease of transportation to the site for large vehicles traveling along either a north-south or an east-west corridor, and other factors deemed important by the commission.

(2) Ownership of land for the state horse park shall be as follows:

(a) The commission is vested with and shall retain ownership of land provided by the state for the state horse park. Any lands acquired by the commission after July 23, 1995, for the state horse park shall be purchased under chapter 79A.15 RCW. The legislature encourages the commission to

provide a long-term lease of the selected property to the Washington state horse park authority at a minimal charge. The lease shall contain provisions ensuring public access to and use of the horse park facilities, and generally maximizing public recreation opportunities at the horse park, provided that the facility remains available primarily for horse-related activities.

(b) Land provided for the state horse park by the county in which the park is located shall remain in the ownership of that county unless the county determines otherwise. The legislature encourages the county to provide a long-term lease of selected property to the Washington state horse park authority at a minimal charge.

(c) If the authority acquires additional lands through donations, grants, or other means, or with funds generated from the operation of the state horse park, the authority shall retain ownership of those lands. The authority shall also retain ownership of horse park site improvements paid for by or through donations or gifts to the authority.

(3) Development, promotion, operation, management, and maintenance of the state horse park is the responsibility of the authority created in RCW 79A.30.030. [2000 c 11 § 84; 1995 c 200 § 3. Formerly RCW 67.18.020.]

**79A.30.030 Washington state horse park authority—Formation—Powers—Articles of incorporation—Board.**

(1) A nonprofit corporation may be formed under the nonprofit corporation provisions of chapter 24.03 RCW to carry out the purposes of this chapter. Except as provided in RCW 79A.30.040, the corporation shall have all the powers and be subject to the same restrictions as are permitted or prescribed to nonprofit corporations and shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The nonprofit corporation shall be known as the Washington state horse park authority. The articles of incorporation shall provide that it is the responsibility of the authority to develop, promote, operate, manage, and maintain the Washington state horse park. The articles of incorporation shall provide for appointment of directors and other conduct of business consistent with the requirements of this chapter.

(2)(a) The articles of incorporation shall provide for a seven-member board of directors for the authority, all appointed by the governor. Board members shall serve three-year terms, except that two of the original appointees shall serve one-year terms, and two of the original appointees shall serve two-year terms. A board member may serve consecutive terms.

(b) The articles of incorporation shall provide that the governor appoint board members as follows:

(i) One board member shall represent the interests of the commission. In making this appointment, the governor shall solicit recommendations from the commission;

(ii) One board member shall represent the interests of the county in which the park is located. In making this appointment, the governor shall solicit recommendations from the county legislative authority; and

(iii) Five board members shall represent the geographic and sports discipline diversity of equestrian interests in the state, and at least one of these members shall have business experience relevant to the organization of horse shows or

operation of a horse show facility. In making these appointments, the governor shall solicit recommendations from a variety of active horse-related organizations in the state.

(3) The articles of incorporation shall include a policy that provides for the preferential use of a specific area of the horse park facilities at nominal cost for horse groups associated with youth groups and the disabled.

(4) The governor shall make appointments to fill board vacancies for positions authorized under subsection (2) of this section, upon additional solicitation of recommendations from the board of directors.

(5) The board of directors shall perform their duties in the best interests of the authority, consistent with the standards applicable to directors of nonprofit corporations under RCW 24.03.127. [2000 c 11 § 85; 1995 c 200 § 4. Formerly RCW 67.18.030.]

**79A.30.040 Washington state horse park authority—Powers.** To meet its responsibility for developing, promoting, operating, managing, and maintaining the state horse park, the authority is empowered to do the following:

(1) Exercise the general powers authorized for any nonprofit corporation as specified in RCW 24.03.035. All debts of the authority shall be in the name of the authority and shall not be debts of the state of Washington for which the state or any state agency shall have any obligation to pay; and the authority may not issue bonds. Neither the full faith and credit of the state nor the state's taxing power is pledged for any indebtedness of the authority;

(2) Employ and discharge at its discretion employees, agents, advisors, and other personnel;

(3) Apply for or solicit, accept, administer, and dispose of grants, gifts, and bequests of money, services, securities, real estate, or other property. However, if the authority accepts a donation designated for a specific purpose, the authority shall use the donation for the designated purpose;

(4) Establish, revise, collect, manage, and expend such fees and charges at the state horse park as the authority deems necessary to accomplish its responsibilities;

(5) Make such expenditures as are appropriate for paying the administrative costs and expenses of the authority and the state horse park;

(6) Authorize use of the state horse park facilities by the general public and by and for compatible nonequestrian events as the authority deems reasonable, so long as the primacy of the center for horse-related purposes is not compromised;

(7) Insure its obligations and potential liability;

(8) Enter into cooperative agreements with and provide for private nonprofit groups to use the state horse park facilities and property to raise money to contribute gifts, grants, and support to the authority for the purposes of this chapter;

(9) Grant concessions or leases at the state horse park upon such terms and conditions as the authority deems appropriate, but in no event shall the term of a concession or lease exceed twenty-five years. Concessions and leases shall be consistent with the purposes of this chapter and may be renegotiated at least every five years; and

(10) Generally undertake any and all lawful acts necessary or appropriate to carry out the purposes for which the

authority and the state horse park are created. [1995 c 200 § 5. Formerly RCW 67.18.040.]

**79A.30.050 Collaboration by authority and state on projects of shared interest—Cooperation with groups for youth recreational activities.** (1) If the authority and state agencies find it mutually beneficial to do so, they are authorized to collaborate and cooperate on projects of shared interest. Agencies authorized to collaborate with the authority include but are not limited to: The commission for activities and projects related to public recreation; the department of agriculture for projects related to the equine agricultural industry; the department of community, trade, and economic development with respect to community and economic development and tourism issues associated with development of the state horse park; Washington State University with respect to opportunities for animal research, education, and extension; the department of ecology with respect to opportunities for making the state horse park's waste treatment facilities a demonstration model for the handling of waste to protect water quality; and with local community colleges with respect to programs related to horses, economic development, business, and tourism.

(2) The authority shall cooperate with 4-H clubs, pony clubs, youth groups, and local park departments to provide youth recreational activities. The authority shall also provide for preferential use of an area of the horse park facility for youth and the disabled at nominal cost. [1995 c 200 § 6. Formerly RCW 67.18.050.]

**79A.30.900 Severability—1995 c 200.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 200 § 8. Formerly RCW 67.18.900.]

### Chapter 79A.35 RCW

## WASHINGTON STATE RECREATION TRAILS SYSTEM

#### Sections

79A.35.010	Definitions.
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79A.35.030	Trails to be designated by board—Inclusion of other trails—Procedure.
79A.35.040	State trails plan.
79A.35.050	Proposals for designation of existing or proposed trails as state recreational trails.
79A.35.060	Coordination by recreation and conservation funding board.
79A.35.070	Categories of trails or areas—Policy statement as to certain state lands.
79A.35.080	General types of use.
79A.35.090	Guidelines.
79A.35.100	Consultation and cooperation with state, federal, and local agencies.
79A.35.110	Participation by volunteer organizations—Liability of public agencies therefor limited.
79A.35.120	Department of transportation—Participation.
79A.35.900	Short title.

**79A.35.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the recreation and conservation funding board.

(2) "System" means the Washington state recreation trails system. [2007 c 241 § 63; 1970 ex.s. c 76 § 2. Formerly RCW 67.32.020.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

*Recreation and conservation funding board: Chapter 79A.25 RCW.*

**79A.35.020 Purpose.** (1) In order to provide for the ever increasing outdoor recreation needs of an expanding resident and tourist population and to promote public access to, travel within, and the enjoyment and appreciation of outdoor areas of Washington, it is declared to be in the public interest to plan a system of trails throughout the state to enable and encourage the public to engage in outdoor recreation activities.

(2) The purpose of this chapter is to provide the means for attaining these objectives by instituting a method for establishing a system of state recreation trails, and by prescribing the manner by which a proposed trail may be included in the system. [1970 ex.s. c 76 § 3. Formerly RCW 67.32.030.]

**79A.35.030 Trails to be designated by board—Inclusion of other trails—Procedure.** (1) The system shall be composed of trails as designated by the board. Such trails shall meet the conditions established in this chapter and such supplementary criteria as the board may prescribe.

(2) The board shall establish a procedure whereby federal, state, and local governmental agencies and/or public and private organizations may propose trails for inclusion within the system. Such proposals will comply with the proposal requirements contained in RCW 79A.35.050.

(3) In consultation with appropriate federal, state, and local governmental agencies and public and private organizations, the board shall establish a procedure for public review of the proposals considered appropriate for inclusion in the statewide trails system. [2007 c 241 § 64; 2000 c 11 § 86; 1970 ex.s. c 76 § 4. Formerly RCW 67.32.040.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.35.040 State trails plan.** The director shall prepare a state trails plan as part of the statewide outdoor recreation and open space plan. Included in this plan shall be an inventory of existing trails and potential trail routes on all lands within the state presently being used or with potential for use by all types of trail users. Such trails plan may include general routes or corridors within which specific trails or segments thereof may be considered for designation as state recreation trails. [1989 c 237 § 7; 1971 ex.s. c 47 § 1; 1970 ex.s. c 76 § 5. Formerly RCW 67.32.050.]

**Effective date—1989 c 237:** See note following RCW 79A.25.005.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.*

**79A.35.050 Proposals for designation of existing or proposed trails as state recreational trails.** Before any specific existing or proposed trail is considered for designation

as a state recreational trail, a proposal must be submitted to the board showing the following:

(1) For existing trails:

(a) The route of such trail, including maps and illustrations, and the recommended mode or modes of travel to be permitted thereon;

(b) The characteristics that, in the judgment of the agency or organization proposing the trail, make it worthy of designation as a component of a state recreation trail or trail system;

(c) A map showing the current status of land ownership and use along the designated route;

(d) The name of the agency or combination of agencies that would be responsible for acquiring additional trail rights-of-way or easements, trail improvement, operation and maintenance, and a statement from those agencies indicating the conditions under which they would be willing to accept those responsibilities;

(e) Any anticipated problems of maintaining and supervising the use of such trail and any anticipated hazards to the use of any land or resource adjacent to such trail;

(f) And such others as deemed necessary by the board.

(2) In addition, for proposed trails or for existing trails which require additional right-of-way acquisition, easements, and/or development:

(a) The method of acquiring trail rights-of-way or easements;

(b) The estimated cost of acquisition of lands, or interest in land, if any is required;

(c) The plans for developing the trail and the estimated cost thereof;

(d) Proposed sources of funds to accomplish (a) and (b) of this subsection. [2007 c 241 § 65; 1970 ex.s. c 76 § 6. Formerly RCW 67.32.060.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.35.060 Coordination by recreation and conservation funding board.** Following designation of a state recreation trail, the recreation and conservation funding board may coordinate:

(1) The agency or agencies that will acquire (where appropriate), develop and/or maintain the trail;

(2) The most appropriate location for the trail;

(3) Modes of travel to be permitted;

(4) And other functions as appropriate. [2007 c 241 § 66; 1970 ex.s. c 76 § 7. Formerly RCW 67.32.070.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.35.070 Categories of trails or areas—Policy statement as to certain state lands.** The following seven categories of trails or areas are hereby established for purposes of this chapter:

(1) Cross-state trails which connect scenic, historical, geological, geographical, or other significant features which are characteristic of the state;

(2) Water-oriented trails which provide a designated path to, on, or along fresh and/or salt water in which the water is the primary point of interest;

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(3) Scenic-access trails which give access to quality recreation, scenic, historic or cultural areas of statewide or national significance;

(4) Urban trails which provide opportunities within an urban setting for walking, bicycling, horseback riding, or other compatible activities. Where appropriate, they will connect parks, scenic areas, historical points, and neighboring communities;

(5) Historical trails which identify and interpret routes which were significant in the historical settlement and development of the state;

(6) ORV vehicle trails which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. Such trails may be included as a part of the trail systems enumerated in subsections (1), (2), (3) and (5) of this section or may be separately designated;

(7) Off-road and off-trail areas which are suitable for use by both four-wheel drive vehicles and two-wheel vehicles. The board shall coordinate an inventory and classification of such areas giving consideration to the type of use such areas will receive from persons operating four-wheel drive vehicles and two-wheel vehicles.

The planning and designation of trails shall take into account and give due regard to the interests of federal agencies, state agencies and bodies, counties, municipalities, private landowners and individuals, and interested recreation organizations. It is not required that the above categories be used to designate specific trails, but the board will assure that full consideration is given to including trails from all categories within the system. As it relates to all classes of trails and to all types of trail users, it is herein declared as state policy to increase recreational trail access to and within state and federally owned lands and private lands where access may be obtained. It is the intent of the legislature that public recreation facilities be developed as fully as possible to provide greater recreation opportunities for the citizens of the state. The purpose of chapter 153, Laws of 1972 ex. sess. is to increase the availability of trails and areas for off-road vehicles by granting authority to state and local governments to maintain a system of ORV trails and areas, and to fund the program to provide for such development. State lands should be used as fully as possible for all public recreation which is compatible with the income-producing requirements of the various trusts. [2007 c 241 § 67; 1977 ex.s. c 220 § 21; 1972 ex.s. c 153 § 1; 1971 ex.s. c 47 § 2; 1970 ex.s. c 76 § 8. Formerly RCW 67.32.080.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands:* RCW 46.09.010.

**79A.35.080 General types of use.** All trails designated as state recreational trails will be constructed, maintained, and operated to provide for one or more of the following general types of use: Foot, foot powered bicycle, horse, motor vehicular or watercraft travel as appropriate to the terrain and location, or to legal, administrative or other necessary restraints. It is further provided that the same trail shall not be designated for use by foot and vehicular travel at the same time. [1970 ex.s. c 76 § 9. Formerly RCW 67.32.090.]

[Title 79A RCW—page 47]

**79A.35.090 Guidelines.** With the concurrence of any federal or state agency administering lands through which a state recreation trail may pass, and after consultation with local governments, private organizations and landowners which the board knows or believes to be concerned, the board may issue guidelines including, but not limited to: Encouraging the permissive use of volunteer organizations for planning, maintenance, or trail construction assistance; trail construction and maintenance standards, a trail use reporting procedure, and a uniform trail mapping system. [2007 c 241 § 68; 1971 ex.s. c 47 § 3; 1970 ex.s. c 76 § 10. Formerly RCW 67.32.100.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.*

**79A.35.100 Consultation and cooperation with state, federal, and local agencies.** The board is authorized and encouraged to consult and to cooperate with any state, federal, or local governmental agency or body including special districts subject to the provisions of chapter 85.38 RCW, with private landowners, and with any privately owned utility having jurisdiction or control over or information concerning the use, abandonment, or disposition of roadways, utility rights-of-way, dikes or levees, or other properties suitable for the purpose of improving or expanding the system in order to assure, to the extent practicable, that any such properties having value for state recreation trail purposes may be made available for such use. [2007 c 241 § 69; 1993 c 258 § 1; 1970 ex.s. c 76 § 11. Formerly RCW 67.32.110.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**79A.35.110 Participation by volunteer organizations—Liability of public agencies therefor limited.** Volunteer organizations may assist public agencies, with the agency's approval, in the construction and maintenance of recreational trails in accordance with the guidelines issued by the board. In carrying out such volunteer activities the members of the organizations shall not be considered employees or agents of the public agency administering the trails, and such public agencies shall not be subject to any liability whatsoever arising out of volunteer activities. The liability of public agencies to members of such volunteer organizations shall be limited in the same manner as provided for in RCW 4.24.210. [2007 c 241 § 70; 1971 ex.s. c 47 § 4. Formerly RCW 67.32.130.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.*

**79A.35.120 Department of transportation—Participation.** The department of transportation shall consider plans for trails along and across all new construction projects, improvement projects, and along or across any existing highways in the state system as deemed desirable by the board.

[Title 79A RCW—page 48]

[2007 c 241 § 71; 1984 c 7 § 368; 1971 ex.s. c 47 § 5. Formerly RCW 67.32.140.]

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Severability—1971 ex.s. c 47:** See RCW 46.09.900.

*Application of chapter—Permission necessary to enter upon private lands: RCW 46.09.010.*

**79A.35.900 Short title.** This chapter may be cited as the Washington State Recreation Trails System Act. [1970 ex.s. c 76 § 1. Formerly RCW 67.32.010.]

## Chapter 79A.40 RCW

### CONVEYANCES FOR PERSONS IN RECREATIONAL ACTIVITIES

#### Sections

- 79A.40.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.
- 79A.40.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.
- 79A.40.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.
- 79A.40.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission.
- 79A.40.050 Inspector of recreational devices—Employees.
- 79A.40.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection.
- 79A.40.070 Costs of inspection and plan review—Lien—Disposition of funds.
- 79A.40.080 State immunity from liability—Actions deemed exercise of police power.
- 79A.40.090 Rules and codes.
- 79A.40.100 Judicial review.

**79A.40.010 Safe and adequate facilities and equipment required of owner and operator—Operator not common carrier.** Every owner or operator of any recreational device designed and operated for the conveyance of persons which aids in promoting entertainment, pleasure, play, relaxation, or instruction, specifically including devices generally associated with winter sports activities such as ski lifts, ski tows, j-bars, t-bars, ski mobiles, chair lifts, and similar devices and equipment, shall construct, furnish, maintain, and provide safe and adequate facilities and equipment with which safely and properly to receive and transport all persons offered to and received by the owner or operator of such devices, and to promote the safety of such owner's or operator's patrons, employees and the public. The owner or operator of the devices and equipment covered by this section shall be deemed not to be a common carrier. [1965 ex.s. c 85 § 1; 1961 c 253 § 1; 1959 c 327 § 1. Formerly RCW 70.88.010.]

**79A.40.020 Plans, specifications to be submitted to state parks and recreation commission—Approval—Penalty.** It shall be unlawful after June 10, 1959, to construct or install any such recreational device as set forth in RCW 79A.40.010 without first submitting plans and specifications for such device to the state parks and recreation commission and receiving the approval of the commission for such construction or installation. Violation of this section shall be a misdemeanor. [2000 c 11 § 87; 1959 c 327 § 2. Formerly RCW 70.88.020.]

**79A.40.030 Orders directing repairs, improvements, changes, etc.—Notice—Forbidding operation.** The state parks and recreation commission shall have the authority and the responsibility for the inspection of the devices set forth in RCW 79A.40.010 and in addition shall have the following powers and duties:

(1) Whenever the commission, after hearing called upon its own motion or upon complaint, finds that additional apparatus, equipment, facilities or devices for use or in connection with the transportation or conveyance of persons upon the devices set forth in RCW 79A.40.010, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security and safety of the public or employees, it may make and serve an order directing such repairs, improvements, changes, or additions to be made.

(2) If the commission finds that the equipment, or appliances in connection therewith, or the apparatus, or other structures of the recreational device set forth in RCW 79A.40.010 are defective, and that the operation thereof is dangerous to the employees of the owner or operator of such device or to the public, it shall immediately give notice to the owner or operator of such device of the repairs or reconstruction necessary to place the same in a safe condition, and may prescribe the time within which they shall be made. If, in its opinion, it is needful or proper, the commission may forbid the operation of the device until it is repaired and placed in a safe condition. [2000 c 11 § 88; 1959 c 327 § 3. Formerly RCW 70.88.030.]

**79A.40.040 Penalty for violation of chapter or rules, etc., of parks and recreation commission.** Any violation of this chapter or the rules, regulations and codes of the state parks and recreation commission relating to public safety in the construction, operation and maintenance of the recreational devices provided for in this chapter shall be a misdemeanor. [1965 ex.s. c 85 § 2; 1959 c 327 § 4. Formerly RCW 70.88.040.]

**79A.40.050 Inspector of recreational devices—Employees.** The state parks and recreation commission shall employ or retain a person qualified in engineering experience and training who shall be designated as the inspector of recreational devices, and may employ such additional employees as are necessary to properly administer this chapter. The inspector and such additional employees may be hired on a temporary basis or borrowed from other state departments, or the commission may contract with individuals or firms for such inspecting service on an independent basis. The commission shall prescribe the salary or other remuneration for such service. [1959 c 327 § 5. Formerly RCW 70.88.050.]

**79A.40.060 Powers and duties of inspector—Condemnation of equipment—Annual inspection.** The inspector of recreational devices and his or her assistants shall inspect all equipment and appliances connected with the recreational devices set forth in RCW 79A.40.010 and make such reports of his or her inspection to the commission as may be required. He or she shall, on discovering any defec-

tive equipment, or appliances connected therewith, rendering the use of the equipment dangerous, immediately report the same to the owner or operator of the device on which it is found, and in addition report it to the commission. If in the opinion of the inspector the continued operation of the defective equipment constitutes an immediate danger to the safety of the persons operating or being conveyed by such equipment, the inspector may condemn such equipment and shall immediately notify the commission of his or her action in this respect: PROVIDED, That inspection required by this chapter must be conducted at least once each year. [2000 c 11 § 89; 1959 c 327 § 6. Formerly RCW 70.88.060.]

**79A.40.070 Costs of inspection and plan review—Lien—Disposition of funds.** The expenses incurred in connection with making inspections under this chapter shall be paid by the owner or operator of such recreational devices either by reimbursing the commission for the costs incurred or by paying directly such individuals or firms that may be engaged by the commission to accomplish the inspection service. Payment shall be made only upon notification by the commission of the amount due. The commission shall maintain accurate and complete records of the costs incurred for each inspection and plan review for construction approval and shall assess the respective owners or operators of said recreational devices only for the actual costs incurred by the commission for such safety inspections and plan review for construction approval. The costs as assessed by the commission shall be a lien on the equipment of the owner or operator of the recreational devices so inspected. Such moneys collected by the commission under this section shall be paid into the state parks renewal and stewardship account. [1997 c 137 § 5; 1990 c 136 § 1; 1975 1st ex.s. c 74 § 1; 1961 c 253 § 2; 1959 c 327 § 7. Formerly RCW 70.88.070.]

**Effective date—1997 c 137:** See note following RCW 79A.05.055.

*Parks and parkways account abolished: RCW 43.79.405.*

**79A.40.080 State immunity from liability—Actions deemed exercise of police power.** Inspections, rules, and orders of the state parks and recreation commission resulting from the exercise of the provisions of this chapter and chapter 79A.45 RCW shall not in any manner be deemed to impose liability upon the state for any injury or damage resulting from the operation or signing of the facilities regulated by this chapter, and all actions of the state parks and recreation commission and its personnel shall be deemed to be an exercise of the police power of the state. [2000 c 11 § 90; 1991 c 75 § 2; 1990 c 136 § 3; 1959 c 327 § 8. Formerly RCW 70.88.080.]

**79A.40.090 Rules and codes.** The state parks and recreation commission is empowered to adopt reasonable rules and codes relating to public safety in the construction, operation, signing, and maintenance of the recreational devices provided for in this chapter. The rules and codes authorized hereunder shall be in accordance with established standards, if any, and shall not be discriminatory in their application. [1991 c 75 § 3; 1959 c 327 § 9. Formerly RCW 70.88.090.]

**79A.40.100 Judicial review.** The procedure for review of the orders or actions of the state parks and recreation commission, its agents or employees, shall be conducted in accordance with chapter 34.05 RCW. [2007 c 234 § 98; 1959 c 327 § 10. Formerly RCW 70.88.100.]

### Chapter 79A.45 RCW

#### SKIING AND COMMERCIAL SKI ACTIVITY

##### Sections

- 79A.45.010 Ski area sign requirements.
- 79A.45.020 "Trails" or "runs" defined.
- 79A.45.030 Standard of conduct—Prohibited acts—Responsibility.
- 79A.45.040 Skiing outside of trails or boundaries—Notice of skier responsibility.
- 79A.45.050 Leaving scene of skiing accident—Penalty—Notice.
- 79A.45.060 Insurance requirements for operators.

**79A.45.010 Ski area sign requirements.** (1) The operator of any ski area shall maintain a sign system based on international or national standards and as may be required by the state parks and recreation commission.

All signs for instruction of the public shall be bold in design with wording short, simple, and to the point. All such signs shall be prominently placed.

Entrances to all machinery, operators', and attendants' rooms shall be posted to the effect that unauthorized persons are not permitted therein.

The sign "Working on Lift" or a similar warning sign shall be hung on the main disconnect switch and at control points for starting the auxiliary or prime mover when a person is working on the passenger tramway.

(2) All signs required for normal daytime operation shall be in place, and those pertaining to the tramway, lift, or tow operations shall be adequately lighted for night skiing.

(3) If a particular trail or run has been closed to the public by an operator, the operator shall place a notice thereof at the top of the trail or run involved, and no person shall ski on a run or trail which has been designated "Closed".

(4) An operator shall place a notice at the embarking terminal or terminals of a lift or tow which has been closed that the lift or tow has been closed and that a person embarking on such a lift or tow shall be considered to be a trespasser.

(5) Any snow making machines or equipment shall be clearly visible and clearly marked. Snow grooming equipment or any other vehicles shall be equipped with a yellow flashing light at any time the vehicle is moving on or in the vicinity of a ski run; however, low profile vehicles, such as snowmobiles, may be identified in the alternative with a flag on a mast of not less than six feet in height.

(6) The operator of any ski area shall maintain a readily visible sign on each rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device, advising the users of the device that:

(a) Any person not familiar with the operation of the lift shall ask the operator thereof for assistance and/or instruction; and

(b) The skiing-ability level recommended for users of the lift and the runs served by the device shall be classified "easiest", "more difficult", and "most difficult". [1991 c 75 § 1; 1989 c 81 § 2; 1977 ex.s. c 139 § 1. Formerly RCW 70.117.010.]

**Severability—1989 c 81:** See note following RCW 79A.45.020.

**79A.45.020 "Trails" or "runs" defined.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

"Trails" or "runs" means those trails or runs that have been marked, signed, or designated by the ski area operator as ski trails or ski runs within the ski area boundary. [1989 c 81 § 1. Formerly RCW 70.117.015.]

**Severability—1989 c 81:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 81 § 6.]

**79A.45.030 Standard of conduct—Prohibited acts—Responsibility.** (1) In addition to the specific requirements of this section, all skiers shall conduct themselves within the limits of their individual ability and shall not act in a manner that may contribute to the injury of themselves or any other person.

(2) No person shall:

(a) Embark or disembark upon a ski lift except at a designated area;

(b) Throw or expel any object from any tramway, ski lift, commercial skimobile, or other similar device while riding on the device;

(c) Act in any manner while riding on a rope tow, wire rope tow, j-bar, t-bar, ski lift, or similar device that may interfere with the proper or safe operation of the lift or tow;

(d) Wilfully engage in any type of conduct which may injure any person, or place any object in the uphill ski track which may cause another to fall, while traveling uphill on a ski lift; or

(e) Cross the uphill track of a j-bar, t-bar, rope tow, wire rope tow, or other similar device except at designated locations.

(3) Every person shall maintain control of his or her speed and course at all times, and shall stay clear of any snowgrooming equipment, any vehicle, any lift tower, and any other equipment on the mountain.

(4) A person shall be the sole judge of his or her ability to negotiate any trail, run, or uphill track and no action shall be maintained against any operator by reason of the condition of the track, trail, or run unless the condition results from the negligence of the operator.

(5) Any person who boards a rope tow, wire rope tow, j-bar, t-bar, ski lift, or other similar device shall be presumed to have sufficient abilities to use the device. No liability shall attach to any operator or attendant for failure to instruct the person on the use of the device, but a person shall follow any written or verbal instructions that are given regarding the use.

(6) Because of the inherent risks in the sport of skiing all persons using the ski hill shall exercise reasonable care for their own safety. However, the primary duty shall be on the person skiing downhill to avoid any collision with any person or object below him or her.

(7) Any person skiing outside the confines of trails open for skiing or runs open for skiing within the ski area boundary shall be responsible for any injuries or losses resulting from his or her action.

(8) Any person on foot or on any type of sliding device shall be responsible for any collision whether the collision is with another person or with an object.

(9) A person embarking on a lift or tow without authority shall be considered to be a trespasser. [1989 c 81 § 3; 1977 ex.s. c 139 § 2. Formerly RCW 70.117.020.]

**Severability—1989 c 81:** See note following RCW 79A.45.020.

**79A.45.040 Skiing outside of trails or boundaries—Notice of skier responsibility.** Ski area operators shall place a notice of the provisions of RCW 79A.45.030(7) on their trail maps, at or near the ticket booth, and at the bottom of each ski lift or similar device. [2000 c 11 § 91; 1989 c 81 § 5. Formerly RCW 70.117.025.]

**Severability—1989 c 81:** See note following RCW 79A.45.020.

**79A.45.050 Leaving scene of skiing accident—Penalty—Notice.** (1) Any person who is involved in a skiing accident and who departs from the scene of the accident without leaving personal identification or otherwise clearly identifying himself or herself before notifying the proper authorities or obtaining assistance, knowing that any other person involved in the accident is in need of medical or other assistance, shall be guilty of a misdemeanor.

(2) An operator shall place a prominent notice containing the substance of this section in such places as are necessary to notify the public. [1989 c 81 § 4; 1977 ex.s. c 139 § 3. Formerly RCW 70.117.030.]

**Severability—1989 c 81:** See note following RCW 79A.45.020.

**79A.45.060 Insurance requirements for operators.** (1) Every tramway, ski lift, or commercial skimobile operator shall maintain liability insurance of not less than one hundred thousand dollars per person per accident and of not less than two hundred thousand dollars per accident.

(2) Every operator of a rope tow, wire rope tow, j-bar, t-bar, or similar device shall maintain liability insurance of not less than twenty-five thousand dollars per person per accident and of not less than fifty thousand dollars per accident.

(3) This section shall not apply to operators of tramways that are not open to the general public and that are operated without charge, except that this section shall apply to operators of tramways that are operated by schools, ski clubs, or similar organizations. [1977 ex.s. c 139 § 4. Formerly RCW 70.117.040.]

## Chapter 79A.50 RCW

### PUBLIC LANDS FOR STATE OR CITY PARKS

#### Sections

- 79A.50.010 Use of public lands for state or city park purposes—Regents' consent, when.
- 79A.50.020 Use of public lands for state or city park purposes—Rental—Deposit of rent.
- 79A.50.030 Use of public lands for state or city park purposes—Removal of timber—Consent—Compensation.
- 79A.50.040 State lands used for state parks—Trust lands, payment of full market value rental—Other lands, rent free.
- 79A.50.050 State lands used for state parks—Trust lands—Determination of full market value by board of natural resources.
- 79A.50.060 State lands used for state parks—Trust lands—Full market value rental defined—Factor in determination.

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- 79A.50.070 State lands used for state parks—Certain funds appropriated for rental to be deposited without deduction for management purposes.
- 79A.50.080 Utilization of public lands for outdoor recreational and other beneficial public uses—State agency cooperation.
- 79A.50.090 Department estopped from certain actions respecting state parks without concurrence of commission.
- 79A.50.100 State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with policy.
- 79A.50.110 Exchange of lands to secure private lands for parks and recreation purposes.

**79A.50.010 Use of public lands for state or city park purposes—Regents' consent, when.** The department of natural resources is hereby authorized to withdraw from sale or lease, and reserve for state or city park purposes, public lands selected by the state parks and recreation commission, for such time as it shall determine will be for the best interests of the state and any particular fund for which said public lands are being held in trust: PROVIDED, None of the lands selected under the provisions of section 3, chapter 91, Laws of 1903, shall be withdrawn or reserved hereunder without the consent of the board of regents of the University of Washington; except that the consent of the board of regents of the University of Washington shall not be required with regard to any such lands which are situated within the corporate limits of any city or town and are presently zoned for residential use. [1969 ex.s. c 129 § 2; 1951 c 26 § 1. Formerly RCW 79.08.102.]

**Reviser's note:** 1903 c 91 § 3 referred to herein is not codified. See Index of Public Land Acts of Special or Historical Nature not codified in RCW following Title 79 RCW digest.

**79A.50.020 Use of public lands for state or city park purposes—Rental—Deposit of rent.** The department of natural resources and the state parks and recreation commission shall fix a yearly reasonable rental for the use of public lands reserved for state park purposes, which shall be paid by the commission to the department for the particular fund for which the lands had been held in trust, and which rent shall be transmitted to the state treasurer for deposit in such fund. [1988 c 128 § 59; 1951 c 26 § 2. Formerly RCW 79.08.104.]

**79A.50.030 Use of public lands for state or city park purposes—Removal of timber—Consent—Compensation.** No merchantable timber shall be cut or removed from lands reserved for state park purposes without the consent of the department of natural resources and without payment to the particular fund for which the lands are held in trust, the reasonable value thereof as fixed by the department. [1988 c 128 § 60; 1951 c 26 § 3. Formerly RCW 79.08.106.]

**79A.50.040 State lands used for state parks—Trust lands, payment of full market value rental—Other lands, rent free.** The parks and recreation commission shall pay to the department of natural resources the full market value rental for state-owned lands acquired in trust from the United States that are used for state parks. All other state lands used by the parks and recreation commission for state parks shall be rent free. [1967 ex.s. c 63 § 4. Formerly RCW 79.08.1062.]

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**79A.50.050 State lands used for state parks—Trust lands—Determination of full market value by board of natural resources.** The full market value shall be determined by the board of natural resources for trust lands used for state park purposes. [1969 ex.s. c 189 § 1; 1967 ex.s. c 63 § 5. Formerly RCW 79.08.1064.]

**79A.50.060 State lands used for state parks—Trust lands—Full market value rental defined—Factor in determination.** The full market value rental for trust lands used by the parks and recreation commission shall be a percentage of the full market value of the land and the board of natural resources shall consider in its deliberations the average percentage of return realized by the state during the preceding fiscal biennium on the invested common school permanent fund. [1969 ex.s. c 189 § 2; 1967 ex.s. c 63 § 6. Formerly RCW 79.08.1066.]

**79A.50.070 State lands used for state parks—Certain funds appropriated for rental to be deposited without deduction for management purposes.** Any funds appropriated to the state parks and recreation commission for payment of rental for use of state lands reserved for state park purposes during the 1969-71 biennium and received by the department of natural resources shall be deposited by the department to the applicable trust land accounts without the deduction normally applied to such revenues for management purposes. [1969 ex.s. c 189 § 3. Formerly RCW 79.08.1069.]

**79A.50.080 Utilization of public lands for outdoor recreational and other beneficial public uses—State agency cooperation.** In order to maximize outdoor recreation opportunities for the people of the state of Washington and allow for the full utilization of state owned land, all state departments and agencies are authorized and directed to cooperate together in fully utilizing the public lands. All state departments and agencies, vested with statutory authority for utilizing land for outdoor recreation or other beneficial public uses, are authorized and directed to apply to another state department or agency holding suitable public lands for permission of use. The department or agency applied to is authorized and directed to grant permission of use to the applying department or agency if the public use of the public land would be consistent with the existing and continuing principal uses. Trust lands may be withdrawn for outdoor recreation purposes from sale or lease for other purposes by the department of natural resources pursuant to this section subject to the constraints imposed by the Washington state Constitution and the federal enabling statute. The decision regarding such consistency with existing and continuing principal uses shall be made by the agency owning or controlling such lands and which decision shall be final. [1969 ex.s. c 247 § 1. Formerly RCW 79.08.1072.]

**79A.50.090 Department estopped from certain actions respecting state parks without concurrence of commission.** The department of natural resources shall not rescind the withdrawal of public land in any existing and future state park nor sell any timber or other valuable material therefrom or grant any right-of-way or easement thereon,

except as provided in the withdrawal order or for off-site drilling, without the concurrence of the state parks and recreation commission.

The department of natural resources shall have reasonable access across such lands in order to reach other public lands administered by the department of natural resources. [1969 ex.s. c 247 § 2. Formerly RCW 79.08.1074.]

*State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Board to determine most beneficial use in accordance with policy: RCW 79A.50.100.*

**79A.50.100 State trust lands—Withdrawal—Revocation or modification of withdrawal when used for recreational purposes—Hearing—Notice—Board to determine most beneficial use in accordance with policy.** (1) A public hearing may be held prior to any withdrawal of state trust lands and shall be held prior to any revocation of withdrawal or modification of withdrawal of state trust lands used for recreational purposes by the department of natural resources or by other state agencies.

(2) The department shall cause notice of the withdrawal, revocation of withdrawal or modification of withdrawal of state trust lands as described in subsection (1) of this section to be published by advertisement once a week for four weeks prior to the public hearing in at least one newspaper published and of general circulation in the county or counties in which the state trust lands are situated, and by causing a copy of said notice to be posted in a conspicuous place in the department's Olympia office, in the district office in which the land is situated, and in the office of the county auditor in the county where the land is situated thirty days prior to the public hearing. The notice shall specify the time and place of the public hearing and shall describe with particularity each parcel of state trust lands involved in said hearing.

(3) The board of natural resources shall administer the hearing according to its prescribed rules and regulations.

(4) The board of natural resources shall determine the most beneficial use or combination of uses of the state trust lands. Its decision will be conclusive as to the matter: PROVIDED, HOWEVER, That said decisions as to uses shall conform to applicable state plans and policy guidelines adopted by the department of community, trade, and economic development. [1995 c 399 § 209; 1985 c 6 § 24; 1969 ex.s. c 129 § 1. Formerly RCW 79.08.1078.]

*Purchase of withdrawn state trust lands by state parks and recreation commission: RCW 79A.05.210.*

*Reconveyance of state forest land to counties for park purposes: RCW 79.22.300 through 79.22.330.*

**79A.50.110 Exchange of lands to secure private lands for parks and recreation purposes.** For the purpose of securing and preserving privately owned lands for parks and recreation purposes, the department of natural resources is authorized, with the advice and approval of the state board of natural resources, to exchange any state lands of equal value for such lands. Lands acquired by exchange as herein provided shall be withdrawn from lease and sale and reserved for park and recreation purposes. [1967 ex.s. c 64 § 2. Formerly RCW 79.08.109.]

**Construction—Severability—1967 ex.s. c 64:** See notes following RCW 79.10.140.

*Outdoor recreation facilities, construction and maintenance by department of natural resources: RCW 79.10.140.*

## Chapter 79A.55 RCW SCENIC RIVER SYSTEM

### Sections

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79A.55.900	Severability—1977 ex.s. c 161.

**79A.55.005 Legislative finding—Purpose.** The legislature hereby finds that many rivers of this state, with their immediate environs, possess outstanding natural, scenic, historic, ecological, and recreational values of present and future benefit to the public. The legislature further finds that the policy of permitting the construction of dams and other impoundment facilities at appropriate sections of the rivers of this state needs to be complemented by a policy that would protect and preserve the natural character of such rivers and fulfill other conservation purposes. It is hereby declared to be the policy of this state that certain selected rivers of the state which, with their immediate environs, possess the aforementioned characteristics, shall be preserved in as natural a condition as practical and that overuse of such rivers, which tends to downgrade their natural condition, shall be discouraged.

The purpose of this chapter is to establish a program for managing publicly owned land on rivers included in the state's scenic river system, to indicate the river segments to be initially included in that system, to prescribe a procedure for adding additional components to the system, and to protect the rights of private property owners. [1977 ex.s. c 161 § 1. Formerly RCW 79.72.010.]

**79A.55.010 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the state parks and recreation commission.

(2) "Participating local government" means the legislative authority of any city or county, a portion of whose territorial jurisdiction is bounded by or includes a river or river segment of the state's scenic river system.

(3) "River" means a flowing body of water or a section, segment, or portion thereof.

(4) "River area" means a river and the land area in its immediate environs as established by the participating agen-

cies not exceeding a width of one-quarter mile landward from the streamway on either side of the river.

(5) "Scenic easement" means the negotiated right to control the use of land, including the air space above the land, for the purpose of protecting the scenic view throughout the visual corridor.

(6) "Streamway" means that stream-dependent corridor of single or multiple, wet or dry, channel or channels within which the usual seasonal or stormwater run-off peaks are contained, and within which environment the flora, fauna, soil, and topography is dependent on or influenced by the height and velocity of the fluctuating river currents.

(7) "System" means all the rivers and river areas in the state designated by the legislature for inclusion as scenic rivers but does not include tributaries of a designated river unless specifically included by the legislature. The inclusion of a river in the system does not mean that other rivers or tributaries in a drainage basin shall be required to be part of the management program developed for the system unless the rivers and tributaries within the drainage basin are specifically designated for inclusion by the legislature.

(8) "Visual corridor" means that area which can be seen in a normal summer month by a person of normal vision walking either bank of a river included in the system. The visual corridor shall not exceed the river area. [1999 c 249 § 801; 1999 c 151 § 1701; 1994 c 264 § 64; 1988 c 36 § 57; 1987 c 57 § 1; 1984 c 7 § 371; 1977 ex.s. c 161 § 2. Formerly RCW 79.72.020.]

**Reviser's note:** This section was amended by 1999 c 151 § 1701 and by 1999 c 249 § 801, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Part headings not law—Effective date—1999 c 151:** See notes following RCW 18.28.010.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**79A.55.020 Management policies—Development—Hearings—Notice (*as amended by 1999 c 151*).** (1) The department shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The department may adopt regulations identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be (~~subject to review by the committee of participating agencies. Once such a policy has been approved by a majority vote of the committee members, it shall be~~) adopted by the department in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the (~~committee of participating agencies by majority vote,~~) department and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The (~~committee of participating agencies shall, by two-thirds majority vote,~~) department shall identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The department shall exclude lands so identified from

the provisions of any management policies implementing the provisions of this chapter.

(4) The ~~((committee of participating agencies, by majority vote,))~~ department shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in \*RCW 79.72.080, the ~~((committee))~~ department shall make such determination, and those determinations authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the ~~((committee))~~ department shall hold hearings in accord with chapter 34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The department shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

~~((6) Meetings of the committee shall be called by the department or by written petition signed by five or more of the committee members. The chairman of the parks and recreation commission or the chairman's designee shall serve as the chairman of any meetings of the committee held to implement the provisions of this chapter.))~~

The ~~((committee))~~ department shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may ~~((, through the department,))~~ submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the ~~((committee's))~~ department's judgment, make an area a worthy addition to the system. [1999 c 151 § 1702; 1977 ex.s. c 161 § 3. Formerly RCW 79.72.030.]

\***Reviser's note:** RCW 79.72.080 was recodified as RCW 79A.55.070 pursuant to 1999 c 249 § 1601.

**Part headings not law—Effective date—1999 c 151:** See notes following RCW 18.28.010.

**79A.55.020 Management policies—Development—Inclusion of management plans—Identification and exclusion of unsuitably developed lands—Boundaries of river areas—Hearings—Notice—Meetings—Chair—Studies—Proposals for system additions (as amended by 1999 c 249).** (1) The ~~((department))~~ commission shall develop and adopt management policies for publicly owned or leased land on the rivers designated by the legislature as being a part of the state's scenic river system and within the associated river areas. The ~~((department))~~ commission may adopt ~~((regulations))~~ rules identifying river classifications which reflect the characteristics common to various segments of scenic rivers and may adopt management policies consistent with local government's shoreline management master plans appropriate for each such river classification. All such policies shall be subject to review by the committee of participating agencies. Once such a policy has been approved by a majority vote of the committee members, it shall be adopted by the ~~((department))~~ commission in accordance with the provisions of chapter 34.05 RCW, as now or hereafter amended. Any variance with such a policy by any public agency shall be authorized only by the approval of the committee of participating agencies by majority vote, and shall be made only to alleviate unusual hardships unique to a given segment of the system.

(2) Any policies developed pursuant to subsection (1) of this section shall include management plans for protecting ecological, economic, recreational, aesthetic, botanical, scenic, geological, hydrological, fish and wildlife, historical, cultural, archaeological, and scientific features of the rivers designated as being in the system. Such policies shall also include management plans to encourage any nonprofit group, organization, association, person, or corporation to develop and adopt programs for the purpose of increasing fish propagation.

(3) The committee of participating agencies shall, by two-thirds majority vote, identify on a river by river basis any publicly owned or leased lands which could be included in a river area of the system but which are developed in a manner unsuitable for land to be managed as part of the system. The ~~((department))~~ commission shall exclude lands so identified from the provisions of any management policies implementing the provisions of this chapter.

(4) The committee of participating agencies, by majority vote, shall determine the boundaries which shall define the river area associated with any included river. With respect to the rivers named in RCW 79A.55.070, the committee shall make such determination, and those determinations

authorized by subsection (3) of this section, within one year of September 21, 1977.

(5) Before making a decision regarding the river area to be included in the system, a variance in policy, or the excluding of land from the provisions of the management policies, the committee shall hold hearings in accord with chapter 34.05 RCW, with at least one public hearing to be held in the general locale of the river under consideration. The ~~((department))~~ commission shall cause to be published in a newspaper of general circulation in the area which includes the river or rivers to be considered, a description, including a map showing such river or rivers, of the material to be considered at the public hearing. Such notice shall appear at least twice in the time period between two and four weeks prior to the public hearing.

(6) Meetings of the committee shall be called by the ~~((department))~~ commission or by written petition signed by five or more of the committee members. The ~~((chairman))~~ chair of the ~~((parks and recreation))~~ commission or the ~~((chairman's))~~ chair's designee shall serve as the ~~((chairman))~~ chair of any meetings of the committee held to implement the provisions of this chapter.

The committee shall seek and receive comments from the public regarding potential additions to the system, shall initiate studies, and may, through the ~~((department))~~ commission, submit to any session of the legislature proposals for additions to the state scenic river system. These proposals shall be accompanied by a detailed report on the factors which, in the committee's judgment, make an area a worthy addition to the system. [1999 c 249 § 802; 1977 ex.s. c 161 § 3. Formerly RCW 79.72.030.]

**Reviser's note:** RCW 79A.55.020 was amended twice during the 1999 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.55.030 Administration of management program—Powers, duties, and authority of commission.** (1) The management program for the system shall be administered by the commission. The commission shall have the responsibility for coordinating the development of the program between affected state agencies and participating local governments, and shall develop and adopt rules, in accord with chapter 34.05 RCW, the Administrative Procedure Act, for each portion of the system, which shall implement the management policies. In developing rules for a specific river in the system, the commission shall hold at least one public hearing in the general locale of the river under consideration. The hearing may constitute the hearing required by chapter 34.05 RCW. The commission shall cause a brief summary of the proposed rules to be published twice in a newspaper of general circulation in the area that includes the river to be considered in the period of time between two and four weeks prior to the public hearing. In addition to the foregoing required publication, the commission shall also provide notice of the hearings, rules, and decisions of the commission to radio and television stations and major local newspapers in the areas that include the river to be considered.

(2) In addition to any other powers granted to carry out the intent of this chapter, the commission is authorized to: (a) Purchase, within the river area, real property in fee or any lesser right or interest in real property including, but not limited to scenic easements and future development rights, visual corridors, wildlife habitats, unique ecological areas, historical sites, camping and picnic areas, boat launching sites, and/or easements abutting the river for the purpose of preserving or enhancing the river or facilitating the use of the river by the public for fishing, boating and other water related activities; and (b) purchase, outside of a river area, public access to the river area.

The right of eminent domain shall not be utilized in any purchase made pursuant to this section.

(3) The commission is further authorized to: (a) Acquire by gift, devise, grant, or dedication the fee, an option to purchase, a right of first refusal or any other lesser right or interest in real property and upon acquisition such real property shall be held and managed within the scenic river system; and (b) accept grants, contributions, or funds from any agency, public or private, or individual for the purposes of this chapter.

(4) The commission is hereby vested with the power to obtain injunctions and other appropriate relief against violations of any provisions of this chapter and any rules adopted under this section or agreements made under the provisions of this chapter. [1999 c 249 § 803; 1999 c 151 § 1703; 1989 c 175 § 169; 1977 ex.s. c 161 § 4. Formerly RCW 79.72.040.]

**Reviser's note:** This section was amended by 1999 c 151 § 1703 and by 1999 c 249 § 803, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Part headings not law—Effective date—1999 c 151:** See notes following RCW 18.28.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**79A.55.040 State agencies and local governments to pursue policies to conserve and enhance included river areas—Shoreline management act—Private lands—Trust lands.** (1) All state government agencies and local governments are hereby directed to pursue policies with regard to their respective activities, functions, powers, and duties which are designed to conserve and enhance the conditions of rivers which have been included in the system, in accordance with the management policies and the rules adopted by the commission for such rivers. Local agencies are directed to pursue such policies with respect to all lands in the river area owned or leased by such local agencies. Nothing in this chapter shall authorize the modification of a shoreline management plan adopted by a local government and approved by the state pursuant to chapter 90.58 RCW without the approval of the department of ecology and local government. The policies adopted pursuant to this chapter shall be integrated, as fully as possible, with those of the shoreline management act of 1971.

(2) Nothing in this chapter shall grant to the commission the power to restrict the use of private land without either the specific written consent of the owner thereof or the acquisition of rights in real property authorized by RCW 79A.55.030.

(3) Nothing in this chapter shall prohibit the department of natural resources from exercising its full responsibilities and obligations for the management of state trust lands. [1999 c 249 § 804; 1999 c 151 § 1704; 1977 ex.s. c 161 § 5. Formerly RCW 79.72.050.]

**Reviser's note:** This section was amended by 1999 c 151 § 1704 and by 1999 c 249 § 804, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Part headings not law—Effective date—1999 c 151:** See notes following RCW 18.28.010.

(2008 Ed.)

**79A.55.050 Criteria for inclusion of rivers within system.** Rivers of a scenic nature are eligible for inclusion in the system. Ideally, a scenic river:

(1) Is free-flowing without diversions that hinder recreational use;

(2) Has a streamway that is relatively unmodified by riprapping and other stream bank protection;

(3) Has water of sufficient quality and quantity to be deemed worthy of protection;

(4) Has a relatively natural setting and adequate open space;

(5) Requires some coordinated plan of management in order to enhance and preserve the river area; and

(6) Has some lands along its length already in public ownership, or the possibility for purchase or dedication of public access and/or scenic easements. [1977 ex.s. c 161 § 6. Formerly RCW 79.72.060.]

**79A.55.060 Authority of department of fish and wildlife unaffected.** Nothing contained in this chapter shall affect the authority of the department of fish and wildlife to construct facilities or make improvements to facilitate the passage or propagation of fish nor shall anything in this chapter be construed to interfere with the powers, duties, and authority of the department of fish and wildlife to regulate, manage, conserve, and provide for the harvest of fish or wildlife within any area designated as being in the state's scenic river system. No hunting shall be permitted in any state park. [1999 c 249 § 805; 1988 c 36 § 58; 1977 ex.s. c 161 § 7. Formerly RCW 79.72.070.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.55.070 Rivers designated as part of system.** The following rivers of the state of Washington are hereby designated as being in the scenic river system of the state of Washington:

(1) The Skykomish river from the junction of the north and south forks of the Skykomish river:

(a) Downstream approximately fourteen miles to its junction with the Sultan river;

(b) Upstream approximately twenty miles on the south fork to the junction of the Tye and Foss rivers;

(c) Upstream approximately eleven miles on the north fork to its junction with Bear creek;

(2) The Beckler river from its junction with the south fork of the Skykomish river upstream approximately eight miles to its junction with Rapid river;

(3) The Tye river from its junction with the south fork of the Skykomish river upstream approximately fourteen miles to Tye Lake; and

(4) The Little Spokane river from the upstream boundary of the state park boat put-in site near Rutter parkway and downstream to its confluence with the Spokane river. [1991 c 206 § 1; 1977 ex.s. c 161 § 8. Formerly RCW 79.72.080.]

*Green River Gorge conservation area: RCW 79A.05.700 through 79A.05.715.*

*Washington state Yakima river conservation area: RCW 79A.05.750 through 79A.05.795.*

**79A.55.080 Inclusion of state's scenic rivers in national wild and scenic river system not precluded.**

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Nothing in this chapter shall preclude a section or segment of the state's scenic rivers included in the system from becoming a part of the national wild and scenic river system. [1977 ex.s. c 161 § 9. Formerly RCW 79.72.090.]

**79A.55.090 \*Wildlife fund moneys not to be used.** No funds shall be expended from the \*wildlife fund to carry out the provisions of this chapter. [1988 c 36 § 59; 1977 ex.s. c 161 § 10. Formerly RCW 79.72.100.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**79A.55.900 Severability—1977 ex.s. c 161.** If any provision of this act, or its application to any person of legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected. [1977 ex.s. c 161 § 12. Formerly RCW 79.72.900.]

## Chapter 79A.60 RCW

### REGULATION OF RECREATIONAL VESSELS

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**79A.60.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accredited course" means a mandatory course of instruction on boating safety education that has been approved by the commission.

(2) "Boat wastes" includes, but is not limited to, sewage, garbage, marine debris, plastics, contaminated bilge water, cleaning solvents, paint scrapings, or discarded petroleum products associated with the use of vessels.

(3) "Boater" means any person on a vessel on waters of the state of Washington.

(4) "Boater education card" means a card issued to a person who has successfully completed a boating safety education test and has paid the registration fee for a serial number record to be maintained in the commission's database.

(5) "Boating educator" means a person providing an accredited course.

(6) "Carrying passengers for hire" means carrying passengers in a vessel on waters of the state for valuable consideration, whether given directly or indirectly or received by the owner, agent, operator, or other person having an interest in the vessel. This shall not include trips where expenses for

food, transportation, or incidentals are shared by participants on an even basis. Anyone receiving compensation for skills or money for amortization of equipment and carrying passengers shall be considered to be carrying passengers for hire on waters of the state.

(7) "Certificate of accomplishment" means a form of certificate approved by the commission and issued by a boating educator to a person who has successfully completed an accredited course.

(8) "Commission" means the state parks and recreation commission.

(9) "Darkness" means that period between sunset and sunrise.

(10) "Environmentally sensitive area" means a restricted body of water where discharge of untreated sewage from boats is especially detrimental because of limited flushing, shallow water, commercial or recreational shellfish, swimming areas, diversity of species, the absence of other pollution sources, or other characteristics.

(11) "Guide" means any individual, including but not limited to subcontractors and independent contractors, engaged for compensation or other consideration by a white-water river outfitter for the purpose of operating vessels. A person licensed under RCW 77.65.480 or 77.65.440 and acting as a fishing guide is not considered a guide for the purposes of this chapter.

(12) "Marina" means a facility providing boat moorage space, fuel, or commercial services. Commercial services include but are not limited to overnight or live-aboard boating accommodations.

(13) "Motor driven boats and vessels" means all boats and vessels which are self propelled.

(14) "Motor vessel safety operating and equipment checklist" means a printed list of the safety requirements for a vessel with a motor installed or attached to the vessel being rented, chartered, or leased and meeting minimum requirements adopted by the commission in accordance with RCW 79A.60.630.

(15) "Muffler" or "muffler system" means a sound suppression device or system, including an underwater exhaust system, designed and installed to abate the sound of exhaust gases emitted from an internal combustion engine and that prevents excessive or unusual noise.

(16) "Operate" means to steer, direct, or otherwise have physical control of a vessel that is underway.

(17) "Operator" means an individual who steers, directs, or otherwise has physical control of a vessel that is underway or exercises actual authority to control the person at the helm.

(18) "Observer" means the individual riding in a vessel who is responsible for observing a water skier at all times.

(19) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest.

(20) "Person" means any individual, sole proprietorship, partnership, corporation, nonprofit corporation or organization, limited liability company, firm, association, or other legal entity located within or outside this state.

(21) "Personal flotation device" means a buoyancy device, life preserver, buoyant vest, ring buoy, or buoy cush-

ion that is designed to float a person in the water and that is approved by the commission.

(22) "Personal watercraft" means a vessel of less than sixteen feet that uses a motor powering a water jet pump, as its primary source of motive power and that is designed to be operated by a person sitting, standing, or kneeling on, or being towed behind the vessel, rather than in the conventional manner of sitting or standing inside the vessel.

(23) "Polluted area" means a body of water used by boaters that is contaminated by boat wastes at unacceptable levels, based on applicable water quality and shellfish standards.

(24) "Public entities" means all elected or appointed bodies, including tribal governments, responsible for collecting and spending public funds.

(25) "Reckless" or "recklessly" means acting carelessly and heedlessly in a willful and wanton disregard of the rights, safety, or property of another.

(26) "Rental motor vessel" means a motor vessel that is legally owned by a person that is registered as a rental and leasing agency for recreational motor vessels, and for which there is a written and signed rental, charter, or lease agreement between the owner, or owner's agent, of the vessel and the operator of the vessel.

(27) "Sewage pumpout or dump unit" means:

(a) A receiving chamber or tank designed to receive vessel sewage from a "porta-potty" or a portable container; and

(b) A stationary or portable mechanical device on land, a dock, pier, float, barge, vessel, or other location convenient to boaters, designed to remove sewage waste from holding tanks on vessels.

(28) "Underway" means that a vessel is not at anchor, or made fast to the shore, or aground.

(29) "Vessel" includes every description of watercraft on the water, other than a seaplane, used or capable of being used as a means of transportation on the water. However, it does not include inner tubes, air mattresses, sailboards, and small rafts or flotation devices or toys customarily used by swimmers.

(30) "Water skiing" means the physical act of being towed behind a vessel on, but not limited to, any skis, aquaplane, kneeboard, tube, or any other similar device.

(31) "Waters of the state" means any waters within the territorial limits of Washington state.

(32) "Whitewater river outfitter" means any person who is advertising to carry or carries passengers for hire on any whitewater river of the state, but does not include any person whose only service on a given trip is providing instruction in canoeing or kayaking skills.

(33) "Whitewater rivers of the state" means those rivers and streams, or parts thereof, within the boundaries of the state as listed in RCW 79A.60.470 or as designated by the commission under RCW 79A.60.495. [2005 c 392 § 2; 2003 c 39 § 45; 2000 c 11 § 92; 1998 c 219 § 5; 1997 c 391 § 1; 1993 c 244 § 5; 1933 c 72 § 1; RRS § 9851-1. Formerly RCW 88.12.010.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

**Intent—1993 c 244:** "It is the intent of the legislature that the boating safety laws administered by the state parks and recreation commission provide Washington's citizens with clear and reasonable boating safety regulations and penalties. Therefore, the legislature intends to recodify, clarify, and partially decriminalize the statewide boating safety laws in order to help the boating community understand and comply with these laws.

It is also the intent of the legislature to increase boat registration fees in order to provide additional funds to local governments for boating safety enforcement and education programs. The funds are to be used for enforcement, education, training, and equipment, including vessel noise measurement equipment. The legislature encourages programs that provide boating safety education in the primary and secondary school system for boat users and potential future boat users. The legislature also encourages boating safety programs that use volunteer and private sector efforts to enhance boating safety and education." [1993 c 244 § 1.]

**79A.60.020 Violations of chapter punishable as misdemeanor—Circumstances—Violations designated as civil infractions.** (1) A violation of this chapter designated as an infraction is a misdemeanor, punishable under RCW 9.92.030, if the current violation is the person's third violation of the same provision of this chapter during the past three hundred sixty-five days.

(2) A violation designated in this chapter as a civil infraction shall constitute a civil infraction pursuant to chapter 7.84 RCW. [1999 c 249 § 1501; 1993 c 244 § 6. Formerly RCW 88.12.015.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.030 Operation of vessel in a negligent manner—Penalty.** A person shall not operate a vessel in a negligent manner. For the purposes of this section, to "operate in a negligent manner" means operating a vessel in disregard of careful and prudent operation, or in disregard of careful and prudent rates of speed that are no greater than is reasonable and proper under the conditions existing at the point of operation, taking into account the amount and character of traffic, size of the lake or body of water, freedom from obstruction to view ahead, effects of vessel wake, and so as not to unduly or unreasonably endanger life, limb, property or other rights of any person entitled to the use of such waters. Except as provided in RCW 79A.60.020, a violation of this section is an infraction under chapter 7.84 RCW. [2000 c 11 § 93; 1993 c 244 § 7; 1933 c 72 § 2; RRS § 9851-2. Formerly RCW 88.12.020.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.040 Operation of vessel in a reckless manner—Operation of a vessel under the influence of intoxicating liquor—Penalty.** (1) It shall be unlawful for any person to operate a vessel in a reckless manner.

(2) It shall be a violation for a person to operate a vessel while under the influence of intoxicating liquor or any drug. A person is considered to be under the influence of intoxicating liquor or any drug if:

(a) The person has 0.08 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of the person's breath made under RCW 46.61.506; or

(b) The person has 0.08 percent or more by weight of alcohol in the person's blood, as shown by analysis of the person's blood made under RCW 46.61.506; or

(c) The person is under the influence of or affected by intoxicating liquor or any drug; or

(d) The person is under the combined influence of or affected by intoxicating liquor and any drug.

The fact that any person charged with a violation of this section is or has been entitled to use such drug under the laws

of this state shall not constitute a defense against any charge of violating this section. A person cited under this subsection may upon request be given a breath test for breath alcohol or may request to have a blood sample taken for blood alcohol analysis. An arresting officer shall administer field sobriety tests when circumstances permit.

(3) A violation of this section is a misdemeanor, punishable as provided under RCW 9.92.030. In addition, the court may order the defendant to pay restitution for any damages or injuries resulting from the offense. [1998 c 213 § 7; 1993 c 244 § 8. Prior: 1990 c 231 § 3; 1990 c 31 § 1; 1987 c 373 § 6; 1986 c 153 § 6; 1985 c 267 § 2. Formerly RCW 88.12.025, 88.12.100, and 88.02.095.]

**Effective date—1998 c 213:** See note following RCW 46.20.308.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Effective date—Severability—1990 c 231:** See notes following RCW 79A.60.170.

**Legislative finding, purpose—Severability—1987 c 373:** See notes following RCW 46.61.502.

**79A.60.050 Homicide by watercraft—Penalty.** (1) When the death of any person ensues within three years as a proximate result of injury proximately caused by the operating of any vessel by any person, the operator is guilty of homicide by watercraft if he or she was operating the vessel:

(a) While under the influence of intoxicating liquor or any drug, as defined by RCW 79A.60.040;

(b) In a reckless manner; or

(c) With disregard for the safety of others.

(2) When the death is caused by a skier towed by a vessel, the operator of the vessel is not guilty of homicide by watercraft.

(3) A violation of this section is punishable as a class A felony according to chapter 9A.20 RCW. [2000 c 11 § 94; 1998 c 219 § 1. Formerly RCW 88.12.029.]

**79A.60.060 Assault by watercraft—Penalty.** (1) "Serious bodily injury" means bodily injury which involves a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any part or organ of the body.

(2) A person is guilty of assault by watercraft if he or she operates any vessel:

(a) In a reckless manner, and this conduct is the proximate cause of serious bodily injury to another; or

(b) While under the influence of intoxicating liquor or any drug, as defined by RCW 79A.60.040, and this conduct is the proximate cause of serious bodily injury to another.

(3) When the injury is caused by a skier towed by a vessel, the operator of the vessel is not guilty of assault by watercraft.

(4) A violation of this section is punishable as a class B felony according to chapter 9A.20 RCW. [2000 c 11 § 95; 1998 c 219 § 2. Formerly RCW 88.12.032.]

**79A.60.070 Conviction under RCW 79A.60.050 or 79A.60.060—Community supervision or community placement—Conditions.** (*Effective until August 1, 2009.*) A person convicted under RCW 79A.60.050 or 79A.60.060 shall, as a condition of community custody imposed under

RCW 9.94A.545 or community placement imposed under RCW 9.94A.700, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 219, Laws of 1998 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law. [2000 c 11 § 96; 1998 c 219 § 3. Formerly RCW 88.12.033.]

**79A.60.080 Failure to stop for law enforcement officer.** Any operator of a vessel who willfully fails to stop when requested or signaled to do so by a person reasonably identifiable as a law enforcement officer is guilty of a gross misdemeanor. [1990 c 235 § 1. Formerly RCW 88.12.035, 88.12.110, and 88.08.070.]

**79A.60.090 Eluding a law enforcement vessel.** Any operator of a vessel who willfully fails or refuses to immediately bring the vessel to a stop and who operates the vessel in a manner indicating a wanton or willful disregard for the lives or property of others while attempting to elude a pursuing law enforcement vessel, after being given a visual or audible signal to bring the vessel to a stop, shall be guilty of a class C felony punishable under chapter 9A.20 RCW. The signal given by the law enforcement officer may be by hand, voice, emergency light, or siren. The officer giving such a signal shall be in uniform and his or her vessel shall be appropriately marked showing it to be an official law enforcement vessel. [1990 c 235 § 2. Formerly RCW 88.12.045, 88.12.120, and 88.08.080.]

**79A.60.100 Enforcement—Chapter to supplement federal law.** (1) Every law enforcement officer of this state and its political subdivisions has the authority to enforce this chapter. Law enforcement officers may enforce recreational boating rules adopted by the commission. Such law enforcement officers include, but are not limited to, county sheriffs, officers of other local law enforcement entities, fish and wildlife officers, through the director, the state patrol, and state park rangers. In the exercise of this responsibility, all such officers may stop and board any vessel and direct it to a suitable pier or anchorage to enforce this chapter.

(2) This chapter shall be construed to supplement federal laws and regulations. To the extent this chapter is inconsistent with federal laws and regulations, the federal laws and regulations shall control. [2001 c 253 § 60; 1994 c 264 § 80;

1993 c 244 § 9; 1988 c 36 § 73; 1986 c 217 § 10. Formerly RCW 88.12.055, 88.12.330, and 91.14.100.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.110 Equipment standards—Rules—Penalty.** In addition to the equipment standards prescribed under this chapter, the commission shall adopt rules specifying equipment standards for vessels. Except where the violation is classified as a misdemeanor under this chapter, violation of any equipment standard adopted by the commission is an infraction under chapter 7.84 RCW. [1993 c 244 § 10. Formerly RCW 88.12.065.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.120 Tampering with vessel lights or signals—Exhibiting false lights or signals—Penalty.** An operator or owner who endangers a vessel, or the persons on board the vessel, by showing, masking, extinguishing, altering, or removing any light or signal or by exhibiting any false light or signal, is guilty of a misdemeanor, punishable as provided in RCW 9.92.030. [1993 c 244 § 11. Formerly RCW 88.12.075.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.130 Muffler or underwater exhaust system required—Exemptions—Enforcement—Penalty.** (1) All motor-propelled vessels shall be equipped and maintained with an effective muffler that is in good working order and in constant use. For the purpose of this section, an effective muffler or underwater exhaust system does not produce sound levels in excess of ninety decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission, as of July 25, 1993, and for engines manufactured on or after January 1, 1994, a noise level of eighty-eight decibels when subjected to a stationary sound level test that shall be prescribed by rules adopted by the commission.

(2) A vessel that does not meet the requirements of subsection (1) of this section shall not be operated on the waters of this state.

(3) No person may operate a vessel on waters of the state in such a manner as to exceed a noise level of seventy-five decibels measured from any point on the shoreline of the body of water on which the vessel is being operated that shall be specified by rules adopted by the commission, as of July 25, 1993. Such measurement shall not preclude a stationary sound level test that shall be prescribed by rules adopted by the commission.

(4) This section does not apply to: (a) A vessel tuning up, testing for, or participating in official trials for speed records or a sanctioned race conducted pursuant to a permit issued by an appropriate governmental agency; or (b) a vessel being operated by a vessel or marine engine manufacturer for the purpose of testing or development. Nothing in this subsection prevents local governments from adopting ordinances to control the frequency, duration, and location of vessel testing, tune-up, and racing.

(5) Any officer authorized to enforce this section who has reason to believe that a vessel is not in compliance with the noise levels established in this section may direct the

operator of the vessel to submit the vessel to an on-site test to measure noise level, with the officer on board if the officer chooses, and the operator shall comply with such request. If the vessel exceeds the decibel levels established in this section, the officer may direct the operator to take immediate and reasonable measures to correct the violation.

(6) Any officer who conducts vessel sound level tests as provided in this section shall be qualified in vessel noise testing. Qualifications shall include but may not be limited to the ability to select the appropriate measurement site and the calibration and use of noise testing equipment.

(7) A person shall not remove, alter, or otherwise modify in any way a muffler or muffler system in a manner that will prevent it from being operated in accordance with this chapter.

(8) A person shall not manufacture, sell, or offer for sale any vessel that is not equipped with a muffler or muffler system that does not comply with this chapter. This subsection shall not apply to power vessels designed, manufactured, and sold for the sole purpose of competing in racing events and for no other purpose. Any such exemption or exception shall be documented in any and every sale agreement and shall be formally acknowledged by signature on the part of both the buyer and the seller. Copies of the agreement shall be maintained by both parties. A copy shall be kept on board whenever the vessel is operated.

(9) Except as provided in RCW 79A.60.020, a violation of this section is an infraction under chapter 7.84 RCW.

(10) Vessels that are equipped with an engine modified to increase performance beyond the engine manufacturer's stock configuration shall have an exhaust system that complies with the standards in this section after January 1, 1994. Until that date, operators or owners, or both, of such vessels with engines that are out of compliance shall be issued a warning and be given educational materials about types of muffling systems available to muffle noise from such high performance engines.

(11) Nothing in this section preempts a local government from exercising any power that it possesses under the laws or Constitution of the state of Washington to adopt more stringent regulations. [2000 c 11 § 97; 1993 c 244 § 39. Formerly RCW 88.12.085.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.140 Personal flotation devices—Inspection and approval—Rules.** (1) The commission shall adopt rules providing for its inspection and approval of the personal flotation devices that may be used to satisfy the requirements of this chapter and governing the manner in which such devices shall be used. The commission shall prescribe the different types of devices that are appropriate for the different uses, such as water skiing or operation of a personal watercraft. In adopting its rules the commission shall consider the United States coast guard rules or regulations. The commission may approve devices inspected and approved by the coast guard without conducting any inspection of the devices itself.

(2) In situations where personal flotation devices are required under provisions of this chapter, the devices shall be in good and serviceable condition and of appropriate size. If they are not, then they shall not be considered as personal flo-

tation devices under such provisions. [1993 c 244 § 12. Formerly RCW 88.12.095.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.150 Failure of vessel to contain required equipment—Liability of operator or owner—Penalty.** If an infraction is issued under this chapter because a vessel does not contain the required equipment and if the operator is not the owner of the vessel, but is operating the vessel with the express or implied permission of the owner, then either or both operator or owner may be cited for the infraction. [1993 c 244 § 13. Formerly RCW 88.12.105.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.160 Personal flotation devices required—Penalty.** (1) No person may operate or permit the operation of a vessel on the waters of the state without a personal flotation device on board for each person on the vessel. Each personal flotation device shall be in serviceable condition, of an appropriate size, and readily accessible.

(2) Except as provided in RCW 79A.60.020, a violation of subsection (1) of this section is an infraction under chapter 7.84 RCW if the vessel is not carrying passengers for hire.

(3) A violation of subsection (1) of this section is a misdemeanor punishable under RCW 9.92.030, if the vessel is carrying passengers for hire.

(4) No person shall operate a vessel under nineteen feet in length on the waters of this state with a child twelve years old and under, unless the child is wearing a personal flotation device that meets or exceeds the United States coast guard approval standards of the appropriate size, while the vessel is underway. For the purposes of this section, a personal flotation device is not considered readily accessible for children twelve years old and under unless the device is worn by the child while the vessel is underway. The personal flotation device must be worn at all times by a child twelve years old and under whenever the vessel is underway and the child is on an open deck or open cockpit of the vessel. The following circumstances are excepted:

(a) While a child is below deck or in the cabin of a boat with an enclosed cabin;

(b) While a child is on a United States coast guard inspected passenger-carrying vessel operating on the navigable waters of the United States; or

(c) While on board a vessel at a time and place where no person would reasonably expect a danger of drowning to occur.

(5) Except as provided in RCW 79A.60.020, a violation of subsection (4) of this section is an infraction under chapter 7.84 RCW. Enforcement of subsection (4) of this section by law enforcement officers may be accomplished as a primary action, and need not be accompanied by the suspected violation of some other offense. [2000 c 11 § 98; 1999 c 310 § 1; 1993 c 244 § 14; 1933 c 72 § 5; RRS § 9851-5. Formerly RCW 88.12.115 and 88.12.050.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.170 Water skiing safety—Requirements.** (1) The purpose of this section is to promote safety in water skiing on the waters of Washington state, provide a means of

ensuring safe water skiing and promote the enjoyment of water skiing.

(2) No vessel operator may tow or attempt to tow a water skier on any waters of Washington state unless such craft shall be occupied by at least an operator and an observer. The observer shall continuously observe the person or persons being towed and shall display a flag immediately after the towed person or persons fall into the water, and during the time preparatory to skiing while the person or persons are still in the water. Such flag shall be a bright red or brilliant orange color, measuring at least twelve inches square, mounted on a pole not less than twenty-four inches long and displayed as to be visible from every direction. This subsection does not apply to a personal watercraft, the design of which makes no provision for carrying an operator or any other person on board, and that is actually operated by the person or persons being towed. Every remote-operated personal watercraft shall have a flag attached which meets the requirements of this subsection. Except as provided under RCW 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(3) The observer and the operator shall not be the same person. The observer shall be an individual who meets the minimum qualifications for an observer established by rules of the commission. Except as provided under RCW 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(4) No person shall engage or attempt to engage in water skiing without wearing a personal flotation device. Except as provided under RCW 79A.60.020, a violation of this subsection is an infraction under chapter 7.84 RCW.

(5) No person shall engage or attempt to engage in water skiing, or operate any vessel to tow a water skier, on the waters of Washington state during the period from one hour after sunset until one hour prior to sunrise. A violation of this subsection is a misdemeanor, punishable as provided under RCW 9.92.030.

(6) No person engaged in water skiing either as operator, observer, or skier, shall conduct himself or herself in a reckless manner that willfully or wantonly endangers, or is likely to endanger, any person or property. A violation of this subsection is a misdemeanor as provided under RCW 9.92.030.

(7) The requirements of subsections (2), (3), (4), and (5) of this section shall not apply to persons engaged in tournaments, competitions, or exhibitions that have been authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events. [2000 c 11 § 99; 1993 c 244 § 15; 1990 c 231 § 1; 1989 c 241 § 1. Formerly RCW 88.12.125, 88.12.080, and 88.12.070.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Effective date—1990 c 231:** "This act shall take effect July 1, 1990." [1990 c 231 § 4.]

**Severability—1990 c 231:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 231 § 5.]

**79A.60.180 Loading or powering vessel beyond safe operating ability—Penalties.** (1) A person shall not load or permit to be loaded a vessel with passengers or cargo beyond its safe carrying ability or carry passengers or cargo in an

unsafe manner taking into consideration weather and other existing operating conditions.

(2) A person shall not operate or permit to be operated a vessel equipped with a motor or other propulsion machinery of a power beyond the vessel's ability to operate safely, taking into consideration the vessel's type, use, and construction, the weather conditions, and other existing operating conditions.

(3) A violation of subsection (1) or (2) of this section is an infraction punishable as provided under chapter 7.84 RCW except as provided under RCW 79A.60.020 or where the overloading or overpowering is reasonably advisable to effect a rescue or for some similar emergency purpose.

(4) If it appears reasonably certain to any law enforcement officer that a person is operating a vessel clearly loaded or powered beyond its safe operating ability and in the judgment of that officer the operation creates an especially hazardous condition, the officer may direct the operator to take immediate and reasonable steps necessary for the safety of the individuals on board the vessel, including directing the operator to return to shore or a mooring and to remain there until the situation creating the hazard is corrected or ended. Failure to follow the direction of an officer under this subsection is a misdemeanor punishable as provided under RCW 9.92.030. [2000 c 11 § 100; 1993 c 244 § 16. Formerly RCW 88.12.135.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.190 Operation of personal watercraft—Prohibited activities—Penalties.** (1) A person shall not operate a personal watercraft unless each person aboard the personal watercraft is wearing a personal flotation device approved by the commission. Except as provided for in RCW 79A.60.020, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) A person operating a personal watercraft equipped by the manufacturer with a lanyard-type engine cutoff switch shall attach the lanyard to his or her person, clothing, or personal flotation device as appropriate for the specific vessel. It is unlawful for any person to remove or disable a cutoff switch that was installed by the manufacturer.

(3) A person shall not operate a personal watercraft during darkness.

(4) A person under the age of fourteen shall not operate a personal watercraft on the waters of this state.

(5) A person shall not operate a personal watercraft in a reckless manner, including recklessly weaving through congested vessel traffic, recklessly jumping the wake of another vessel unreasonably or unnecessarily close to the vessel or when visibility around the vessel is obstructed, or recklessly swerving at the last possible moment to avoid collision.

(6) A person shall not lease, hire, or rent a personal watercraft to a person under the age of sixteen.

(7) Subsections (1) through (6) of this section shall not apply to a performer engaged in a professional exhibition or a person participating in a regatta, race, marine parade, tournament, or exhibition authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events.

(8) Violations of subsections (2) through (6) of this section constitute a misdemeanor under RCW 9.92.030. [2000 c 11 § 101; 1993 c 244 § 17. Formerly RCW 88.12.145.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.200 Duty of operator involved in collision, accident, or other casualty—Immunity from liability of persons rendering assistance—Penalties.** (1) The operator of a vessel involved in a collision, accident, or other casualty, to the extent the operator can do so without serious danger to the operator's own vessel or persons aboard, shall render all practical and necessary assistance to persons affected by the collision, accident, or casualty to save them from danger caused by the incident. Under no circumstances may the rendering of assistance or other compliance with this section be evidence of the liability of such operator for the collision, accident, or casualty. The operator shall also give all pertinent accident information, as specified by rule by the commission, to the law enforcement agency having jurisdiction: PROVIDED, That this requirement shall not apply to operators of vessels when they are participating in an organized competitive event authorized or otherwise permitted by the appropriate agency having jurisdiction and authority to authorize such events. These duties are in addition to any duties otherwise imposed by law. Except as provided for in RCW 79A.60.020 and subsection (3) of this section, a violation of this subsection is a civil infraction punishable under RCW 7.84.100.

(2) Any person who complies with subsection (1) of this section or who gratuitously and in good faith renders assistance at the scene of a vessel collision, accident, or other casualty, without objection of the person assisted, shall not be held liable for any civil damages as a result of the rendering of assistance or for any act or omission in providing or arranging salvage, towage, medical treatment, or other assistance, where the assisting person acts as any reasonably prudent person would have acted under the same or similar circumstances.

(3) An operator of a vessel is guilty of a class C felony and is punishable pursuant to RCW 9A.20.021 if the operator: (a) Is involved in a collision that results in injury to a person; (b) knew or reasonably should have known that a person was injured in the collision; and (c) leaves the scene of the collision without rendering all practical and necessary assistance to the injured person as required pursuant to subsection (1) of this section, under circumstances in which the operator could have rendered assistance without serious danger to the operator's own vessel or persons aboard. This subsection (3) does not apply to vessels involved in commerce, including but not limited to tugs, barges, cargo vessels, commercial passenger vessels, fishing vessels, and processing vessels. [2000 c 11 § 102; 1996 c 36 § 1; 1993 c 244 § 18; 1984 c 183 § 1; 1983 2nd ex.s. c 3 § 48. Formerly RCW 88.12.155, 88.12.130, and 88.02.080.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.210 Casualty and accident reports—Confidentiality—Use as evidence.** (1) All reports made to the commission pursuant to RCW 79A.60.200 and 79A.05.310 shall be without prejudice to the person who makes the report

and shall be for the confidential usage of governmental agencies, except as follows:

(a) Statistical information which shall be made public;

(b) The names and addresses of the operator and owner and the registration number or name of the vessel as documented which was involved in an accident or casualty and the names and addresses of any witnesses which, if reported, shall be disclosed upon written request to any person involved in a reportable accident, or, for a reportable casualty, to any member of a decedent's family or the personal representatives of the family.

(2) A report made to the commission pursuant to RCW 79A.60.200 and 79A.05.310 or copy thereof shall not be used in any trial, civil or criminal, arising out of an accident or casualty, except that solely to prove a compliance or failure to comply with the report requirements of RCW 79A.60.200 and 79A.05.310, a certified statement which indicates that a report has or has not been made to the commission shall be provided upon demand to any court or upon written request to any person who has or claims to have made a report. [1999 c 249 § 1502; 1984 c 183 § 3. Formerly RCW 88.12.165, 88.12.140, and 43.51.402.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.60.220 Boating accident reports by local government agencies—Investigation—Report of coroner.** Law enforcement authorities, fire departments, or search and rescue units of any city or county government shall provide to the commission a report, prepared by the local government agency regarding any boating accident occurring within their jurisdiction resulting in a death or injury requiring hospitalization. Such report shall be provided to the commission within ten days of the occurrence of the accident. The results of any investigation of the accident conducted by the city or county governmental agency shall be included in the report provided to the commission. At the earliest opportunity, but in no case more than forty-eight hours after becoming aware of an accident, the agency shall notify the commission of the accident. The commission shall have authority to investigate any boating accident. The results of any investigation conducted by the commission shall be made available to the local government for further processing. This provision does not eliminate the requirement for a boating accident report by the operator required under RCW 79A.60.200.

The report of a county coroner, or any public official assuming the functions of a coroner, concerning the death of any person resulting from a boating accident, shall be submitted to the commission within one week of completion. Information in such report may be, together with information in other such reports, incorporated into the state boating accident report provided for in RCW 79A.05.310(4), and shall be for the confidential usage of governmental agencies as provided in RCW 79A.60.210. [1999 c 249 § 1503; 1987 c 427 § 1. Formerly RCW 88.12.175, 88.12.150, and 43.51.403.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Boating accidents and boating safety services—Study—Report—1987 c 427:** "The parks and recreation commission shall conduct a study of boating accidents and boating safety services in Washington including a review of how the local option tax for funding of boating safety enforcement is used. Further the parks and recreation commission shall develop recommendations to address identified problems and report these recommendations to the legislature by January 2, 1988." [1987 c 427 § 4.]

**79A.60.230 Vessels adrift—Owner to be notified.**

Any person taking up any vessel found adrift, and out of the custody of the owner, in waters of this state, shall forthwith notify the owner thereof, if to him or her known, or if upon reasonable inquiry he or she can ascertain the name and residence of the owner, and request such owner to pay all reasonable charges, and take such vessel away. [1993 c 244 § 19; Code 1881 § 3242; 1854 p 386 § 1; RRS § 9891. Formerly RCW 88.12.185, 88.12.160, and 88.20.010.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.240 Notice—Contents—Service.** Such notice as is required by RCW 79A.60.230 shall be given personally, or in writing; if in writing, it shall be served upon the owner, or may be sent by mail to the post office where such owner usually receives his or her letters. Such notice shall inform the party where the vessel was taken up, and where it may be found, and what amount the taker-up or finder demands for his or her charges. [1999 c 249 § 1504; 1993 c 244 § 20; Code 1881 § 3243; 1854 p 386 § 2; RRS § 9892. Formerly RCW 88.12.195, 88.12.170, and 88.20.020.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.250 Posting of notice.** (1) In all cases where the notice required by RCW 79A.60.230 is not given personally, it shall be the duty of the taker-up to post up at the post office nearest the place where such vessel may be taken up, a written notice of the taking up of such vessel. The written notice shall contain a description of the vessel, with the name, if any is painted thereon, also the place where taken up, the place where the property may be found, and the charge for taking the same up.

(2) If the taker-up is traveling upon waters of the state, such notice shall additionally be posted up at the first post office he or she shall pass after the taking up.

(3) In all cases, the person who took up the vessel shall at the time when, and place where, he or she posts up such notice, also mail a copy of such notice, directed to the postmaster of each post office on waters of the state, and within fifty miles of the place where such vessel is taken up. [1999 c 249 § 1505; 1993 c 244 § 21; Code 1881 § 3244; 1854 p 386 § 3; RRS § 9893. Formerly RCW 88.12.205, 88.12.180, and 88.20.030.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.260 Compensation—Liability on failure to give notice.** Every person taking up any vessel so found adrift, and giving the notice herein required, shall be entitled to receive from the owner claiming the property, a reasonable compensation for his or her time, services, expenses, and risk in taking up said property, and take notice of the same, to be settled by agreement between the parties. In case the person has not, within ten days after the taking up, substantially complied with the provisions of this chapter in giving the notice, the person shall be entitled to no compensation, but he or she shall be liable to all damages the owner may have suffered, and be also liable to the owner for the value of the use of the vessel, from the time of taking it up until the same is

delivered to the owner. [1993 c 244 § 22; Code 1881 § 3245; 1854 p 386 § 4; RRS § 9894. Formerly RCW 88.12.215, 88.12.190, and 88.20.040.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.270 Disputed claims—Trial—Bond.** In case the parties cannot agree on the amount to be paid the taker-up, or the ownership, and the sum claimed is less than one thousand dollars, the owner may file a complaint, setting out the facts, and the judge, on hearing, shall decide the same with a jury, or not, and in the same manner as is provided in ordinary civil actions before a district judge. If the amount claimed by the taker-up is more than one thousand dollars, the owner shall file his or her complaint in the superior court of the county where the property is, and trial shall be had as in other civil actions; but if the taker-up claims more than one thousand dollars, and a less amount is awarded him or her, he or she shall be liable for all the costs in the superior court; and in all cases where the taker-up shall recover a less amount than has been tendered him or her by the owner or claimant, previous to filing his or her complaint, he or she shall pay the costs before the district judge or in the superior court: PROVIDED, That in all cases the owner, after filing his or her complaint before a district judge, shall be entitled to the possession of the vessel, upon giving bond, with security to the satisfaction of the judge, in double the amount claimed by the taker-up. When the complaint is filed in the superior court, the clerk thereof shall approve the security of the bond. The bond shall be conditioned to pay such costs as shall be awarded to the finder or taker-up of such vessel. [1993 c 244 § 23; 1987 c 202 § 248; Code 1881 § 3246; 1854 p 386 § 5; RRS § 9895. Formerly RCW 88.12.218, 88.12.200, and 88.20.050.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**79A.60.280 Liability for excessive or negligent use.**

In case the taker-up shall use the vessel, more than is necessary to put it into a place of safety, he or she shall be liable to the owner for such use, and for all damage; and in case it shall suffer injury from his or her neglect to take suitable care of it, he or she shall be liable to the owner for all damage. [1993 c 244 § 24; Code 1881 § 3247, part; 1854 p 387 § 6; RRS § 9896, part. FORMER PART OF SECTION: Code 1881 § 3247, part. Now codified as RCW 88.20.070. Formerly RCW 88.12.222, 88.12.210, and 88.20.060.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.290 Unclaimed vessel—Procedure.** In case such vessel is of less value than one hundred dollars, and is not claimed within three months, the taker-up may apply to a district judge of the district where the property is, who, upon being satisfied that due notice has been given, and that the owner cannot, with reasonable diligence be found, shall order the vessel to be sold, and after paying the taker-up such sum as he or she shall be entitled to, and the costs, the balance shall be paid the county treasurer as is provided in the case of the sale of estrays. In case the vessel exceeds one hundred dollars, and is not claimed within six months, application shall be made to the superior court of the county, and the

same proceeding shall be thereupon had. All sales made under this section shall be conducted as sales of personal property on execution. [1993 c 244 § 25; 1987 c 202 § 249; Code 1881 § 3247, part; 1854 p 387 § 7; RRS § 9896, part. Formerly RCW 88.12.225, 88.12.220, 88.20.070, and 88.20.060, part.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**Intent—1987 c 202:** See note following RCW 2.04.190.

**79A.60.300 Vessels secured pursuant to chapter 79A.65 RCW.** The provisions of RCW 79A.60.230 through 79A.60.290 do not apply to vessels secured pursuant to chapter 79A.65 RCW. [2000 c 11 § 103; 1994 c 51 § 8. Formerly RCW 88.12.227.]

**Severability—1994 c 51:** See RCW 79A.65.900.

**79A.60.400 Vessels carrying passengers for hire on whitewater rivers—Purpose.** The purpose of RCW 79A.60.440 through 79A.60.480 is to further the public interest, welfare, and safety by providing for the protection and promotion of safety in the operation of vessels carrying passengers for hire on the whitewater rivers of this state. [2000 c 11 § 104; 1993 c 244 § 26; 1986 c 217 § 1. Formerly RCW 88.12.230 and 91.14.005.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.410 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license required.** (1) No person shall act in the capacity of a paid whitewater river outfitter, or advertise in any newspaper or magazine or any other trade publication, or represent himself or herself as a whitewater river outfitter in the state, without first obtaining a whitewater river outfitter's license from the department of licensing in accordance with RCW 79A.60.480.

(2) Every whitewater river outfitter's license must, at all times, be conspicuously placed on the premises set forth in the license. [2000 c 11 § 105; 1997 c 391 § 2. Formerly RCW 88.12.232.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** "Sections 2, 4, 5, 7, and 8 of this act take effect January 1, 1998." [1997 c 391 § 12.]

**79A.60.420 Vessels carrying passengers for hire on whitewater rivers—Conduct constituting misdemeanor.** Except as provided in RCW 79A.60.480, the commission of a prohibited act or the omission of a required act under RCW 79A.60.430 through 79A.60.480 constitutes a misdemeanor, punishable as provided under RCW 9.92.030. [2000 c 11 § 106; 1997 c 391 § 3; 1993 c 244 § 27. Formerly RCW 88.12.235.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.430 Vessels carrying passengers for hire on whitewater rivers—Safety requirements.** (1) While carrying passengers for hire on whitewater rivers in this state, the licensed whitewater river outfitter shall comply with the following requirements at the beginning of every trip:

(a) If using inflatable vessels, use only vessels with three or more separate air chambers;

(b) Ensure that all passengers are wearing a securely fastened United States coast guard-approved type V personal flotation device of the proper size, and that all guides are wearing a securely fastened United States coast guard-approved type III or type V personal flotation device;

(c) Ensure that a spare United States coast guard-approved type III or type V personal flotation device in good repair is accessible to all vessels on each trip;

(d) Ensure that each vessel has on it a bagged throwable line with a floating line and bag;

(e) Ensure that each vessel has accessible an adequate first-aid kit;

(f) Ensure that each vessel has a spare propelling device;

(g) Ensure that a repair kit and air pump are accessible to inflatable vessel;

(h) Ensure that equipment to prevent and treat hypothermia is accessible to all vessels on a trip; and

(i) Ensure that each vessel is operated by a guide who has complied with the requirements of subsection (2) of this section.

(2) No person may act as a guide unless the individual is at least eighteen years of age and has:

(a) Successfully completed a lifesaving training course meeting standards adopted by the commission;

(b) Completed a program of guide training on whitewater rivers, conducted by a guide instructor, which program must run for a minimum of fifty hours on a whitewater river and must include at least the following elements:

(i) Equipment preparation and boat rigging;

(ii) Reading river characteristics including currents, eddies, rapids, and hazards;

(iii) Methods of scouting and running rapids;

(iv) River rescue techniques, including emergency procedures and equipment recovery; and

(v) Communications with clients, including paddling and safety instruction; and

(c) Completed at least one trip on an entire section of whitewater river before carrying passengers for hire in a vessel on any such section of whitewater river.

(3) A guide instructor must have traveled at least one thousand five hundred river miles, seven hundred fifty of which must have been while acting as a guide.

(4) Any person conducting guide training on whitewater rivers shall, upon request of a guide trainee, issue proof of completion to the guide completing the required training program. [1997 c 391 § 4; 1993 c 244 § 30; 1986 c 217 § 6. Formerly RCW 88.12.245, 88.12.280, and 91.14.050.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 79A.60.410.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.440 Vessels carrying passengers for hire on whitewater rivers—Operation of vessel—Exemptions.**

(1) No person may operate any vessel carrying passengers for hire on whitewater rivers in a manner that interferes with other vessels or with the free and proper navigation of the rivers of this state.

(2) Every operator of a vessel carrying passengers for hire on whitewater rivers shall at all times operate the vessel in a careful and prudent manner and at such a speed as to not endanger the life, limb, or property of any person.

(3) No vessel carrying passengers for hire on whitewater rivers may be loaded with passengers or cargo beyond its safe carrying capacity taking into consideration the type and construction of the vessel and other existing operating conditions. In the case of inflatable vessels, safe carrying capacity in whitewater shall be considered as less than the United States coast guard capacity rating for each vessel. This subsection shall not apply in cases of an unexpected emergency on the river.

(4) Individuals licensed under chapter 77.32 RCW and acting as fishing guides are exempt from RCW 79A.60.420 and 79A.60.460 through 79A.60.480. [2000 c 11 § 107; 1993 c 244 § 28; 1986 c 217 § 3. Formerly RCW 88.12.250 and 91.14.020.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.450 Vessels carrying passengers for hire on whitewater rivers—Use of alcohol prohibited—Vessel to be accompanied by vessel with licensed outfitter.** (1) Whitewater river outfitters and guides on any trip carrying passengers for hire on whitewater rivers of the state shall not allow the use of alcohol during the course of a trip on a whitewater river section in this state.

(2) Any vessel carrying passengers for hire on any whitewater river section in this state must be accompanied by at least one other vessel being operated by a licensed whitewater river outfitter or a guide under the direction or control of a licensed whitewater river outfitter. [1997 c 391 § 5; 1993 c 244 § 31; 1986 c 217 § 7. Formerly RCW 88.12.255, 88.12.290, and 91.14.060.]

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 79A.60.410.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.460 Vessels carrying passengers for hire on whitewater rivers—Rights-of-way.** (1) Except as provided in subsection (2) of this section, vessels on whitewater rivers proceeding downstream have the right-of-way over vessels proceeding upstream.

(2) In all cases, vessels not under power proceeding downstream on whitewater rivers have the right-of-way over motorized craft underway. [1993 c 244 § 29; 1986 c 217 § 4. Formerly RCW 88.12.260 and 91.14.030.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.470 Vessels carrying passengers for hire on whitewater rivers—Designation of whitewater river sections.** Whitewater river sections include but are not limited to:

- (1) Green river above Flaming Geyser state park;
- (2) Klickitat river above the confluence with Summit creek;
- (3) Methow river below the town of Carlton;
- (4) Sauk river above the town of Darrington;
- (5) Skagit river above Bacon creek;
- (6) Suiattle river;
- (7) Tieton river below Rimrock dam;
- (8) Skykomish river below Sunset Falls and above the Highway 2 bridge one mile east of the town of Gold Bar;

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(9) Wenatchee river above the Wenatchee county park at the town of Monitor;

(10) White Salmon river; and

(11) Any other section of river designated a "whitewater river section" by the commission under RCW 79A.60.495. [2000 c 11 § 108; 1997 c 391 § 6; 1986 c 217 § 8. Formerly RCW 88.12.265, 88.12.300, and 91.14.070.]

**79A.60.480 Vessels carrying passengers for hire on whitewater rivers—Whitewater river outfitter's license—Application—Fees—Insurance—Penalties—State immune from civil actions arising from licensure.** (1) The department of licensing may issue a whitewater river outfitter's license to an applicant who submits a completed application, pays the required fee, and complies with the requirements of this section.

(2) An applicant for a whitewater river outfitter's license shall make application upon a form provided by the department of licensing. The form must be submitted annually and include the following information:

(a) The name, residence address, and residence telephone number, and the business name, address, and telephone number of the applicant;

(b) Certification that all employees, subcontractors, or independent contractors hired as guides meet training standards under RCW 79A.60.430 before carrying any passengers for hire;

(c) Proof that the applicant has liability insurance for a minimum of three hundred thousand dollars per claim for occurrences by the applicant and the applicant's employees that result in bodily injury or property damage. All guides must be covered by the applicant's insurance policy;

(d) Certification that the applicant will maintain the insurance for a period of not less than one year from the date of issuance of the license; and

(e) Certification by the applicant that for a period of not less than twenty-four months immediately preceding the application the applicant:

(i) Has not had a license, permit, or certificate to carry passengers for hire on a river revoked by another state or by an agency of the government of the United States due to a conviction for a violation of safety or insurance coverage requirements no more stringent than the requirements of this chapter; and

(ii) Has not been denied the right to apply for a license, permit, or certificate to carry passengers for hire on a river by another state.

(3) The department of licensing shall charge a fee for each application, to be set in accordance with RCW 43.24.086.

(4) Any person advertising or representing himself or herself as a whitewater river outfitter who is not currently licensed is guilty of a gross misdemeanor.

(5) The department of licensing shall submit annually a list of licensed persons and companies to the department of community, trade, and economic development, tourism promotion division.

(6) If an insurance company cancels or refuses to renew insurance for a licensee, the insurance company shall notify the department of licensing in writing of the termination of

coverage and its effective date not less than thirty days before the effective date of termination.

(a) Upon receipt of an insurance company termination notice, the department of licensing shall send written notice to the licensee that on the effective date of termination the department of licensing will suspend the license unless proof of insurance as required by this section is filed with the department of licensing before the effective date of the termination.

(b) If an insurance company fails to give notice of coverage termination, this failure shall not have the effect of continuing the coverage.

(c) The department of licensing may sanction a license under RCW 18.235.110 if the licensee fails to maintain in full force and effect the insurance required by this section.

(7) The state of Washington shall be immune from any civil action arising from the issuance of a license under this section. [2002 c 86 § 327; 2000 c 11 § 109; 1997 c 391 § 7; 1995 c 399 § 216; 1986 c 217 § 11. Formerly RCW 88.12.275, 88.12.320, and 91.14.090.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 79A.60.410.

**79A.60.485 Vessels carrying passengers for hire on whitewater rivers—Rules to implement RCW 79A.60.480—Fees.** The department of licensing may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to implement RCW 79A.60.480. The fees must approximate the cost of administration. The fees must be deposited in the master license account. [2000 c 11 § 110; 1997 c 391 § 9. Formerly RCW 88.12.276.]

**79A.60.490 Vessels carrying passengers for hire on whitewater rivers—License sanction for certain convictions.** Within five days after conviction for any of the provisions of RCW 79A.60.430 through 79A.60.480, the court shall forward a copy of the judgment to the department of licensing. After receiving proof of conviction, the department of licensing may sanction the license of any whitewater river outfitter under RCW 18.235.110. Proof of compliance with all licensing requirements and correction of the violation under which the whitewater river outfitter was convicted may be considered by the department as mitigating factors when taking disciplinary action. [2002 c 86 § 328; 2000 c 11 § 111; 1997 c 391 § 8. Formerly RCW 88.12.278.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**Effective date—1997 c 391 §§ 2, 4, 5, 7, and 8:** See note following RCW 79A.60.410.

**79A.60.495 Designation as whitewater river—Rules—Schedule of fines.** The commission shall adopt rules that designate as whitewater rivers all sections of rivers with at least one class III rapid or greater, as described in the American Whitewater Affiliation's whitewater safety code. The commission is authorized to consider the imposition of a

schedule of fines for minor violations. [1997 c 391 § 10. Formerly RCW 88.12.279.]

**79A.60.498 Uniform regulation of business and professions act.** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 329.]

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**79A.60.500 Uniform waterway marking system.** The parks and recreation commission is hereby directed to develop and adopt rules establishing a uniform waterway marking system for waters of the state not serviced by such a marking system administered by the federal government. Such system shall be designed to provide for standardized waterway marking buoys, floats, and other waterway marking devices which identify or specify waterway hazards, vessel traffic patterns, and similar information of necessity or use to boaters. Any new or replacement waterway marking buoy, float, or device installed by a unit of local government shall be designed and installed consistent with rules adopted by the parks and recreation commission pursuant to this section. [1987 c 427 § 3. Formerly RCW 88.12.285, 88.12.350, and 43.51.404.]

**79A.60.510 Findings—Sewage disposal initiative established—Boater environmental education—Waterway access facilities.** The legislature finds that the waters of Washington state provide a unique and valuable recreational resource to large and growing numbers of boaters. Proper stewardship of, and respect for, these waters requires that, while enjoying them for their scenic and recreational benefits, boaters must exercise care to assure that such activities do not contribute to the despoliation of these waters, and that watercraft be operated in a safe and responsible manner. The legislature has specifically addressed the topic of access to clean and safe waterways by requiring the 1987 boating safety study and by establishing the Puget Sound partnership.

The legislature finds that there is a need to educate Washington's boating community about safe and responsible actions on our waters and to increase the level and visibility of the enforcement of boating laws. To address the incidence of fatalities and injuries due to recreational boating on our state's waters, local and state efforts directed towards safe boating must be stimulated. To provide for safe waterways and public enjoyment, portions of the watercraft excise tax and boat registration fees should be made available for boating safety and other boating recreation purposes.

In recognition of the need for clean waterways, and in keeping with the Puget Sound partnership's water quality work plan, the legislature finds that adequate opportunities for responsible disposal of boat sewage must be made available. There is hereby established a five-year initiative to install sewage pumpout or sewage dump stations at appropriate marinas.

To assure the use of these sewage facilities, a boater environmental education program must accompany the five-

year initiative and continue to educate boaters about boat wastes and aquatic resources.

The legislature also finds that, in light of the increasing numbers of boaters utilizing state waterways, a program to acquire and develop sufficient waterway access facilities for boaters must be undertaken.

To support boating safety, environmental protection and education, and public access to our waterways, the legislature declares that a portion of the income from boating-related activities, as specified in RCW 82.49.030 and 88.02.040, should support these efforts. [2007 c 341 § 57; 1999 c 249 § 1506; 1989 c 393 § 1. Formerly RCW 88.12.295, 88.12.360, and 88.36.010.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.60.520 Identification and designation of polluted and environmentally sensitive areas.** The commission, in consultation with the departments of ecology, fish and wildlife, natural resources, social and health services, and the Puget Sound partnership shall conduct a literature search and analyze pertinent studies to identify areas which are polluted or environmentally sensitive within the state's waters. Based on this review the commission shall designate appropriate areas as polluted or environmentally sensitive, for the purposes of chapter 393, Laws of 1989 only. [2007 c 341 § 56; 1999 c 249 § 1507; 1994 c 264 § 81; 1989 c 393 § 3. Formerly RCW 88.12.305, 88.12.380, and 88.36.030.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.60.530 Designation of marinas, boat launches, or boater destinations for installation of sewage pumpout or dump units.** (1) A marina which meets one or more of the following criteria shall be designated by the commission as appropriate for installation of a sewage pumpout or dump unit:

(a) The marina is located in an environmentally sensitive or polluted area; or

(b) The marina has one hundred twenty-five slips or more and there is a lack of sewage pumpout or dump units within a reasonable distance.

(2) In addition to subsection (1) of this section, the commission may at its discretion designate a marina as appropriate for installation of a sewage pumpout or dump unit if there is a demonstrated need for a sewage pumpout or dump unit at the marina based on professionally conducted studies undertaken by federal, state, or local government, or the private sector; and it meets the following criteria:

(a) The marina provides commercial services, such as sales of food, fuel or supplies, or overnight or live-aboard moorage opportunities;

(b) The marina is located at a heavily used boating destination or on a heavily traveled route, as determined by the commission; or

(c) There is a lack of adequate sewage pumpout or dump unit capacity within a reasonable distance.

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(3) Exceptions to the designation made under this section may be made by the commission if no sewer, septic, water, or electrical services are available at the marina.

(4) In addition to marinas, the commission may designate boat launches or boater destinations as appropriate for installation of a sewage pumpout or dump unit based on the criteria found in subsections (1) and (2) of this section. [1993 c 244 § 32; 1989 c 393 § 4. Formerly RCW 88.12.315, 88.12.390, and 88.36.040.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.540 Contracts for financial assistance—Ownership of sewage pumpout or dump unit—Ongoing costs.** (1) Marinas and boat launches designated as appropriate for installation of a sewage pumpout or dump unit under RCW 79A.60.530 shall be eligible for funding support for installation of such facilities from funds specified in RCW 79A.60.590. The commission shall notify owners or operators of all designated marinas and boat launches of the designation, and of the availability of funding to support installation of appropriate sewage disposal facilities. The commission shall encourage the owners and operators to apply for available funding.

(2) The commission shall seek to provide the most cost-efficient and accessible facilities possible for reducing the amount of boat waste entering the state's waters. The commission shall consider providing funding support for portable pumpout facilities in this effort.

(3) The commission shall contract with, or enter into an interagency agreement with another state agency to contract with, applicants based on the criteria specified below:

(a)(i) Contracts may be awarded to publicly owned, tribal, or privately owned marinas or boat launches.

(ii) Contracts may provide for state reimbursement to cover eligible costs as deemed reasonable by commission rule. Eligible costs include purchase, installation, or major renovation of the sewage pumpout or dump units, including sewer, water, electrical connections, and those costs attendant to the purchase, installation, and other necessary appurtenances, such as required pier space, as determined by the commission.

(iii) Ownership of the sewage pumpout or dump unit will be retained by the state through the commission in privately owned marinas. Ownership of the sewage pumpout or dump unit in publicly owned marinas will be held by the public entity.

(iv) Operation, normal and expected maintenance, and ongoing utility costs will be the responsibility of the contract recipient. The sewage pumpout or dump unit shall be kept in operating condition and available for public use at all times during operating hours of the facility, excluding necessary maintenance periods.

(v) The contract recipient agrees to allow the installation, existence and use of the sewage pumpout or dump unit by granting an irrevocable license for a minimum of ten years at no cost to the commission.

(b) Contracts awarded pursuant to (a) of this subsection shall be subject, for a period of at least ten years, to the following conditions:

(i) Any contract recipient entering into a contract under this section must allow the boating public access to the sewage pumpout or dump unit during operating hours.

(ii) The contract recipient must agree to monitor and encourage the use of the sewage pumpout or dump unit, and to cooperate in any related boater environmental education program administered or approved by the commission.

(iii) The contract recipient must agree not to charge a fee for the use of the sewage pumpout or dump unit.

(iv) The contract recipient must agree to arrange and pay a reasonable fee for a periodic inspection of the sewage pumpout or dump unit by the local health department or appropriate authority.

(v) Use of a free sewage pumpout or dump unit by the boating public shall be deemed to be included in the term "outdoor recreation" for the purposes of chapter 4.24 RCW. [2000 c 11 § 112; 1993 c 244 § 33; 1989 c 393 § 5. Formerly RCW 88.12.325, 88.12.400, and 88.36.050.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.550 Development by department of ecology of design, installation, and operation of sewage pumpout and dump units—Rules.** The department of ecology, in consultation with the commission, shall, for initiation of the statewide program only, develop criteria for the design, installation, and operation of sewage pumpout and dump units, taking into consideration the ease of access to the unit by the boating public. The department of ecology may adopt rules to administer the provisions of this section. [1993 c 244 § 34; 1989 c 393 § 6. Formerly RCW 88.12.335, 88.12.410, and 88.36.060.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.560 Boater environmental education program.** The commission shall undertake a statewide boater environmental education program concerning the effects of boat wastes. The boater environmental education program shall provide informational materials on proper boat waste disposal methods, environmentally safe boat maintenance practices, locations of sewage pumpout and dump units, and boat oil recycling facilities. [1993 c 244 § 35; 1989 c 393 § 7. Formerly RCW 88.12.345, 88.12.420, and 88.36.070.]

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.570 Grants for environmental education or boat waste management planning.** The commission shall award grants to local government entities for boater environmental education or boat waste management planning. Grants shall be allocated according to criteria developed by the commission. [1989 c 393 § 8. Formerly RCW 88.12.355, 88.12.430, and 88.36.080.]

**79A.60.580 Review of programs by commission.** The commission shall, in consultation with interested parties, review progress on installation of sewage pumpout and dump units, the boater environmental education program, and the boating safety program. [1999 c 249 § 1508; 1993 c 244 § 36; 1989 c 393 § 9. Formerly RCW 88.12.365, 88.12.440, and 88.36.090.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.590 Allocation of funds.** The amounts allocated in accordance with \*RCW 82.49.030(3) shall be expended upon appropriation in accordance with the following limitations:

(1) Thirty percent of the funds shall be appropriated to the recreation and conservation funding board and be expended for use by state and local government for public recreational waterway boater access and boater destination sites. Priority shall be given to critical site acquisition. The recreation and conservation funding board shall administer such funds as a competitive grants program. The amounts provided for in this subsection shall be evenly divided between state and local governments.

(2) Thirty percent of the funds shall be expended by the commission exclusively for sewage pumpout or dump units at publicly and privately owned marinas as provided for in RCW 79A.60.530 and 79A.60.540.

(3) Twenty-five percent of the funds shall be expended for grants to state agencies and other public entities to enforce boating safety and registration laws and to carry out boating safety programs. The commission shall administer such grant program.

(4) Fifteen percent shall be expended for instructional materials, programs or grants to the public school system, public entities, or other nonprofit community organizations to support boating safety and boater environmental education or boat waste management planning. The commission shall administer this program. [2007 c 241 § 72; 2000 c 11 § 113; 1993 c 244 § 37; 1989 c 393 § 11. Formerly RCW 88.12.375, 88.12.450, and 88.36.100.]

**\*Reviser's note:** RCW 82.49.030 was amended by 2000 c 103 § 18, deleting subsection (3).

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Intent—1993 c 244:** See note following RCW 79A.60.010.

**79A.60.595 Commission to adopt rules.** The commission shall adopt rules as are necessary to carry out all sections of chapter 393, Laws of 1989 except for RCW 79A.60.550 and 82.49.030. The commission shall comply with all applicable provisions of chapter 34.05 RCW in adopting the rules. [1999 c 249 § 1509; 1989 c 393 § 14. Formerly RCW 88.12.385, 88.12.460, and 88.36.110.]

**Severability—1999 c 249:** See note following RCW 79A.05.010.

**79A.60.600 Liquid petroleum gas leak warning devices—Findings.** (1) The legislature finds that:

(a) Washington state has the greatest length of marine shoreline miles of the lower forty-eight states;

(b) Such marine waters and the extensive freshwater lakes and rivers of the state provide innumerable recreational opportunities, and support a state recreational vessel population that is one of the largest in the country;

(c) Many of Washington's popular recreational waters are remote from population centers and thus remote from emergency health care facilities;

(d) Washington's climate in the western portion of the state, in which its marine recreational waters lie, is cool and wet for much of the year. Much of the state's recreational

vessel activity is conducted in the late fall and winter months in connection with fishing activities. For these reasons the great majority of Washington vessels are equipped with heating devices. These appliances are in use for a much greater portion of the boating season than in other states, and are predominantly fueled by liquid petroleum gas;

(e) Current state and federal standards governing heating and cooking appliances on vessels that are fueled by liquid petroleum gas do not adequately protect against undetected gas leaks. Such gas leaks have led to explosions on Washington waters, causing loss of life and property damage;

(f) The commission coordinates a statewide program of boating safety education to communicate accident prevention information to boaters at risk of fires, explosions, and other hazards, and administers a boating accident reporting program to assess the effectiveness of accident prevention measures.

(2) It is the intent of the legislature to address the state's unique local circumstances regarding inadequate protection of Washington's boaters from undetected leaks of liquid petroleum gas-fueled appliances by incorporating into the boating safety program an intensified boating fire prevention program with special emphasis on preventing fires and carbon monoxide poisoning caused by auxiliary fuels and appliances. [1994 c 151 § 1; 1993 c 469 § 1. Formerly RCW 88.12.500.]

**Severability—1993 c 469:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 469 § 7.]

**Effective date—1993 c 469:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 469 § 8.]

**79A.60.610 Recreational boating fire prevention education program.** The commission shall undertake a statewide recreational boating fire prevention education program concerning the safe use of marine fuels and electrical systems. The boating fire prevention education program shall provide for the distribution of fire safety materials and decals warning of fire hazards and for educational opportunities to educate boaters on the safety practices needed to operate heaters, stoves, and other appliances in Washington's unique aquatic environment. The commission shall evaluate the boating public's voluntary participation in the program and the program's impact on safe boating. [2006 c 140 § 4; 1994 c 151 § 2. Formerly RCW 88.12.505.]

**Short title—2006 c 140:** See note following RCW 79A.60.660.

**79A.60.620 Small spill prevention education program.** (1) The Washington sea grant program, in consultation with the department of ecology, shall develop and conduct a voluntary spill prevention education program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas. Washington sea grant shall coordinate the spill prevention education program with recreational boater education performed by the state parks and recreation commission.

(2) The spill prevention education program shall illustrate ways to reduce oil contamination of bilge water, acci-

dental spills of hydraulic fluid and other hazardous substances during routine maintenance, and reduce spillage during refueling. The program shall illustrate proper disposal of oil and hazardous substances and promote strategies to meet shoreside oil and hazardous substance handling, and disposal needs of the targeted groups. The program shall include a series of training workshops and the development of educational materials. [2000 c 11 § 114; 1991 c 200 § 110. Formerly RCW 90.56.090.]

**79A.60.630 Boating safety education—Commission's duties—Fee—Report to the legislature.** (1) The commission shall establish and implement by rule a program to provide required boating safety education. The boating safety education program shall include training on preventing the spread of aquatic invasive species. The program shall be phased in so that all boaters not exempted under RCW 79A.60.640(3) are required to obtain a boater education card by January 1, 2016. To obtain a boater education card, a boater shall provide a certificate of accomplishment issued by a boating educator for taking and passing an accredited boating safety education course, or pass an equivalency exam, or provide proof of completion of a course that meets the standard adopted by the commission.

(2) As part of the boating safety education program, the commission shall:

(a) Establish a program to be phased over eleven years starting July 1, 2005, with full implementation by January 1, 2016. The period July 1, 2005, through December 31, 2007, will be program development, boater notification of the new requirements for mandatory education, and processing cards to be issued to individuals having taken an accredited course prior to January 1, 2008. The schedule for phase-in of the mandatory education requirement by age group is as follows: January 1, 2008 - All boat operators twenty years old and younger;  
January 1, 2009 - All boat operators twenty-five years old and younger;  
January 1, 2010 - All boat operators thirty years old and younger;  
January 1, 2011 - All boat operators thirty-five years old and younger;  
January 1, 2012 - All boat operators forty years old and younger;  
January 1, 2013 - All boat operators fifty years old and younger;  
January 1, 2014 - All boat operators sixty years old and younger;  
January 1, 2015 - All boat operators seventy years old and younger;  
January 1, 2016 - All boat operators;

(b) Establish a minimum standard of boating safety education accomplishment. The standard must be consistent with the applicable standard established by the national association of state boating law administrators;

(c) Adopt minimum standards for boating safety education course of instruction and examination that ensures compliance with the national association of state boating law administrators minimum standards;

(d) Approve and provide accreditation to boating safety education courses operated by volunteers, or commercial or

nonprofit organizations, including, but not limited to, courses given by the United States coast guard auxiliary and the United States power squadrons;

(e) Develop an equivalency examination that may be taken as an alternative to the boating safety education course;

(f) Establish a fee of ten dollars for the boater education card to fund all commission activities related to the boating safety education program created by chapter 392, Laws of 2005, including the initial costs of developing the program. Any surplus funds resulting from the fees received shall be distributed by the commission as grants to local marine law enforcement programs approved by the commission as provided in RCW 88.02.040;

(g) Establish a fee for the replacement of the boater education card that covers the cost of replacement;

(h) Consider and evaluate public agency and commercial opportunities to assist in program administration with the intent to keep administrative costs to a minimum;

(i) Approve and provide accreditation to boating safety education courses offered online; and

(j) Provide a report to the legislature by January 1, 2008, on its progress of implementation of the mandatory education program. [2005 c 392 § 3.]

**Intent—2005 c 392:** "It is the intent of the legislature to establish a boating safety education program that contributes to the reduction of accidents and increases the enjoyment of boating by all operators of all recreational vessels on the waters of this state. Based on the 2003 report to the legislature titled "Recreational Boating Safety in Washington, A Report on Methods to Achieve Safer Boating Practices," the legislature recognizes that boating accidents also occur in nonmotorized vessels in this state, but, at this time there is no national educational standard for nonmotorized vessels. Therefore, the commission is hereby authorized and directed to work with agencies and organizations representing nonmotorized vessel activities and individuals operating nonmotorized vessels to decrease accidents of operators in these vessels. It is also the intent of the legislature to encourage boating safety education programs that use volunteer and private sector efforts to enhance boating safety and education for operators of nonmotorized vessels to work closely with the state parks and recreation commission in its efforts to reduce all boating accidents in this state." [2005 c 392 § 1.]

**79A.60.640 Requirements to operate motor driven boats/vessels—Exemptions—Penalty.** (1) No person shall operate or permit the operation of motor driven boats and vessels with a mechanical power of fifteen horsepower or greater unless the person:

(a) Is at least twelve years of age, except that an operator of a personal watercraft shall comply with the age requirements under RCW 79A.60.190; and

(b)(i) Has in his or her possession a boater education card, unless exempted under subsection (3) of this section; or

(ii) Is accompanied by and is under the direct supervision of a person sixteen years of age or older who is in possession of a boater education card, or who is not yet required to possess the card as provided in the program phase in RCW 79A.60.630(2)(a).

(2) Any person who can demonstrate they have successfully completed, prior to July 24, 2005, a boating safety education course substantially equivalent to the standards adopted by the commission shall be eligible for a boater education card upon application to the commission and payment of the fee, without having to take a course or equivalency exam as provided in RCW 79A.60.630(1). Successful completion of a boating safety education course could include an

original or copy of an original certificate issued by the commission, the United States coast guard auxiliary, or the United States power squadrons, or official certification by these organizations that the individual successfully completed a course substantially equivalent to the standards adopted by the commission.

(3) The following persons are not required to carry a boater education card:

(a) The operator of a vessel engaged in a lawful commercial fishery operation as licensed by the department of fish and wildlife under Title 77 RCW. However, the person when operating a vessel for recreational purposes must carry either a valid commercial fishing license issued by the department of fish and wildlife or a boater education card;

(b) Any person who possesses a valid marine operator license issued by the United States coast guard when operating a vessel authorized by such coast guard license. However, the person when operating a vessel for recreational purposes must carry either a valid marine operator license issued by the United States coast guard or a boater education card;

(c) Any person who is legally engaged in the operation of a vessel that is exempt from vessel registration requirements under chapter 88.02 RCW and applicable rules and is used for purposes of law enforcement or official government work. However, the person when operating a vessel for recreational purposes must carry a boater education card;

(d) Any person at least twelve years old renting, chartering, or leasing a motor driven boat or vessel with an engine power of fifteen horsepower or greater who completes a commission-approved motor vessel safety operating and equipment checklist each time before operating the motor driven boat or vessel, except that an operator of a personal watercraft shall comply with the age requirements under RCW 79A.60.190;

(e) Any person who is not a resident of Washington state and who does not operate a motor driven boat or vessel with an engine power of fifteen horsepower or greater in waters of the state for more than sixty consecutive days;

(f) Any person who is not a resident of Washington state and who holds a current out-of-state or out-of-country certificate or card that is equivalent to the rules adopted by the commission;

(g) Any person who has purchased the boat or vessel within the last sixty days, and has a bill of sale in his or her possession to document the date of purchase;

(h) Any person, including those less than twelve years of age, who is involved in practicing for, or engaging in, a permitted racing event where a valid document has been issued by the appropriate local, state, or federal government agency for the event, and is available for inspection on-site during the racing event;

(i) Any person who is not yet required to have a boater education card under the phased schedule in RCW 79A.60.630(2)(a); and

(j) Any person born before January 1, 1955.

(4) Except as provided in subsection (3)(a) through (i) of this section, a boater must carry a boater education card while operating a vessel and is required to present the boater education card, or alternative license as provided in subsection (3)(a) and (b) of this section, to a law enforcement officer upon request.

(5) Failure to possess a boater education card required by this section is an infraction under chapter 7.84 RCW. The penalty shall be waived if the boater provides proof to the court within sixty days that he or she has received a boater education card.

(6) No person shall permit the rental, charter, or lease of a motor driven boat or vessel with an engine power of fifteen horsepower or greater to a person without first reviewing with that person, and all other persons who may be permitted by the person to operate the vessel, all the information contained in the motor vessel safety operating and equipment checklist. [2005 c 392 § 4.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

**79A.60.650 Boating safety education certification account.** The boating safety education certification account is created in the custody of the state treasurer. All receipts from fees collected for the issuance of a boater education card shall be deposited in the account and shall be used only for the administration of RCW 79A.60.630 and 79A.60.640. Only the state parks and recreation commission may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2005 c 392 § 5.]

**Intent—2005 c 392:** See note following RCW 79A.60.630.

**79A.60.660 Operating motor driven boat or vessel for teak surfing, platform dragging, bodysurfing—Prohibition—Exceptions—Penalty.** (1) No person may operate a motor driven boat or vessel or have the engine of a motor driven boat or vessel run idle while an individual is teak surfing, platform dragging, or bodysurfing behind the motor driven boat or vessel.

(2) No person may operate a motor driven boat or vessel or have the engine of a motor driven boat or vessel run idle while an individual is occupying or holding onto the swim platform, swim deck, swim step, or swim ladder of the motor driven boat or vessel.

(3) Subsection (2) of this section does not apply when an individual is occupying the swim platform, swim deck, swim step, or swim ladder for a very brief period of time while assisting with the docking or departure of the vessel, while exiting or entering the vessel, or while the vessel is engaged in law enforcement or emergency rescue activity.

(4) For the purposes of this section, "teak surfing" or "platform dragging" means holding onto the swim platform, swim deck, swim step, swim ladder, or any portion of the exterior of the transom of a motor driven boat or vessel for any amount of time while the motor driven boat or vessel is underway at any speed.

(5) For the purposes of this section, "bodysurfing" means swimming or floating on one's stomach or on one's back on or in the wake directly behind a motor driven boat or vessel that is underway.

(6) A violation of this section is a natural resource infraction punishable as provided under chapter 7.84 RCW, however the fine imposed may not exceed one hundred dollars. [2006 c 140 § 1.]

(2008 Ed.)

**Short title—2006 c 140:** "This act may be known and cited as the Jenda Jones and Denise Colbert safe boating act." [2006 c 140 § 5.]

**79A.60.670 Boating activities program—Boating activities advisory committee—Adoption of rules.** (1) The boating activities program is created in the \*interagency committee for outdoor recreation.

(2) The \*interagency committee for outdoor recreation shall distribute moneys appropriated from the boating activities account created in RCW 79A.60.690 as follows, or as otherwise appropriated by the legislature, after deduction for the \*committee's expenses in administering the boating activities grant program and for related studies:

(a) To the commission for boater safety, boater education, boating-related law enforcement activities, activities included in RCW 88.02.040, related administrative expenses, and boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating;

(b) For grants to state agencies, counties, municipalities, port districts, federal agencies, nonprofit organizations, and Indian tribes to improve boating access to water and marine parks, enhance the boater experience, boater safety, boater education, and boating-related law enforcement activities, and to provide funds for boating-related environmental programs, such as pumpout stations, to enhance clean waters for boating; and

(c) If the amount available for distribution from the boating activities account is equal to or less than two million five hundred thousand dollars per fiscal year, then eighty percent of the amount available must be distributed to the commission for the purposes of (a) of this subsection and twenty percent for grants in (b) of this subsection. Amounts available for distribution in excess of two million five hundred thousand dollars per fiscal year shall be distributed by the \*committee for purposes of (a) and (b) of this subsection.

(3) The \*interagency committee for outdoor recreation shall establish an application process for boating activities grants.

(4) Agencies receiving grants for capital purposes from the boating activities account shall consider the possibility of contracting with the commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(5) To solicit input on the boating activities grant application process, criteria for grant awards, and use of grant moneys, and to determine the interests of the boating community, the \*interagency committee for outdoor recreation shall solicit input from a boating activities advisory committee. The \*interagency committee for outdoor recreation may utilize a currently established boating issues committee that has similar responsibility for input on recreational boating-related funding issues. Members of the boating activities advisory committee are not eligible for compensation but may be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The \*interagency committee for outdoor recreation may adopt rules to implement this section. [2007 c 311 § 2.]

**\*Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency

committee for outdoor recreation" to the "recreation and conservation funding board."

**79A.60.680 Study of boater needs—Funding recommendations.** (1) By December 1, 2007, the \*interagency committee for outdoor recreation shall complete an initial study of boater needs and make recommendations to the appropriate committees of the legislature on the initial amount of funding that should be provided to the commission for boating-related law enforcement purposes under RCW 79A.60.670(2)(a).

(2) The \*interagency committee for outdoor recreation shall periodically update its study of boater needs as necessary and shall make recommendations to the governor and the appropriate committees of the legislature concerning funding allocations to state parks and other grant applicants. [2007 c 311 § 3.]

**\*Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency committee for outdoor recreation" to the "recreation and conservation funding board."

**79A.60.690 Boating activities account.** The boating activities account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as authorized under RCW 79A.60.670 and 79A.60.680.

Grants, gifts, or other financial assistance received by the \*interagency committee for outdoor recreation from state and nonstate sources for purposes of boating activities may be deposited into the account. [2007 c 311 § 1.]

**\*Reviser's note:** Chapter 241, Laws of 2007 amended numerous sections of chapter 79A.25 RCW, and changed the name of the "interagency committee for outdoor recreation" to the "recreation and conservation funding board."

## Chapter 79A.65 RCW

### COMMISSION MOORAGE FACILITIES

#### Sections

79A.65.010	Definitions.
79A.65.020	Securing unauthorized vessels—Notice—Claiming vessels—Abandoned vessels—Derelict vessel removal account.
79A.65.030	Sale of abandoned vessels—Notice—Redemption of vessels—Use of proceeds—Disposal of vessels.
79A.65.040	Action to recover charges—Attorneys' fees—Costs.
79A.65.050	Rights not affected.
79A.65.900	Severability—1994 c 51.

**79A.65.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Charges" means charges of the commission for moorage and storage, and all other charges related to the vessel and owing to or that become owing to the commission, including but not limited to costs of securing, disposing, or removing vessels, damages to any commission facility, and any costs of sale and related legal expenses for implementing RCW 79A.65.020 and 79A.65.030.

(2) "Commission" means the Washington state parks and recreation commission.

(3) "Commission facility" means any moorage facility, as that term is defined in RCW 53.08.310, owned, leased,

operated, managed, or otherwise controlled by the commission or by a person pursuant to a contract with the commission.

(4) "Owner" means a person who has a lawful right to possession of a vessel by purchase, exchange, gift, lease, inheritance, or legal action whether or not the vessel is subject to a security interest, and shall not include the holder of a bona fide security interest.

(5) "Person" means any natural person, firm, partnership, corporation, association, organization, or any other entity.

(6)(a) "Registered owner" means any person that is either: (i) Shown as the owner in a vessel certificate of documentation issued by the secretary of the United States department of transportation under 46 U.S.C. Sec. 12103; or (ii) the registered owner or legal owner of a vessel for which a certificate of title has been issued under chapter 88.02 RCW; or (iii) the owner of a vessel registered under the vessel registration laws of another state under which laws the commission can readily identify the ownership of vessels registered with that state.

(b) "Registered owner" also includes: (i) Any holder of a security interest or lien recorded with the United States department of transportation with respect to a vessel on which a certificate of documentation has been issued; (ii) any holder of a security interest identified in a certificate of title for a vessel registered under chapter 88.02 RCW; or (iii) any holder of a security interest in a vessel where the holder is identified in vessel registration information of a state with vessel registration laws that fall within (a)(iii) of this subsection and under which laws the commission can readily determine the identity of the holder.

(c) "Registered owner" does not include any vessel owner or holder of a lien or security interest in a vessel if the vessel does not have visible information affixed to it (such as name and hailing port or registration numbers) that will enable the commission to obtain ownership information for the vessel without incurring unreasonable expense.

(7) "Registered vessel" means a vessel having a registered owner.

(8) "Secured vessel" means any vessel that has been secured by the commission that remains in the commission's possession and control.

(9) "Unauthorized vessel" means a vessel using a commission facility of any type whose owner has not paid the required moorage fees or has left the vessel beyond the posted time limits, or a vessel otherwise present without permission of the commission.

(10) "Vessel" means every watercraft or part thereof constructed, used, or capable of being used as a means of transportation on the water. It includes any equipment or personal property on the vessel that is used or capable of being used for the operation, navigation, or maintenance of the vessel. [2002 c 286 § 20; 2000 c 11 § 115; 1994 c 51 § 1. Formerly RCW 88.27.010.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**79A.65.020 Securing unauthorized vessels—Notice—Claiming vessels—Abandoned vessels—Derelict vessel removal account.** (1) The commission may take reasonable measures, including but not limited to the use of

anchors, chains, ropes, and locks, or removal from the water, to secure unauthorized vessels located at or on a commission facility so that the unauthorized vessels are in the possession and control of the commission. At least ten days before securing any unauthorized registered vessel, the commission shall send notification by registered mail to the last registered owner or registered owners of the vessel at their last known address or addresses.

(2) The commission may take reasonable measures, including but not limited to the use of anchors, chains, ropes, locks, or removal from the water, to secure any vessel if the vessel, in the opinion of the commission, is a nuisance, is in danger of sinking or creating other damage to a commission facility, or is otherwise a threat to the health, safety, or welfare of the public or environment at a commission facility. The costs of any such procedure shall be paid by the vessel's owner.

(3) At the time of securing any vessel under subsection (1) or (2) of this section, the commission shall attach to the vessel a readily visible notice or, when practicable, shall post such notice in a conspicuous location at the commission facility in the event the vessel is removed from the premises. The notice shall be of a reasonable size and shall contain the following information:

(a) The date and time the notice was attached or posted;

(b) A statement that the vessel has been secured by the commission and that if the commission's charges, if any, are not paid and the vessel is not removed by . . . . . (the thirty-fifth consecutive day following the date of attachment or posting of the notice), the vessel will be considered abandoned and will be sold at public auction to satisfy the charges;

(c) The address and telephone number where additional information may be obtained concerning the securing of the vessel and conditions for its release; and

(d) A description of the owner's or secured party's rights under this chapter.

(4) With respect to registered vessels: Within five days of the date that notice is attached or posted under subsection (3) of this section, the commission shall send such notice, by registered mail, to each registered owner.

(5) If a vessel is secured under subsection (1) or (2) of this section, the owner, or any person with a legal right to possess the vessel, may claim the vessel by:

(a) Making arrangements satisfactory to the commission for the immediate removal of the vessel from the commission's control or for authorized storage or moorage; and

(b) Making payment to the commission of all reasonable charges incurred by the commission in securing the vessel under subsections (1) and (2) of this section and of all moorage fees owed to the commission.

(6) A vessel is considered abandoned if, within the thirty-five day period following the date of attachment or posting of notice in subsection (3) of this section, the vessel has not been claimed under subsection (5) of this section.

(7) If the owner or owners of a vessel are unable to reimburse the commission for all reasonable charges under subsections (1) and (2) of this section within a reasonable time, the commission may seek reimbursement of seventy-five percent of all reasonable and auditable costs from the derelict

vessel removal account established in RCW 79.100.100. [2002 c 286 § 21; 1994 c 51 § 2. Formerly RCW 88.27.020.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**79A.65.030 Sale of abandoned vessels—Notice—Redemption of vessels—Use of proceeds—Disposal of vessels.** (1) The commission may provide for the public sale of vessels considered abandoned under RCW 79A.65.020. At such sales, the vessels shall be sold for cash to the highest and best bidder. The commission may establish either a minimum bid or require a letter of credit, or both, to discourage the future reabandonment of the vessel.

(2) Before a vessel is sold, the commission shall make a reasonable effort to provide notice of sale, at least twenty days before the day of the sale, to each registered owner of a registered vessel and each owner of an unregistered vessel. The notice shall contain the time and place of the sale, a reasonable description of the vessel to be sold, and the amount of charges then owing with respect to the vessel, and a summary of the rights and procedures under this chapter. A notice of sale shall be published at least once, more than ten but not more than twenty days before the sale, in a newspaper of general circulation in the county in which the commission facility is located. This notice shall include: (a) If known, the name of the vessel and the last owner and the owner's address; and (b) a reasonable description of the vessel. The commission may bid all or part of its charges at the sale and may become a purchaser at the sale.

(3) Before a vessel is sold, any person seeking to redeem a secured vessel may commence a lawsuit in the superior court for the county in which the vessel was secured to contest the commission's decision to secure the vessel or the amount of charges owing. This lawsuit shall be commenced within fifteen days of the date the notification was posted under RCW 79A.65.020(3), or the right to a hearing is deemed waived and the owner is liable for any charges owing the commission. In the event of litigation, the prevailing party is entitled to reasonable attorneys' fees and costs.

(4) The proceeds of a sale under this section shall be applied first to the payment of the amount of the reasonable charges incurred by the commission and moorage fees owed to the commission, then to the owner or to satisfy any liens of record or security interests of record on the vessel in the order of their priority. If an owner cannot in the exercise of due diligence be located by the commission within one year of the date of the sale, any excess funds from the sale, following the satisfaction of any bona fide security interest, shall revert to the derelict vessel removal account established in RCW 79.100.100. If the sale is for a sum less than the applicable charges, the commission is entitled to assert a claim for the deficiency against the vessel owner. Nothing in this section prevents any lien holder or secured party from asserting a claim for any deficiency owed the lien holder or secured party.

(5) If no one purchases the vessel at a sale, the commission may proceed to properly dispose of the vessel in any way the commission considers appropriate, including, but not limited to, destruction of the vessel or by negotiated sale. The commission may assert a claim against the owner for any charges incurred thereby. If the vessel, or any part of the ves-

sel, or any rights to the vessel, are sold under this subsection, any proceeds from the sale shall be distributed in the manner provided in subsection (4) of this section. [2002 c 286 § 22; 2000 c 11 § 116; 1994 c 51 § 3. Formerly RCW 88.27.030.]

**Severability—Effective date—2002 c 286:** See RCW 79.100.900 and 79.100.901.

**79A.65.040 Action to recover charges—Attorneys' fees—Costs.** If the full amount of all charges due the commission on an unauthorized vessel is not paid to the commission within thirty days after the date on which notice is affixed or posted under RCW 79A.65.020(3), the commission may bring an action in any court of competent jurisdiction to recover the charges, plus reasonable attorneys' fees and costs incurred by the commission. [2000 c 11 § 117; 1994 c 51 § 4. Formerly RCW 88.27.040.]

**79A.65.050 Rights not affected.** The rights granted to the commission under this chapter are in addition to any other legal rights the commission may have to secure, hold, and sell a vessel and in no manner does this section alter those rights, or affect the priority of other liens on a vessel. [1994 c 51 § 5. Formerly 88.27.050.]

**79A.65.900 Severability—1994 c 51.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 51 § 10. Formerly RCW 88.27.900.]

## Chapter 79A.70 RCW STATE PARKS GIFT FOUNDATION

### Sections

79A.70.005	Findings.
79A.70.010	Purpose.
79A.70.020	Definitions.
79A.70.030	Washington state parks gift foundation—Establishment—Board of directors—Term of service.
79A.70.040	Foundation's duties—Grant process.
79A.70.050	Foundation moneys not to supplant preexisting funding.
79A.70.900	Severability—2000 c 25.

**79A.70.005 Findings.** The legislature finds that:

- (1) State parks are a valuable asset to the people of the state of Washington, contributing to their health, education, and well-being;
- (2) Well maintained state parks are an attraction and contribute significantly to the economic well-being of the state of Washington;
- (3) Well maintained state parks encourage the appreciation of the natural resources and natural beauty of the state of Washington;
- (4) There is an increasing demand for more state parks and more state parks services;
- (5) There are individuals and groups who desire to contribute to the continued vitality of the state parks system;
- (6) Providing a tax-deductible method for individuals and groups to contribute is an effective way of increasing available funds to improve the state parks system; and
- (7) It is in the public interest to create a nonprofit foundation to provide such a method for individuals and groups to

contribute to the preservation, restoration, and enhancement of the state parks system. [2000 c 25 § 1.]

**79A.70.010 Purpose.** The purpose of the Washington state parks gift foundation is to solicit support for the state parks system, cooperate with other organizations, and to encourage gifts to support and improve the state parks. [2000 c 25 § 2.]

**79A.70.020 Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Foundation" means the Washington state parks gift foundation, created in RCW 79A.70.030.

(2) "State parks" means that system of parks administered by the commission under this title.

(3) "Eligible grant recipients" includes any and all of the activities of the commission in carrying out the provisions of this title.

(4) "Eligible projects" means any project, action, or part of any project or action that serves to preserve, restore, improve, or enhance the state parks. [2000 c 25 § 3.]

**79A.70.030 Washington state parks gift foundation—Establishment—Board of directors—Term of service.** (1) By September 1, 2000, the commission shall file articles of incorporation in accordance with the Washington nonprofit corporation act, chapter 24.03 RCW, to establish the Washington state parks gift foundation. The foundation shall not be an agency, instrumentality, or political subdivision of the state and shall not disburse public funds.

(2) The foundation shall have a board of directors consisting of up to fifteen members. Initial members of the board shall be appointed by the governor and collectively have experience in business, charitable giving, outdoor recreation, and parks administration. Initial appointments shall be made by September 30, 2000. Subsequent board members shall be elected by the general membership of the foundation.

(3) Members of the board shall serve three-year terms, except for the initial terms, which shall be staggered by the governor to achieve a balanced mix of terms on the board. Members of the board may serve up to a maximum of three terms. At the end of a term, a member may continue to serve until a successor has been elected. [2000 c 25 § 4.]

**79A.70.040 Foundation's duties—Grant process.** (1) As soon as practicable, the board of directors shall organize themselves and the foundation suitably to carry out the duties of the foundation, including achieving federal tax-exempt status.

(2) The foundation shall actively solicit contributions from individuals and groups for the benefit of the state parks.

(3) The foundation shall develop criteria for guiding themselves in either the creation of an endowment, or the making of grants to eligible grant recipients and eligible projects in the state parks, or both.

(4) A competitive grant process shall be conducted at least annually by the foundation to award funds to the state parks. Competitive grant applications shall only be submitted to the foundation by the commission. The process shall be

started as soon as practicable. Grants shall be awarded to eligible projects consistent with the criteria developed by the foundation and shall be available only for state parks use on eligible projects. [2000 c 25 § 5.]

**79A.70.050 Foundation moneys not to supplant pre-existing funding.** Money provided to the state parks by the foundation shall not be used to supplant preexisting funding sources. [2000 c 25 § 6.]

**79A.70.900 Severability—2000 c 25.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2000 c 25 § 7.]

### Chapter 79A.75 RCW

#### STATE PARKS CENTENNIAL

##### Sections

79A.75.005	Finding.
79A.75.010	Centennial advisory committee—Established—Composition.
79A.75.020	Expenses—Reimbursement.
79A.75.030	Centennial 2013 plan—Develop proposal.
79A.75.900	Expiration date—2004 c 14.
79A.75.901	Effective date—2004 c 14.

**79A.75.005 Finding. (Expires December 31, 2013.)** Washington state parks will mark its centennial year in 2013. The legislature finds it fitting to commemorate the Washington state parks centennial through a coordinated effort by the state parks and recreation commission, the governor, the legislature, and the people of the state of Washington by implementing the Washington state parks centennial 2013 plan developed by the state parks and recreation commission in response to the directive of the legislature in section 347, chapter 26, Laws of 2003 1st sp. sess. [2004 c 14 § 1.]

**79A.75.010 Centennial advisory committee—Established—Composition. (Expires December 31, 2013.)** (1) The Washington state parks centennial advisory committee is established, composed of eleven members selected as follows:

- (a) The chair and vice-chair of the state parks and recreation commission, who shall serve as the chair and vice-chair of the committee;
- (b) A representative of the governor;
- (c) A member of each of the two largest caucuses of the senate, appointed by the president of the senate;
- (d) A member of each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives;
- (e) The director of the office of financial management or his or her designee; and
- (f) Three members of the public, appointed by the chair of the commission, consisting of a representative of the commission employees, a representative of private sector donors, and a representative of state park users.

(2) The committee will be staffed by the commission and by other staff as may be provided by the legislature, the gov-

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ernor, the office of financial management, or other sources that choose to donate staff assistance.

(3) The committee will meet at the call of the chair. [2004 c 14 § 2.]

**79A.75.020 Expenses—Reimbursement. (Expires December 31, 2013.)** Nonlegislative committee members will be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Legislative members will be reimbursed as provided in RCW 44.04.120. [2004 c 14 § 3.]

**79A.75.030 Centennial 2013 plan—Develop proposal. (Expires December 31, 2013.)** (1) The Washington state parks centennial advisory committee will develop a proposal to implement the centennial 2013 plan. The proposal must include:

- (a) A complete description of the policy and fiscal components of the plan;
- (b) The roles of the commission, the governor, the legislature, the public, and other entities in implementing the plan;
- (c) Time frames for implementing the plan;
- (d) Cost estimates for implementing the plan, including total estimated costs for each component of the plan, and estimates on a yearly or biennial basis for implementing the plan in phases.

(2) The commission will review and may revise the plan. The commission will submit a draft proposal to the office of financial management and the fiscal committees of the legislature, no later than September 1, 2004. That proposal must include at least the portion of the plan that would need to be considered during the 2005 legislative session to be implemented during the 2005-07 biennium. The commission will submit the complete proposal to the office of financial management and the appropriate policy and fiscal committees of the legislature no later than January 1, 2005. Thereafter, the commission must submit revised proposals to the office of financial management and the appropriate policy and fiscal committees of the legislature no later than June 30 of each even-numbered year. [2004 c 14 § 4.]

**79A.75.900 Expiration date—2004 c 14.** This act expires December 31, 2013. [2004 c 14 § 5.]

**79A.75.901 Effective date—2004 c 14.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 2004]. [2004 c 14 § 7.]



# Title 80

## PUBLIC UTILITIES

### Chapters

- 80.01** Utilities and transportation commission.
- 80.04** Regulations—General.
- 80.08** Securities.
- 80.12** Transfers of property.
- 80.16** Affiliated interests.
- 80.20** Investigation of public service companies.
- 80.24** Regulatory fees.
- 80.28** Gas, electrical, and water companies.
- 80.32** Electric franchises and rights-of-way.
- 80.36** Telecommunications.
- 80.40** Underground Natural Gas Storage Act.
- 80.50** Energy facilities—Site locations.
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- 80.58** Nonpolluting power generation exemption.
- 80.60** Net metering of electricity.
- 80.66** Radio communications service companies.
- 80.70** Carbon dioxide mitigation.
- 80.80** Greenhouse gases emissions—Baseload electric generation performance standard.
- 80.98** Construction.

*Agreements between electrical public utilities and cooperatives: Chapter 54.48 RCW.*

*Assessment of public utilities for property tax purposes: Chapter 84.12 RCW.*

*Conversion of overhead electric and communication facilities to underground: Chapter 35.96 RCW, RCW 36.88.410 through 36.88.480.*

*Corporate seals, effect of absence from instrument: RCW 64.04.105.*

*Corporations, annual license fee of public service companies: RCW 23B.01.590.*

*Easements of public service companies taxable as personalty: RCW 84.20.010.*

*Electrical advisory board: RCW 19.28.311.*

*Flaggers—Safety standards: RCW 49.17.350.*

*Franchise on county roads and bridges: Chapter 36.55 RCW.*

*Fraud in obtaining telecommunications service: RCW 9.26A.110.*

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*Generating electricity by steam: RCW 43.21A.600 through 43.21A.642.*

*Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts: RCW 87.03.825 through 87.03.840.*

*Mechanics' and materialmen's liens: Chapter 60.04 RCW.*

*Metropolitan municipal corporations: Chapter 35.58 RCW.*

*Motor vehicle fuel tax exemption for urban transportation system: RCW 82.36.275.*

*Municipal utilities: Chapter 35.92 RCW.*

*Municipal utilities, sale or lease of: Chapter 35.94 RCW.*

*Municipal water and sewer facilities act: Chapter 35.91 RCW.*

*Nuclear, thermal power facilities, joint development by cities, public utility districts, electrical companies: Chapter 54.44 RCW.*

*Operating agencies: Chapter 43.52 RCW.*

*Party line telephone calls, emergencies: Chapter 70.85 RCW.*

*Power resources, state division of: Chapter 43.27A RCW.*

*Public utility districts: Title 54 RCW.*

*Public utility tax: Chapter 82.16 RCW.*

*State department of conservation: Chapter 43.27A RCW.*

*State power commission: Chapter 43.27A RCW.*

*Traffic control at work sites: RCW 47.36.200.*

*Underground utilities, records of location: Chapter 19.122 RCW.*

*Utility poles, unlawful to attach objects—Penalty: RCW 70.54.090.*

*Water resources, state division of: Chapter 43.27A RCW.*

### Chapter 80.01 RCW

#### UTILITIES AND TRANSPORTATION COMMISSION

##### Sections

- 80.01.010 Commission created—Appointment of members—Terms—Vacancies—Removal—Salary.
- 80.01.020 Commissioners—Oath, bond, and qualifications—Persons excluded from office and employment.
- 80.01.030 Commission to employ secretary and other assistants—Secretary's duties—Deputies.
- 80.01.035 Appointment of commissioners pro tempore.
- 80.01.040 General powers and duties of commission.
- 80.01.050 Quorum—Hearings—Actions deemed those of the commission.
- 80.01.060 Administrative law judges—Powers.
- 80.01.070 Joint investigations, hearings, orders.
- 80.01.075 Authority to initiate, participate in federal administrative agency proceedings.
- 80.01.080 Public service revolving fund.
- 80.01.090 Proceedings public records—Seal.
- 80.01.100 Duties of attorney general.
- 80.01.110 Wholesale telecommunications services—Commission authorized to review rates, terms, conditions.
- 80.01.300 Certain provisions not to detract from commission powers, duties, and functions.

*Collection agencies, retained by public bodies to collect debts—Fees: RCW 19.16.500.*

*Solid waste collection districts in counties, commission findings necessary: RCW 36.58A.030.*

#### **80.01.010 Commission created—Appointment of members—Terms—Vacancies—Removal—Salary.**

There is hereby created and established a state commission to be known and designated as the Washington utilities and transportation commission, and in this chapter referred to as the commission.

The commission shall be composed of three members appointed by the governor, with the consent of the senate. Not more than two members of said commission shall belong to the same political party.

Each commissioner shall be appointed and hold office for the term of six years. The governor shall designate one of the commissioners to be chair of the commission during the term of the governor.

Each commissioner shall receive a salary as may be fixed by the governor in accordance with the provisions of RCW 43.03.040.

Any member of the commission may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit

such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a special tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time, place and procedure for the hearing, and the hearing shall be public. The decision of such tribunal shall be final and not subject to review.

If the tribunal specified herein finds the charges of the governor to be true, the governor shall have the right to immediately remove the commissioner from office, to declare the position of the commissioner vacant, and appoint another commissioner to the position in accordance with the provisions of the law.

Any vacancy arising in the office of commissioner shall be filled by appointment by the governor, and, except for persons appointed as pro tempore commissioners, an appointee selected to fill a vacancy shall hold office for the balance of the full term for which his or her predecessor on the commission was appointed.

If a vacancy occurs while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he or she shall present to the senate his or her nomination or nominations for the office to be filled. [2006 c 346 § 1; 1961 c 307 § 4; 1961 c 14 § 80.01.010. Prior: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 § 1; Rem. Supp. 1949 § 10964-115-1. Formerly RCW 43.53.010.]

**80.01.020 Commissioners—Oath, bond, and qualifications—Persons excluded from office and employment.** Each commissioner shall, before entering upon the duties of his office, take and subscribe the constitutional oath of office, and furnish bond to the state in the sum of twenty thousand dollars conditioned for the faithful discharge of the duties of his office and for the proper accounting for all funds that may come into his possession by virtue of his office. Each commissioner shall be a qualified elector of this state and no person in the employ of or holding any official relation to any corporation or person, which corporation or person is subject in whole or in part to regulation by the commission, and no person owning stocks or bonds of any such corporation or who is in any manner pecuniarily interested therein shall be appointed or hold the office of commissioner or be appointed or employed by the commission: PROVIDED, That if any such person shall become the owner of such stocks or bonds or become pecuniarily interested in such corporation otherwise than voluntarily, he shall within a reasonable time divest himself of such ownership or interest, and failing to do so his office or employment shall become vacant. [1961 c 14 § 80.01.020. Prior: 1949 c 117 § 2; Rem. Supp. 1949 § 10964-115-2. Formerly RCW 43.53.020 and 43.53.030.]

**80.01.030 Commission to employ secretary and other assistants—Secretary's duties—Deputies.** The commission shall appoint and employ a secretary and such accounting, engineering, expert and clerical assistants, and such other qualified assistants as may be necessary to carry on the administrative work of the commission.

The secretary shall be the custodian of the commission's official seal, and shall keep full and accurate minutes of all

transactions, proceedings and determinations of the commission and perform such other duties as may be required by the commission.

The commission may deputize one or more of its assistants to perform, in the name of the commission, such duties of the commission as it deems expedient. The commission may, by rule or order, delegate to designated assistants any of the powers and duties vested in or imposed upon the commission by law except matters governed by chapter 34.05 RCW; however, a matter may not be delegated to a person who has worked as an advocate on the same docket. Delegated powers and duties may be exercised in the name of the commission. The commission by rule shall implement a process by which notice shall be provided of matters designated for delegation. Any such matter shall be heard or reviewed by commissioners at the request of any commissioner or any affected person. [2006 c 346 § 2; 1961 c 14 § 80.01.030. Prior: 1949 c 117 § 4; 1934 c 267 §§ 2, 3, 5 and 6; Rem. Supp. 1949 § 10964-115-4 and Rem. Supp. 1945 §§ 10459-2, 10459-3, 10459-5, 10459-6; prior: compare prior laws as follows: 1955 c 340 § 7; 1951 c 260 § 1; 1949 c 117 §§ 1, 3, 8; 1945 c 267; 1935 c 8 § 1; 1921 c 7 §§ 25, 26; 1911 c 117. Formerly RCW 43.53.040.]

**80.01.035 Appointment of commissioners pro tempore.** When a commissioner has heard all or a substantial part of an adjudicative proceeding and leaves office before entry of a final order in the proceeding, at the request of the remaining commissioners the commissioner leaving office may be appointed by the governor as commissioner pro tempore to complete the proceeding. A proceeding is completed when the commission enters a final order purporting to resolve all contested issues therein, from which no party seeks clarification or reconsideration, or upon entry of an order on clarification or reconsideration, even though the order is subject to a petition for judicial review. A commissioner pro tempore shall receive a reasonable compensation to be fixed by the remaining members of the commission. [2006 c 346 § 3.]

**80.01.040 General powers and duties of commission.** The utilities and transportation commission shall:

(1) Exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law.

(2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons or property within this state for compensation.

(3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.

(4) Make rules and regulations necessary to carry out its other powers and duties. [2007 c 234 § 1; 1985 c 450 § 10; 1961 c 14 § 80.01.040. Prior: (i) 1949 c 117 § 3; Rem. Supp. 1949 § 10964-115-3. (ii) 1945 c 267 § 5; Rem. Supp. 1945 § 10459-5. (iii) 1945 c 267 § 6; Rem. Supp. 1945 § 10459-6. Formerly RCW 43.53.050.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

*Flaggers—Safety standards: RCW 49.17.350.*

**80.01.050 Quorum—Hearings—Actions deemed those of the commission.** A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission, and may hold hearings at any time or place within or without the state. A quorum of commissioners need not affirm any matter delegated under RCW 80.01.030. Any investigation, inquiry, or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner or any administrative law judge as provided in RCW 80.01.060. All investigations, inquiries, and hearings of the commission, and all findings, orders, or decisions, made by a commissioner or administrative law judge, when approved and confirmed by the commission or allowed to become final pursuant to RCW 80.01.060 and filed in its office, shall be the orders or decisions of the commission. [2006 c 346 § 4; 1995 c 331 § 2; 1961 c 14 § 80.01.050. Prior: 1949 c 117 § 6; Rem. Supp. 1949 § 10964-115-6. Formerly RCW 43.53.060.]

**80.01.060 Administrative law judges—Powers.** (1) The commission may appoint administrative law judges when it deems such action necessary for its general administration. The administrative law judges may administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, waybills, books, accounts, documents, and testimony, examine witnesses, make findings of probable cause and issue complaints in the name of the commission, and receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules as the commission may adopt. The administrative law judges appointed under this subsection are not subject to chapter 41.06 RCW; however, they are subject to discipline and termination, for cause, by the executive secretary of the commission. Upon written request of the person so disciplined or terminated, the executive secretary shall state the reasons for such action in writing. The person affected has a right of review by the superior court of Thurston county on petition for reinstatement or other remedy filed within thirty days of receipt of the written reasons.

(2) In general rate increase filings by a natural gas, electric, or telecommunications company, the administrative law judges may preside, but may not enter an initial order unless expressly agreed to in writing by the company making the filing. In all other cases, the administrative law judge may enter an initial order including findings of fact and conclusions of law in accordance with RCW 34.05.461(1)(a) and (c) and (3) through (9) or 34.05.485. RCW 34.05.461 (1)(b) and (2) do not apply to entry of orders under this section.

(3) Administrative law judges may not enter final orders, except that the commission may designate persons by rule to preside and enter final orders in emergency adjudications under RCW 34.05.479. Initial orders of administrative law judges shall become final on the day following expiration of the time established by the commission for filing a petition for administrative review, unless, within that time, a party petitions for administrative review or the commission notifies parties that it will review the initial order on its own motion.

(4) If the administrative law judge does not enter an initial order as provided in subsection (2) of this section, then a majority of the members of the commission who are to enter the final order must hear or review substantially all of the record submitted by any party. [2006 c 346 § 5; 1995 c 331 § 3; 1991 c 48 § 1; 1981 c 67 § 35; 1961 c 14 § 80.01.060. Prior: 1925 ex.s. c 164 § 1; RRS § 10779-1. Formerly RCW 43.53.070.]

**Effective dates—Severability—1981 c 67:** See notes following RCW 34.12.010.

**80.01.070 Joint investigations, hearings, orders.** The commission shall have full power to make joint or concurrent investigations, hold joint or concurrent hearings, and issue joint or concurrent orders in conjunction or concurrence with any official, board, or commission of any state or of the United States, whether in the holding of such investigations or hearings or in the making of such orders the commission functions under agreements or compacts between states or under the concurrent power of states to regulate interstate commerce or as an agency of the federal government or otherwise. When necessary the commission may hold such joint hearing or investigation outside the state. [1961 c 14 § 80.01.070. Prior: 1949 c 117 § 7; Rem. Supp. 1949 § 10964-115-7. Formerly RCW 43.53.080.]

**80.01.075 Authority to initiate, participate in federal administrative agency proceedings.** The commission shall have the authority as petitioner, intervenor or otherwise to initiate and/or participate in proceedings before federal administrative agencies in which there is at issue the authority, rates or practices for transportation or utility services affecting the interests of the state of Washington, its businesses and general public, and to do all things necessary in its opinion to present to such federal administrative agencies all facts bearing upon such issues, and to similarly initiate and/or participate in any judicial proceedings relating thereto. [1967 ex.s. c 49 § 1.]

**80.01.080 Public service revolving fund.** There is created in the state treasury a public service revolving fund. Regulatory fees payable by all types of public service companies shall be deposited to the credit of the public service revolving fund. Except for expenses payable out of the pipeline safety account, all expense of operation of the Washington utilities and transportation commission shall be payable out of the public service revolving fund.

During the 2003-2005 fiscal biennium, the legislature may transfer from the public service revolving fund to the state general fund such amounts as reflect the excess fund balance of the fund.

Due to the extraordinarily high winter energy costs, during the 2005-2007 fiscal biennium, no more than seven million six hundred thousand dollars, as appropriated in section 1, chapter 3, Laws of 2006, shall be payable out of the public service revolving fund to provide energy assistance to customers in accordance with the low-income energy assistance program. [2006 c 3 § 2; 2003 1st sp.s. c 25 § 940; 2002 c 371 § 924; 2001 c 238 § 8; 1961 c 14 § 80.01.080. Prior: 1949 c

117 § 11; Rem. Supp. 1949 § 10964-115-11. Formerly RCW 43.53.090.]

**Effective date—2006 c 3:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [January 12, 2006]." [2006 c 3 § 3.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**80.01.090 Proceedings public records—Seal.** All proceedings of the commission and all documents and records in its possession shall be public records, and it shall adopt and use an official seal. [1998 c 245 § 163; 1987 c 505 § 77; 1977 c 75 § 91; 1961 c 14 § 80.01.090. Prior: 1949 c 117 § 5; Rem. Supp. 1949 § 10964-115-5. Formerly RCW 43.53.100.]

**80.01.100 Duties of attorney general.** It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title or Title 81 RCW, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.01.100. Prior: 1911 c 117 § 5; RRS § 10341.]

**80.01.110 Wholesale telecommunications services—Commission authorized to review rates, terms, conditions.** The commission is authorized to perform the duties required by RCW 53.08.380 and 54.16.340. [2000 c 81 § 10.]

**Findings—2000 c 81:** See note following RCW 53.08.005.

**80.01.300 Certain provisions not to detract from commission powers, duties, and functions.** Nothing contained in the provisions of RCW 36.58A.010 through 36.58A.040 and 70.95.090 and this section shall detract from the powers, duties, and functions given to the utilities and transportation commission in chapter 81.77 RCW. [1971 ex.s. c 293 § 7.]

## Chapter 80.04 RCW

### REGULATIONS—GENERAL

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**80.04.010 Definitions.** As used in this title, unless specifically defined otherwise or unless the context indicates otherwise:

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

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

"Commission" means the utilities and transportation commission.

"Commissioner" means one of the members of such commission.

"Competitive telecommunications company" means a telecommunications company which has been classified as such by the commission pursuant to RCW 80.36.320.

"Competitive telecommunications service" means a service which has been classified as such by the commission pursuant to RCW 80.36.330.

"Corporation" includes a corporation, company, association or joint stock association.

"Person" includes an individual, a firm or partnership.

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

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

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

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

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

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

"Private shared telecommunications services" includes the provision of telecommunications and information management services and equipment within a user group located in discrete private premises in building complexes, campuses, or high-rise buildings, by a commercial shared ser-

vices provider or by a user association, through privately owned customer premises equipment and associated data processing and information management services and includes the provision of connections to the facilities of a local exchange and to interexchange telecommunications companies.

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

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

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

"Noncompetitive telecommunications service" means any service which has not been classified as competitive by the commission.

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

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

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

"Water company" includes every corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, and every city or town owning, controlling, operating, or managing any water system for hire within this state: PROVIDED, That for purposes of commission jurisdiction it shall not include any water system serving less than one hundred customers where the average annual gross revenue per customer does not exceed three hundred dollars per year, which revenue figure may be increased annually by the commission by rule adopted pursuant to chapter 34.05 RCW to reflect the rate of inflation as determined by the implicit

price deflator of the United States department of commerce: AND PROVIDED FURTHER, That such measurement of customers or revenues shall include all portions of water companies having common ownership or control, regardless of location or corporate designation. "Control" as used herein shall be defined by the commission by rule and shall not include management by a satellite agency as defined in chapter 70.116 RCW if the satellite agency is not an owner of the water company. "Water company" also includes, for auditing purposes only, nonmunicipal water systems which are referred to the commission pursuant to an administrative order from the department, or the city or county as provided in RCW 80.04.110. However, water companies exempt from commission regulation shall be subject to the provisions of chapter 19.86 RCW. A water company cannot be removed from regulation except with the approval of the commission. Water companies subject to regulation may petition the commission for removal from regulation if the number of customers falls below one hundred or the average annual revenue per customer falls below three hundred dollars. The commission is authorized to maintain continued regulation if it finds that the public interest so requires.

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

"Public service company" includes every gas company, electrical company, telecommunications company, and water company. Ownership or operation of a cogeneration facility does not, by itself, make a company or person a public service company.

"Local exchange company" means a telecommunications company providing local exchange telecommunications service.

"Department" means the department of health.

The term "service" is used in this title in its broadest and most inclusive sense. [1995 c 243 § 2; 1991 c 100 § 1; 1989 c 101 § 2; 1987 c 229 § 1. Prior: 1985 c 450 § 2; 1985 c 167 § 1; 1985 c 161 § 1; 1979 ex.s. c 191 § 10; 1977 ex.s. c 47 § 1; 1963 c 59 § 1; 1961 c 14 § 80.04.010; prior: 1955 c 316 § 2; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

**80.04.015 Conduct of business subject to regulation—Determination by commission.** Whether or not any person or corporation is conducting business subject to regulation under this title, or has performed or is performing any act requiring registration or approval of the commission without securing such registration or approval, shall be a question of fact to be determined by the commission. Whenever the commission believes that any person or corporation is engaged in any activity without first complying with the requirements of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and produce information, books,

records, accounts, and other memoranda, and give testimony under oath as to the activities being conducted. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After investigation, the commission is authorized and directed to issue the necessary order or orders declaring the activities to be subject to, or not subject to, the provisions of this title. In the event the activities are found to be subject to the provisions of this title, the commission shall issue such orders as may be necessary to require all parties involved in the activities to comply with this title, and with respect to services found to be reasonably available from alternative sources, to issue orders to cease and desist from providing jurisdictional services pending full compliance.

In proceedings under this section, no person or corporation may be excused from testifying or from producing any information, book, document, paper, or account before the commission when ordered to do so, on the ground that the testimony or evidence, information, book, document, or account required may tend to incriminate him or her or subject him or her to penalty or forfeiture specified in this title; but no person or corporation may be prosecuted, punished, or subjected to any penalty or forfeiture specified in this title for or on account of any account, transaction, matter, or thing concerning which he or she shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying may be exempt from prosecution or punishment for any perjury committed by him or her in such testimony: PROVIDED FURTHER, That the exemption from prosecution in this section extends only to violations of this title.

Until July 1, 1994, in any proceeding instituted under this section to determine whether a person or corporation owning, controlling, operating, or managing a water system is subject to commission regulation, and where the person or corporation has failed or refused to provide sufficient information or documentation to enable the commission to make such a determination, the burden shall be on such person or corporation to prove that the person's or corporation's operations or acts are not subject to commission regulation. [1991 c 101 § 1; 1986 c 11 § 1.]

**80.04.020 Procedure before commission and courts.** Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the

witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [1961 c 14 § 80.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

**80.04.030 Number of witnesses may be limited.** In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 80.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

**80.04.040 Witness fees and mileage.** Each witness who shall appear under subpoena shall receive for his attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [1961 c 14 § 80.04.040. Prior: 1955 c 79 § 1; 1911 c 117 § 76, part; RRS 10414, part.]

**80.04.050 Protection against self-incrimination.** The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commissioner shall have power to compel the attendance of witnesses at any place within the state. [1961 c 14 § 80.04.050. Prior: 1911 c 117 § 76, part; RRS 10414, part.]

*Powers of each commissioner to compel attendance of witnesses: RCW 80.04.020.*

**80.04.060 Depositions—Service of process.** The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 80.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

**80.04.070 Inspection of books, papers, and documents.** The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [1961 c 14 § 80.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

**80.04.075 Manner of serving papers.** All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 80.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 80.04.370.]

**80.04.080 Annual reports.** Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission, upon or concerning which the commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor and the manner of payment for same, the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon, the cost and value of the company's property, franchises and equipment, the number of employees and the salaries paid each class, the accidents to employees and other persons and the cost thereof, the amounts expended for improvements each year, how expended and the character of such improvements, the earnings or receipts from each franchise or business and from all sources, the proportion thereof earned from business moving wholly within the state and the proportion earned from interstate business, the operating and other expenses and the proportion of such expense incurred in transacting business wholly within the state, and proportion incurred in transacting interstate business, such division to be shown according to such rules of division as the commission may prescribe, the balances of profit and loss, and a complete exhibit of the financial operations of the company each year, including an annual balance sheet. Such report shall also contain such information in relation to rates, charges or regulations concerning charges, or agreements, arrangements or contracts affecting the same, as the commission may require; and the commission may, in its discretion, for the purpose of enabling it the better to carry out the provisions of this title, prescribe the period of time within which all public service companies subject to the provisions of this title shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept. Such detailed report shall contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. Such reports shall be made out under oath and filed with the

commission at its office in Olympia on such date as the commission specifies by rule, unless additional time be granted in any case by the commission. The commission shall have authority to require any public service company to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matter about which the commission is authorized or required by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, such periodical or special reports to be under oath whenever the commission so requires. [1989 c 107 § 1; 1961 c 14 § 80.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

**80.04.090 Forms of records to be prescribed.** The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 80.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

**80.04.095 Protection of records containing commercial information.** Records, subject to chapter 42.56 RCW, filed with the commission or the attorney general from any person which contain valuable commercial information, including trade secrets or confidential marketing, cost, or financial information, or customer-specific usage and network configuration and design information, shall not be subject to inspection or copying under chapter 42.56 RCW: (1) Until notice to the person or persons directly affected has been given; and (2) if, within ten days of the notice, the person has obtained a superior court order protecting the records as confidential. The court shall determine that the records are confidential and not subject to inspection and copying if disclosure would result in private loss, including an unfair competitive disadvantage. When providing information to the commission or the attorney general, a person shall designate which records or portions of records contain valuable commercial information. Nothing in this section shall prevent the use of protective orders by the commission governing disclosure of proprietary or confidential information in contested proceedings. [2005 c 274 § 358; 1987 c 107 § 1.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**80.04.100 Production of out-of-state books and records.** The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 80.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

**80.04.110 Complaints—Hearings—Water systems not meeting board of health standards—Drinking water standards—Nonmunicipal water systems audits.** (1) Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, or by the public counsel section of the office of the attorney general, or its successor, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service corporation in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission: PROVIDED, That no complaint shall be entertained by the commission except upon its own motion, as to the reasonableness of the schedule of the rates or charges of any gas company, electrical company, water company, or telecommunications company, unless the same be signed by the mayor, council or commission of the city or town in which the company complained of is engaged in business, or not less than twenty-five consumers or purchasers of such gas, electricity, water or telecommunications service, or at least twenty-five percent of the consumers or purchasers of the company's service: PROVIDED, FURTHER, That when two or more public service corporations, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service corporations in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service corporation or corporations complained of in any other locality or localities in the state.

(2) All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be enter-

tained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

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

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

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

(5) Any customer or purchaser of service from a water system or company that is subject to commission regulation may file a complaint with the commission if he or she has reason to believe that the water delivered by the system to the customer does not meet state drinking water standards under chapter 43.20 or 70.116 RCW. The commission shall investigate such a complaint, and shall request that the state department of health or local health department of the county in which the system is located test the water for compliance with state drinking water standards, and provide the results of such testing to the commission. The commission may decide not to investigate the complaint if it determines that the complaint has been filed in bad faith, or for the purpose of harassment of the water system or company, or for other reasons has no substantial merit. The water system or company shall bear the expense for the testing. After the commission has received the complaint from the customer and during the pendency of the commission investigation, the water system or company shall not take any steps to terminate service to the customer or to collect any amounts alleged to be owed to the company by the customer. The commission may issue an

order or take any other action to ensure that no such steps are taken by the system or company. The customer may, at the customer's option and expense, obtain a water quality test by a licensed or otherwise qualified water testing laboratory, of the water delivered to the customer by the water system or company, and provide the results of such a test to the commission. If the commission determines that the water does not meet state drinking water standards, it shall exercise its authority over the system or company as provided in this title, and may, where appropriate, order a refund to the customer on a pro rata basis for the substandard water delivered to the customer, and shall order reimbursement to the customer for the cost incurred by the customer, if any, in obtaining a water quality test. [1995 c 376 § 12. Prior: 1991 c 134 § 1; 1991 c 100 § 2; prior: 1989 c 207 § 2; 1989 c 101 § 17; 1985 c 450 § 11; 1961 c 14 § 80.04.110; prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

**Findings—1995 c 376:** See note following RCW 70.116.060.

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

*Drinking water standards: Chapters 43.21A, 70.119A, and 80.28 RCW.*

**80.04.120 Hearing—Order—Record.** At the time fixed for the hearing mentioned in RCW 80.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [1961 c 14 § 80.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

**80.04.130 Suspension of tariff change—Mandatory measured telecommunications service—Washington telephone assistance program service—Effect of abandonment of electrical generation facility on which tax exemption for pollution control equipment is claimed—Waiver of provisions during state of emergency.** (1) Except as provided in subsection (2) of this section, whenever any public service company shall file with the commission any schedule,

classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect. After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

(2)(a) The commission shall not suspend a tariff that makes a decrease in a rate, charge, rental, or toll filed by a telecommunications company pending investigation of the fairness, justness, and reasonableness of the decrease when the filing does not contain any offsetting increase to another rate, charge, rental, or toll and the filing company agrees to not file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(i) The filing company shall file with any decrease sufficient information as the commission by rule may require to demonstrate the decreased rate, charge, rental, or toll is above the long run incremental cost of the service. A tariff decrease that results in a rate that is below long run incremental cost, or is contrary to commission rule or order, or the requirements of this chapter, shall be rejected for filing and returned to the company.

(ii) The commission may prescribe a different rate to be effective on the prospective date stated in its final order after its investigation, if it concludes based on the record that the originally filed and effective rate is unjust, unfair, or unreasonable.

(b) The commission shall not suspend a promotional tariff. For the purposes of this section, "promotional tariff" means a tariff that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

(3) The commission may suspend the initial tariff filing of any water company removed from and later subject to commission jurisdiction because of the number of customers or the average annual gross revenue per customer provisions of RCW 80.04.010. The commission may allow temporary rates during the suspension period. These rates shall not exceed the rates charged when the company was last regulated. Upon a showing of good cause by the company, the commission may establish a different level of temporary rates.

(4) At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, charge, rental, or toll theretofore charged, the burden of proof to show that such increase is just and reasonable shall be upon the public service company.

(5) The implementation of mandatory local measured telecommunications service is a major policy change in available telecommunications service. The commission shall not accept for filing a price list, nor shall it accept for filing or approve, prior to June 1, 2004, a tariff filed by a telecommunications company which imposes mandatory local measured

service on any customer or class of customers, except that, upon finding that it is in the public interest, the commission may accept for filing a price list or it may accept for filing and approve a tariff that imposes mandatory measured service for a telecommunications company's extended area service or foreign exchange service. This subsection does not apply to land, air, or marine mobile service, or to pay telephone service, or to any service which has been traditionally offered on a measured service basis.

(6) The implementation of Washington telephone assistance program service is a major policy change in available telecommunications service. The implementation of Washington telephone assistance program service will aid in achieving the stated goal of universal telephone service.

(7) If a utility claims a sales or use tax exemption on the pollution control equipment for an electrical generation facility and abandons the generation facility before the pollution control equipment is fully depreciated, any tariff filing for a rate increase to recover abandonment costs for the pollution control equipment shall be considered unjust and unreasonable for the purposes of this section.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 401; 2003 c 189 § 1; 2001 c 267 § 1; 1998 c 110 § 1; 1997 c 368 § 14; 1993 c 311 § 1; 1992 c 68 § 1; 1990 c 170 § 1; 1989 c 101 § 13. Prior: 1987 c 333 § 1; 1987 c 229 § 2; prior: 1985 c 450 § 12; 1985 c 206 § 1; 1985 c 161 § 2; 1984 c 3 § 2; 1961 c 14 § 80.04.130; prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Effective date—2001 c 267:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2001]." [2001 c 267 § 2.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**Effective date—1993 c 311:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 311 § 2.]

**Effective date—1987 c 333:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 333 § 2.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

**80.04.140 Order requiring joint action.** Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration

of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 80.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

**80.04.150 Remunerative rates cannot be changed without approval.** Whenever the commission shall find, after hearing had upon its own motion or upon complaint as herein provided, that any rate, toll, rental or charge which has been the subject of complaint and inquiry is sufficiently remunerative to the public service company affected thereby, it may order that such rate, toll, rental or charge shall not be changed, altered, abrogated or discontinued, nor shall there be any change in the classification which will change or alter such rate, toll, rental or charge without first obtaining the consent of the commission authorizing such change to be made. [1961 c 14 § 80.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

**80.04.160 Rules and regulations.** The commission is hereby authorized and empowered to adopt, promulgate and issue rules and regulations covering the transmission and delivery of messages and conversations, and the furnishing and supply of gas, electricity and water, and any and all services concerning the same, or connected therewith; and generally such rules as pertain to the comfort and convenience of the public concerning the subjects treated of in this title. Such rules and regulations shall be promulgated and issued by the commission on its own motion, and shall be served on the public service company affected thereby as other orders of the commission are served. Any public service company affected thereby, and deeming such rules and regulations, or any of them, improper, unjust, unreasonable, or contrary to law, may within twenty days from the date of service of such order upon it file objections thereto with the commission, specifying the particular grounds of such objections. The commission shall, upon receipt of such objections, fix a time and place for hearing the same, and after a full hearing may make such changes or modifications thereto, if any, as the evidence may justify. The commission shall have, and it is hereby given, power to adopt rules to govern its proceedings, and to regulate the mode and manner of all investigations and hearings: PROVIDED, No person desiring to be present at such hearing shall be denied permission. Actions may be instituted to review rules and regulations promulgated under this section as in the case of orders of the commission. [1961 c 14 § 80.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

**80.04.170 Review of orders.** Any complainant or any public service company affected by any findings or order of the commission, and deeming such findings or order to be contrary to law, may, within thirty days after the service of the findings or order upon him or it, apply to the superior

court of Thurston county for a writ of review, for the purpose of having the reasonableness and lawfulness of such findings or order inquired into and determined. Such writ shall be made returnable not later than thirty days from and after the date of the issuance thereof, unless upon notice to all parties affected further time be allowed by the court, and shall direct the commission to certify its record in the case to the court. Such cause shall be heard by the court without the intervention of a jury on the evidence and exhibits introduced before the commission and certified to by it. Upon such hearing the superior court shall enter judgment either affirming or setting aside or remanding for further action the findings or order of the commission under review. The reasonable cost of preparing the transcript of testimony taken before the commission shall be assessable as part of the statutory court costs, and the amount thereof, if collected by the commission, shall be deposited in the public service revolving fund. In case such findings or order be set aside, or reversed and remanded, the court shall make specific findings based upon evidence in the record indicating clearly all respects in which the commission's findings or order are erroneous. [1961 c 14 § 80.04.170. Prior: 1937 c 169 § 3; 1911 c 117 § 86; RRS § 10428.]

**80.04.180 Supersedeas—Water companies seeking supersedeas.** (1) The pendency of any writ of review shall not of itself stay or suspend the operation of the order of the commission, but the superior court in its discretion may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit.

(2) No order so restraining or suspending an order of the commission relating to rates, charges, tolls or rentals, or rules or regulations, practices, classifications or contracts affecting the same, shall be made by the superior court otherwise than upon three days' notice and after hearing. If a supersedeas is granted the order granting the same shall contain a specific finding, based upon evidence submitted to the court making the order, and identified by reference thereto, that great or irreparable damage would otherwise result to the petitioner, and specifying the nature of the damage. A water company seeking a supersedeas must demonstrate to the court that it is in compliance with the state board of health standards adopted pursuant to RCW 43.20.050 and chapter 70.116 RCW relating to the purity, volume, and pressure of water.

(3) In case the order of the commission under review is superseded by the court, it shall require a bond, with good and sufficient surety, conditioned that such company petitioning for such review shall answer for all damages caused by the delay in the enforcement of the order of the commission, and all compensation for whatever sums for transmission or service any person or corporation shall be compelled to pay pending the review proceedings in excess of the sum such person or corporations would have been compelled to pay if the order of the commission had not been suspended.

(4) The court may, in addition to or in lieu of the bond herein provided for, require such other or further security for the payment of such excess charges or damages as it may deem proper. [1989 c 207 § 3; 1961 c 14 § 80.04.180. Prior: 1933 c 165 § 6; prior: 1931 c 119 § 2; 1911 c 117 § 87; RRS § 10429.]

**80.04.190 Appellate review.** The commission, any public service company or any complainant may, after the entry of judgment in the superior court in any action of review, seek appellate review as in other cases. [1988 c 202 § 60; 1971 ex.s. c 107 § 4; 1961 c 14 § 80.04.190. Prior: 1911 c 117 § 88; RRS § 10430.]

**Rules of court:** *Cf. RAP 2.2.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**80.04.200 Rehearing before commission.** Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: PROVIDED, That no order superseding the order of the commission denying such rehearing shall be granted by the court pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 80.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

**80.04.210 Commission may change orders.** The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 80.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

**80.04.220 Reparations.** When complaint has been made to the commission concerning the reasonableness of any rate, toll, rental or charge for any service performed by any public service company, and the same has been investigated by the commission, and the commission has determined that the public service company has charged an excessive or exorbitant amount for such service, and the commission has determined that any party complainant is entitled to an award of damages, the commission shall order that the

public service company pay to the complainant the excess amount found to have been charged, whether such excess amount was charged and collected before or after the filing of said complaint, with interest from the date of the collection of said excess amount. [1961 c 14 § 80.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

**80.04.230 Overcharges—Refund.** When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 80.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

**80.04.240 Action in court on reparations and overcharges.** If the public service company does not comply with the order of the commission for the payment of the overcharge within the time limited in such order, suit may be instituted in any superior court where service may be had upon the said company to recover the amount of the overcharge with interest. It shall be the duty of the commission to certify its record in the case, including all exhibits, to the court. Such record shall be filed with the clerk of said court within thirty days after such suit shall have been started and said suit shall be heard on the evidence and exhibits introduced before the commission and certified to by it. If the complainant shall prevail in such action, the superior court shall enter judgment for the amount of the overcharge with interest and shall allow complainant a reasonable attorney's fee, and the cost of preparing and certifying said record for the benefit of and to be paid to the commission by complainant, and deposited by the commission in the public service revolving fund, said sums to be fixed and collected as a part of the costs of the suit. If the order of the commission shall be found to be contrary to law or erroneous by reason of the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive. The court may in its discretion remand any cause which is reversed by it to the commission for further action. Appeals to the supreme court shall lie as in other civil cases. All complaints concerning overcharges resulting from collecting unreasonable rates and charges or from collecting amounts in excess of lawful rates shall be filed with the commission within six months in cases involving the collection of unreasonable rates and two years in cases involving the collection of more than lawful rates from the time the cause of action accrues, and the suit to recover the overcharge shall be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court shall have jurisdiction save in the manner hereinbefore provided. [1961

c 14 § 80.04.240. Prior: 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

**80.04.250 Valuation of public service property.** The commission shall have power upon complaint or upon its own motion to ascertain and determine the fair value for rate making purposes of the property of any public service company used and useful for service in this state and shall exercise such power whenever it shall deem such valuation or determination necessary or proper under any of the provisions of this title. In determining what property is used and useful for providing electric, gas, or water service, the commission may include the reasonable costs of construction work in progress to the extent that the commission finds that inclusion is in the public interest.

The commission shall have the power to make revaluations of the property of any public service company from time to time.

The commission shall, before any hearing is had, notify the complainants and the public service company concerned of the time and place of such hearing by giving at least thirty days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of ascertaining the value of the company's property, used and useful as aforesaid, which notice shall be sufficient to authorize the commission to inquire into and pass upon the matters designated in this section. [1991 c 122 § 2; 1961 c 14 § 80.04.250. Prior: 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

**Findings—1991 c 122:** "The legislature finds that the state is facing an energy shortage as growth occurs and that inadequate supplies of energy will cause harmful impacts on the entire range of state citizens. The legislature further finds that energy efficiency improvement is the single most effective near term measure to lessen the risk of energy shortage. In the area of electricity, the legislature additionally finds that the Northwest power planning council has made several recommendations, including an update of the commercial building energy code and granting flexible ratemaking alternatives for utility commissions to encourage prudent acquisition of new electric resources." [1991 c 122 § 1.]

**Severability—1991 c 122:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 122 § 4.]

**80.04.260 Summary proceedings.** Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for the appropriate relief by way of mandamus or injunction. It shall

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thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1988 c 202 § 61; 1971 c 81 § 140; 1961 c 14 § 80.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**80.04.270 Merchandise accounts to be kept separate.**

Any public service company engaging in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business shall not constitute a part of the fair value of said company's property for rate making purposes, nor shall the revenues from or operating expenses of such business constitute a part of the operating revenues and expenses of said company as a public service company. For purposes of this section, the providing of competitive telephone service, as defined in RCW 82.04.065, shall not constitute the sale of merchandise, appliances, or equipment, unless the commission determines that it would be in the public interest to hold otherwise. [1983 2nd ex.s. c 3 § 40; 1981 c 144 § 5; 1961 c 14 § 80.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**80.04.280 Purchase and sale of stock by employees.**

No public service company shall permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; nor shall any public service company by any means or device require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; nor shall any public service company require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation.

[1961 c 14 § 80.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

**80.04.290 Sales of stock to employees and customers.**

A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and customers any increase of its capital stock, or part thereof, without first offering it to existing stockholders: PROVIDED, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event, a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 80.04.290. Prior: 1955 c 79 § 2; 1923 c 110 § 1; RRS § 10344-1.]

**80.04.300 Budgets to be filed by companies—Supplementary budgets.** The commission may regulate, restrict, and control the budgets of expenditures of public service companies. Each company shall prepare a budget showing the amount of money which, in its judgment, will be needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [1961 c 14 § 80.04.300. Prior: 1959 c 248 § 11; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**80.04.310 Commission's control over expenditures.** The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commission may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within ninety days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereun-

der are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1987 c 38 § 1; 1961 c 14 § 80.04.310. Prior: 1959 c 248 § 12; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**80.04.320 Budget rules.** The commission may prescribe the necessary rules to place RCW 80.04.300 through 80.04.330 in operation. It may, by rule, establish criteria to exempt companies in whole or in part from the operation thereof. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable any portion of any original or supplementary budget relating to proposed capital expenditures. [1989 c 107 § 3; 1961 c 14 § 80.04.320. Prior: 1959 c 248 § 13; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**80.04.330 Effect of unauthorized expenditure—Emergencies.** Any public service company may make or contract for any rejected item of expenditure, but in such case the same shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: PROVIDED, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure therefor free from the operation of RCW 80.04.300 through 80.04.330.

Any finding and order entered by the commission shall be in effect until vacated and set aside in proper proceedings for review thereof. [1961 c 14 § 80.04.330. Prior: 1959 c 248 § 14; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**80.04.350 Depreciation and retirement accounts.** The commission shall have power after hearing to require any or all public service companies to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations and forms of accounts as the commission may prescribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission shall have and exercise like power and authority over all other reserve accounts of public service companies. [1961 c 14 § 80.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

**80.04.360 Earnings in excess of reasonable rate—Consideration in fixing rates.** If any public service company earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reason-

able rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings shall have been invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [1961 c 14 § 80.04.360. Prior: 1959 c 285 § 2; 1933 c 165 § 14; RRS § 10458-8.]

**80.04.380 Penalties—Violations by public service companies.** Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 80.04.380. Prior: 1911 c 117 § 94; RRS § 10443. Formerly RCW 80.04.380, part. FORMER PART OF SECTION: 1911 c 117 § 96 now in RCW 80.04.387.]

**80.04.385 Penalties—Violations by officers, agents, and employees of public service companies.** Every officer, agent or employee of any public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 80.04.390, part.]

**80.04.387 Penalties—Violations by other corporations.** Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 80.04.400. [1961 c 14 § 80.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 80.04.380, part.]

**80.04.390 Penalties—Violations by persons.** Every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, shall violate any provision of this title, or fail to observe, obey or comply with any order made by the commission

under this title, so long as the same shall be or remain in force, or who shall procure, aid or abet any such corporation in its violation of this title, or in its failure to obey, observe or comply with any such order, shall be guilty of a gross misdemeanor. [1961 c 14 § 80.04.390. Prior: 1911 c 117 § 97; RRS § 10446. FORMER PART OF SECTION: 1911 c 117 § 95 now in RCW 80.04.385.]

**80.04.400 Actions to recover penalties—Disposition of fines, penalties, and forfeitures.** Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 238; 1969 ex.s. c 199 § 35; 1961 c 14 § 80.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**80.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees thereof.** In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, regulation or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the

superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1963 c 59 § 2.]

**80.04.410 Orders and rules conclusive.** In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 80.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

**80.04.420 Intervention by commission where order or rule is involved.** In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial, the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 80.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

**80.04.430 Findings of commission prima facie correct.** Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 80.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

**80.04.440 Companies liable for damages.** In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any

person or corporation. [1961 c 14 § 80.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

**80.04.450 Certified copies of orders, rules, etc.—Evidentiary effect.** Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 80.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

**80.04.460 Investigation of accidents.** Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring in its plant or system, in such manner as the commission may prescribe. Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice.

The commission may investigate any accident resulting in death or injury to any person occurring in connection with the plant or system of any public service company. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and they may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [1961 c 14 § 80.04.460. Prior: 1953 c 104 § 2; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

**80.04.470 Commission to enforce public service laws—Employees as peace officers.** It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his presence any provision of this title, or any rule or regulation adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated such person shall be a peace officer and

a police officer for the purposes herein mentioned. [1961 c 173 § 1; 1961 c 14 § 80.04.470. Prior: 1911 c 117 § 101; RRS § 10450.]

**80.04.480 Rights of action not released—Penalties cumulative.** This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other. [1961 c 14 § 80.04.480. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 80.04.480 and 80.04.490.]

**80.04.500 Application to municipal utilities.** Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any telecommunications line, gas plant, electrical plant or water system owned and operated by any city or town, or to make or enforce any order relating to the safety of any telecommunications line, electrical plant or water system owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. [1985 c 450 § 13; 1969 ex.s. c 210 § 1; 1961 c 14 § 80.04.500. Prior: 1911 c 117 § 105; RRS § 10454.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

**80.04.510 Duties of attorney general.** It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 80.04.510. Prior: 1911 c 117 § 5; RRS § 10341.]

**80.04.520 Approval of lease of utility facilities.** In addition to any other powers and duties under this chapter, the commission shall have the authority to authorize and approve the terms of any lease of utility facilities by a public service company, as lessee, if the public service company makes proper application to the commission certifying that such authorization or approval is necessary or appropriate to exempt any owner of the facilities from being a public utility company under the federal Public Utility Holding Company Act of 1935. [1979 ex.s. c 125 § 1.]

**80.04.530 Local exchange company that serves less than two percent of state's access lines—Regulatory exemptions—Reporting requirements.** (1)(a) Except as

provided in (b) of this subsection, the following do not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington: RCW 80.04.080, 80.04.300 through 80.04.330, and, except for RCW 80.08.140, chapters 80.08, 80.12, and 80.16 RCW.

(b) Nothing in this subsection (1) shall affect the commission's authority over the rates, service, accounts, valuations, estimates, or determinations of costs, as well as the authority to determine whether any expenditure is fair, reasonable, and commensurate with the service, material, supplies, or equipment received.

(c) For purposes of this subsection, the number of access lines served by a local exchange company includes the number of access lines served in this state by any affiliate of that local exchange company.

(2) Any local exchange company for which an exemption is provided under this section shall not be required to file reports or data with the commission, except each such company shall file with the commission an annual report that consists of its annual balance sheet and results of operations, both presented on a Washington state jurisdictional basis. This requirement may be satisfied by the filing of information or reports and underlying studies filed with exchange carrier entities or regulatory agencies if the jurisdictionally separated results of operations for Washington state can be obtained from the information or reports. This subsection shall not be applied to exempt a local exchange company from an obligation to respond to data requests in an adjudicative proceeding in which it is a party.

(3) The commission may, in response to customer complaints or on its own motion and after notice and hearing, establish additional reporting requirements for a specific local exchange company. [1995 c 110 § 1.]

**80.04.550 Thermal energy—Restrictions on authority of commission.** (1) Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges for service rendered, or the adequacy or sufficiency of the facilities, equipment, instrumentalities, or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied, or in force affecting any district thermal energy system owned and operated by any thermal energy company.

(2) For the purposes of this section:

(a) "Thermal energy company" means any private person, company, association, partnership, joint venture, or corporation engaged in or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public thermal energy services for any beneficial use other than electricity generation;

(b) "District thermal energy system" means any system that provides thermal energy for space heating, space cooling, or process uses from a central plant, and that distributes the thermal energy to two or more buildings through a network of pipes;

(c) "Thermal energy" means heat or cold in the form of steam, heated or chilled water, or any other heated or chilled fluid or gaseous medium; and

(d) "Thermal energy services" means the provision of thermal energy from a district thermal energy system and includes such ancillary services as energy audits, metering,

billing, maintenance, and repairs related to thermal energy. [1996 c 33 § 2.]

**Findings—1996 c 33:** "(1) The legislature finds:

(a) The Washington utilities and transportation commission has the authority to regulate district heating suppliers on the basis of financial solvency, system design integrity, and reasonableness of contract rates and rate formulas under \*chapter 80.62 RCW;

(b) Consumers have competitive alternatives to thermal energy companies for space heating and cooling and ancillary services;

(c) Consumers have recourse against thermal energy companies for unfair business practices under the consumer protection act; and

(d) Technology and marketing opportunities have advanced since the enactment of \*chapter 80.62 RCW to make the provision of cooling services, as well as heating services, an economical option for consumers.

(2) The legislature declares that the public health, safety, and welfare does not require the regulation of thermal energy companies by the Washington utilities and transportation commission." [1996 c 33 § 1.]

**\*Reviser's note:** Chapter 80.62 RCW was repealed by 1996 c 33 § 3.

## Chapter 80.08 RCW SECURITIES

### Sections

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80.08.160	Small local exchange company—Chapter does not apply.

**80.08.010 Definition.** The term "public service company", as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.08.010. Prior: 1959 c 248 § 2; 1953 c 95 § 4; 1933 c 151 § 1, part; RRS § 10439-1, part.]

**80.08.020 Control vested in state.** The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 80.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

**80.08.030 Authority to issue.** A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than

twelve months after the date thereof, for the following purposes only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 80.08.030. Prior: 1953 c 95 § 5; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

**80.08.040 Prior to issuance—Filing required—Contents—Request for order establishing compliance.** Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

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

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

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

(4) Any public service company undertaking an issuance and making a filing in conformance with this section may at any time of such filing request the commission to enter a written order that such company has complied with the requirements of this section. The commission shall enter such written order after such company has provided all information and statements required by subsections (1), (2), and (3) of this section. [1994 c 251 § 1; 1987 c 106 § 1; 1961 c 14 § 80.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

**80.08.043 Issuance of notes—Compliance with RCW 80.08.040—Exceptions.** A public service company may issue notes, except demand notes, for proper purposes and not in violation of any provision of this chapter, or any other law, payable at periods of not more than twelve months after the date of issuance, without complying with the requirements of RCW 80.08.040, but no such note may be refunded, in whole or in part, by any issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes, or other evidence of indebtedness, without compliance with RCW 80.08.040. However, compliance with RCW 80.08.040 is required for the issuance of any note or notes issued as part of a single borrowing transaction of one million dollars or more payable at periods of less than twelve months after the date of issuance by any public service company that is subject to the federal power act unless such note or notes aggregates together with all other then outstanding notes and drafts of a maturity of twelve months or less on which such public ser-

vice company is primarily or secondarily liable not more than five percent of the par value of other securities of such company then outstanding, computed, in the case of securities having no par value, on the basis of the fair market value as of the date of issuance. [1997 c 162 § 1.]

**80.08.047 Commission may exempt certain issuances—Order or rule—Public interest.** The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed in the order or rule, exempt any security or any class of securities for which a filing is required under this chapter or any electrical or natural gas company or class of electrical or natural gas company from the provisions of this chapter if it finds that the application of this chapter to such security, class of securities, electrical or natural gas company, or class of electrical or natural gas company is not required by the public interest. [1997 c 15 § 1.]

**80.08.080 Capitalization of franchises or merger contracts prohibited.** The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit, in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 80.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

**80.08.090 Accounting for disposition of proceeds.** The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 80.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

**80.08.100 Issuance made contrary to this chapter—Penalties.** If a public service company issues any stock, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness contrary to the provisions of this chapter, the company may be subject to penalty under RCW 80.08.110 and 80.08.120. [1994 c 251 § 2; 1961 c 14 § 80.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

**80.08.110 Penalty against companies.** Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale

thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter, shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission or failure of such public service company. [1994 c 251 § 3; 1961 c 14 § 80.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

**80.08.120 Penalty against individuals.** Every officer, agent, or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness contrary to the provisions of this chapter, or who knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation, or causes or assists to be applied the proceeds or any part thereof, from the sale of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not allowed by this chapter, or who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter, negotiates, or causes the same to be negotiated, shall be guilty of a gross misdemeanor. [1994 c 251 § 4; 1961 c 14 § 80.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

**80.08.130 Assumption of obligation or liability—Compliance with filing requirements.** Any public service company that assumes any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, shall comply with the filing requirements of RCW 80.08.040. [1994 c 251 § 5; 1961 c 14 § 80.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

**80.08.140 State not obligated.** No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter. [1961 c 14 § 80.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

**80.08.150 Authority of commission—Not affected by requirements of this chapter.** No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any

way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 6.]

**80.08.160 Small local exchange company—Chapter does not apply.** Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 2.]

## Chapter 80.12 RCW

### TRANSFERS OF PROPERTY

#### Sections

80.12.010	Definition.
80.12.020	Order required to sell, merge, etc.
80.12.030	Disposal without authorization void.
80.12.040	Authority required to acquire property or securities of utility.
80.12.045	Small local exchange company—Chapter does not apply.
80.12.050	Rules and regulations.
80.12.060	Penalty.

**80.12.010 Definition.** The term "public service company," as used in this chapter, shall mean every company now or hereafter engaged in business in this state as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. [1961 c 14 § 80.12.010. Prior: 1953 c 95 § 6; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

**80.12.020 Order required to sell, merge, etc.** No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: PROVIDED, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a special purpose district as defined in RCW 36.96.010, city, county, or town. [1981 c 117 § 1; 1961 c 14 § 80.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

**80.12.030 Disposal without authorization void.** Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. [1961 c 14 § 80.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

**80.12.040 Authority required to acquire property or securities of utility.** No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender

or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 80.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

**80.12.045 Small local exchange company—Chapter does not apply.** Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 3.]

**80.12.050 Rules and regulations.** The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 80.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

**80.12.060 Penalty.** The provisions of RCW 80.04.380 and 80.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 80.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

## Chapter 80.16 RCW

### AFFILIATED INTERESTS

#### Sections

80.16.010	Definitions.
80.16.020	Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove.
80.16.030	Payments to affiliated interest disallowed if not reasonable.
80.16.040	Satisfactory proof, what constitutes.
80.16.050	Commission's control is continuing.
80.16.055	Small local exchange company—Chapter does not apply.
80.16.060	Summary order on nonapproved payments.
80.16.070	Summary order on payments after disallowance.
80.16.080	Court action to enforce orders.
80.16.090	Review of orders.

**80.16.010 Definitions.** As used in this chapter the term "public service company" shall include every corporation engaged in business as a public utility and subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title.

As used in this chapter, the term "affiliated interest" means:

Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with

the holder of the voting securities of such public service company;

Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

Every corporation or person with which the public service company has a management or service contract; and

Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [1961 c 14 § 80.16.010. Prior: 1953 c 95 § 7; 1933 c 152 § 1, part; RRS § 10440-1, part.]

**80.16.020 Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove.** Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory[, ] construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to the affiliated interests. The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. Any time after receipt of the contract or arrangement, the commission may institute an investigation and disapprove the contract, arrangement, modification, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission may disapprove any such contract or arrangement if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described in this section. [1998 c 47 § 1; 1961 c 14 § 80.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 2; Rem. Supp. 1941 § 10440-2.]

**80.16.030 Payments to affiliated interest disallowed if not reasonable.** In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as described in this section, under existing contracts or arrangements with the affiliated interest unless the public service company establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disallow the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be

disapproved or disallowed by the commission, in whole or in part, if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service described in this section. [1998 c 47 § 2; 1961 c 14 § 80.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

**80.16.040 Satisfactory proof, what constitutes.** No proof shall be satisfactory, within the meaning of RCW 80.16.010 through 80.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: PROVIDED, HOWEVER, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 80.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

**80.16.050 Commission's control is continuing.** The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission has approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreasonable. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when, and as necessary to protect and promote the public interest. [1998 c 47 § 3; 1961 c 14 § 80.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

**80.16.055 Small local exchange company—Chapter does not apply.** Subject to RCW 80.04.530(1), this chapter does not apply to a local exchange company that serves less than two percent of the access lines in the state of Washington. [1995 c 110 § 4.]

**80.16.060 Summary order on nonapproved payments.** Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments have received the approval of the commission. [1998 c 47 § 4; 1961 c 14 § 80.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

**80.16.070 Summary order on payments after disallowance.** Whenever the commission finds upon investigation that any public service company is making payments to an affiliated interest, although the payments have been disallowed or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until the payments have received the approval of the commission. [1998 c 47 § 5; 1961 c 14 § 80.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

**80.16.080 Court action to enforce orders.** The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 80.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

**80.16.090 Review of orders.** Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 80.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

## Chapter 80.20 RCW INVESTIGATION OF PUBLIC SERVICE COMPANIES

### Sections

80.20.010	Definition.
80.20.020	Cost of investigation may be assessed against company.
80.20.030	Interest on unpaid assessment—Action to collect.
80.20.040	Commission's determination of necessity as evidence.
80.20.050	Order of commission not subject to review.
80.20.060	Limitation on frequency of investigation.

**80.20.010 Definition.** As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the commission under the provisions of this title. [1961 c 14 § 80.20.010. Prior: 1953 c 95 § 8; 1939 c 203 § 1; RRS § 10458-6.]

**80.20.020 Cost of investigation may be assessed against company.** Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is

more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 80.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

**80.20.030 Interest on unpaid assessment—Action to collect.** Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney general shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 80.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

**80.20.040 Commission's determination of necessity as evidence.** In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 80.20.020 through 80.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 80.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

**80.20.050 Order of commission not subject to review.** In view of the civil action provided for in RCW 80.20.020 through 80.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 80.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

**80.20.060 Limitation on frequency of investigation.** Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially

changed or there has been a substantial change in its value for rate making purposes or in any other circumstances and conditions affecting rates and services: PROVIDED, That the provisions of this section shall not be a limitation on the frequency of assessment of costs of investigation where such investigation results from a tariff filing or tariff filings by a public service company to increase rates. [1971 ex.s. c 143 § 8; 1961 c 14 § 80.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

## Chapter 80.24 RCW REGULATORY FEES

### Sections

- 80.24.010 Companies to file reports of gross revenue and pay fees—Delinquent fee payments.  
 80.24.020 Fees to approximate reasonable cost of regulation.  
 80.24.030 Intent of legislature—Regulatory cost records to be kept by commission.  
 80.24.040 Disposition of fees.  
 80.24.050 Penalty for failure to pay fees—Disposition of fines and penalties.  
 80.24.060 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.

*Assessment of public utilities for property tax purposes: Chapter 84.12 RCW.*

*Corporations, annual license fees for public service companies: RCW 23B.01.530, 23B.01.590.*

*Easements of public service companies taxable as personalty: RCW 84.20.010.*

*Public utility tax: Chapter 82.16 RCW.*

**80.24.010 Companies to file reports of gross revenue and pay fees—Delinquent fee payments.** Every public service company subject to regulation by the commission shall, on or before the date specified by the commission for filing annual reports under RCW 80.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year or portion thereof and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rates of gross operating revenue to be paid in any year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose such companies shall be classified as follows:

Electrical, gas, water, telecommunications, and irrigation companies shall constitute class one. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [2003 c 296 § 1; 1994 c 83 § 1; 1990 c 48 § 1; 1985 c 450 § 14; 1961 c 14 § 80.24.010. Prior:

1955 c 125 § 2; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

**80.24.020 Fees to approximate reasonable cost of regulation.** In fixing the percentage rates of gross operating revenue to be paid in any year, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the several classes of companies shall be approximately the same as the reasonable cost of supervising and regulating such classes of companies. [1961 c 14 § 80.24.020. Prior: 1955 c 125 § 3; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part.]

**80.24.030 Intent of legislature—Regulatory cost records to be kept by commission.** It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 80.24.030. Prior: 1937 c 158 § 7; RRS § 10417-5.]

**80.24.040 Disposition of fees.** All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by the state treasurer deposited to the public service revolving fund: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 239; 1969 ex.s. c 199 § 36; 1961 c 14 § 80.24.040. Prior: 1937 c 158 § 6; RRS § 10417-4.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**80.24.050 Penalty for failure to pay fees—Disposition of fines and penalties.** Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 240; 1979 ex.s. c 198 § 1; 1969 ex.s. c 199 § 37; 1961 c 14 § 80.24.050. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**80.24.060 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.** (1)(a) Every gas company and every interstate gas pipeline company subject to inspection or enforcement by the commission shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practice[s]; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee payable by each entity by general order entered before July 1st of each year.

(4) For companies subject to RCW 80.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 80.24.010. The commission shall allocate the moneys collected under RCW 80.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its gas pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. The regulatory incentive program shall not be implemented until after the review conducted according to \*RCW 81.88.150. [2001 c 238 § 2.]

\*Reviser's note: RCW 81.88.150 was repealed by 2007 c 142 § 11.

**Intent—Finding—2001 c 238:** "The intent of this act is to ensure a sustainable, comprehensive, pipeline safety program, to protect the health and safety of the citizens of the state of Washington, and [to] maintain the quality of the state's environment. The legislature finds that public safety and the environment are best protected by securing permanent funding for this program through establishment of a regulatory fee imposed on hazardous liquids and gas pipelines." [2001 c 238 § 1.]

**Effective date—2001 c 238:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 238 § 13.]

## Chapter 80.28 RCW

### GAS, ELECTRICAL, AND WATER COMPANIES

#### Sections

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*Franchises on state highways: Chapter 47.44 RCW.*

*Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.*

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

(1) "Bondable conservation investment" means all expenditures made by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of electricity, gas, or water end use, including related carrying costs if:

(a) The conservation measures and services do not produce assets that would be bondable utility property under the general utility mortgage of the electrical, gas, or water company;

(b) The commission has determined that the expenditures were incurred in conformance with the terms and conditions of a conservation service tariff in effect with the commission at the time the costs were incurred, and at the time of such determination the commission finds that the company has proven that the costs were prudent, that the terms and conditions of the financing are reasonable, and that financing under this chapter is more favorable to the customer than other reasonably available alternatives;

(c) The commission has approved inclusion of the expenditures in rate base and has not ordered that they be currently expensed; and

(d) The commission has not required that the measures demonstrate that energy savings have persisted at a certain

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level for a certain period before approving the cost of these investments as bondable conservation investment.

(2) "Conservation bonds" means bonds, notes, certificates of beneficial interests in trusts, or other evidences of indebtedness or ownership that:

(a) The commission determines at or before the time of issuance are issued to finance or refinance bondable conservation investment by an electrical, gas or water company; and

(b) Rely partly or wholly for repayment on conservation investment assets and revenues arising with respect thereto.

(3) "Conservation investment assets" means the statutory right of an electrical, gas, or water company:

(a) To have included in rate base all of its bondable conservation investment and related carrying costs; and

(b) To receive through rates revenues sufficient to recover the bondable conservation investment and the costs of equity and debt capital associated with it, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds.

(4) "Finance subsidiary" means any corporation, company, association, joint stock association, or trust that is beneficially owned, directly or indirectly, by an electrical, gas, or water company, or in the case of a trust issuing conservation bonds consisting of beneficial interests, for which an electrical, gas, or water company or a subsidiary thereof is the grantor, or an unaffiliated entity formed for the purpose of financing or refinancing approved conservation investment, and that acquires conservation investment assets directly or indirectly from such company in a transaction approved by the commission. [1994 c 268 § 1.]

**80.28.010 Duties as to rates, services, and facilities—Limitations on termination of utility service for residential heating.** (1) All charges made, demanded or received by any gas company, electrical company or water company for gas, electricity or water, or for any service rendered or to be rendered in connection therewith, shall be just, fair, reasonable and sufficient. Reasonable charges necessary to cover the cost of administering the collection of voluntary donations for the purposes of supporting the development and implementation of evergreen community management plans and ordinances under RCW 80.28.300 shall be deemed as prudent and necessary for the operation of a utility.

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

(3) All rules and regulations issued by any gas company, electrical company or water company, affecting or pertaining to the sale or distribution of its product, shall be just and reasonable.

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

(a) Notifies the utility of the inability to pay the bill, including a security deposit. This notice should be provided within five business days of receiving a payment overdue notice unless there are extenuating circumstances. If the customer fails to notify the utility within five business days and service is terminated, the customer can, by paying recon-

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tion charges, if any, and fulfilling the requirements of this section, receive the protections of this chapter;

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

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

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

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

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

(5) The utility shall:

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

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

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

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

(e) Advise the customer in writing at the time it disconnects service that it will restore service if the customer con-

tacts the utility and fulfills the other requirements of this section.

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

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

(8) Every gas company, electrical company and water company shall construct and maintain such facilities in connection with the manufacture and distribution of its product as will be efficient and safe to its employees and the public.

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

(10) In establishing rates or charges for water service, water companies as defined in RCW 80.04.010 may consider the achievement of water conservation goals and the discouragement of wasteful water use practices. [2008 c 299 § 35; 1995 c 399 § 211. Prior: 1991 c 347 § 22; 1991 c 165 § 4; 1990 1st ex.s. c 1 § 5; 1986 c 245 § 5; 1985 c 6 § 25; 1984 c 251 § 4; 1961 c 14 § 80.28.010; prior: 1911 c 117 § 26; RRS § 10362.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

**Findings—1991 c 165:** See note following RCW 35.21.300.

**80.28.020 Commission to fix just, reasonable, and compensatory rates.** Whenever the commission shall find, after a hearing had upon its own motion, or upon complaint, that the rates or charges demanded, exacted, charged or collected by any gas company, electrical company or water company, for gas, electricity or water, or in connection therewith, or that the rules, regulations, practices or contracts affecting such rates or charges are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in any wise in violation of the provisions of the law, or that such rates or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine the just, reasonable, or sufficient rates, charges, regulations, practices or contracts to be thereafter observed and in force, and shall fix the same by order. [1961 c 14 § 80.28.020. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

**80.28.022 Water company rates—Reserve account.** In determining the rates to be charged by each water company subject to its jurisdiction, the commission may provide for the funding of a reserve account exclusively for the purpose of making capital improvements approved by the department of health as a part of a long-range plan, or required by the department to assure compliance with federal or state drinking water regulations, or to perform construction or maintenance required by the department of ecology to

secure safety to life and property under RCW 43.21A.064(2). Expenditures from the fund shall be subject to prior approval by the commission, and shall be treated for rate-making purposes as customer contributions. [1991 c 150 § 1; 1990 c 132 § 6.]

**Legislative findings—Severability—1990 c 132:** See note following RCW 43.20.240.

**80.28.024 Legislative finding.** The legislature finds and declares that the potential for meeting future energy needs through conservation measures, including energy conservation loans, energy audits, the use of appropriate tree plantings for energy conservation, and the use of renewable resources, such as solar energy, wind energy, wood, wood waste, municipal waste, agricultural products and wastes, hydroelectric energy, geothermal energy, and end-use waste heat, may not be realized without incentives to public and private energy utilities. The legislature therefore finds and declares that actions and incentives by state government to promote conservation and the use of renewable resources would be of great benefit to the citizens of this state by encouraging efficient energy use and a reliable supply of energy based upon renewable energy resources. [1993 c 204 § 8; 1980 c 149 § 1.]

**Findings—1993 c 204:** See note following RCW 35.92.390.

**80.28.025 Encouragement of energy cogeneration, conservation, and production from renewable resources—Consideration of water conservation goals.**

(1) In establishing rates for each gas and electric company regulated by this chapter, the commission shall adopt policies to encourage meeting or reducing energy demand through cogeneration as defined in \*RCW 82.35.020, measures which improve the efficiency of energy end use, and new projects which produce or generate energy from renewable resources, such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood waste, municipal wastes, agricultural products and wastes, and end-use waste heat. These policies shall include but are not limited to allowing a return on investment in measures to improve the efficiency of energy end use, cogeneration, or projects which produce or generate energy from renewable resources which return is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investment. Measures or projects encouraged under this section are those for which construction or installation is begun after June 12, 1980, and before January 1, 1990, and which, at the time they are placed in the rate base, are reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric company could acquire to meet energy demand in the same time period. The rate of return increment shall be allowed for a period not to exceed thirty years after the measure or project is first placed in the rate base.

(2) In establishing rates for water companies regulated by this chapter, the commission may consider the achievement of water conservation goals and the discouragement of

wasteful water use practices. [1991 c 347 § 23; 1980 c 149 § 2.]

**\*Reviser's note:** RCW 82.35.020 was repealed by 2005 c 443 § 7, effective July 1, 2006.

**Purposes—1991 c 347:** See note following RCW 90.42.005.

**Severability—1991 c 347:** See RCW 90.42.900.

*Public utility tax exemptions relating to energy conservation and production from renewable resources: RCW 82.16.055.*

**80.28.030 Commission may order improved quality of commodity—Water companies, board of health standards.** Whenever the commission shall find, after such hearing, that the illuminating or heating power, purity or pressure of gas, the efficiency of electric lamp supply, the voltage of the current supplied for light, heat or power, or the purity, quality, volume, and pressure of water, supplied by any gas company, electrical company or water company, as the case may be, is insufficient, impure, inadequate or inefficient, it shall order such improvement in the manufacture, distribution or supply of gas, in the manufacture, transmission or supply of electricity, or in the storage, distribution or supply of water, or in the methods employed by such gas company, electrical company or water company, as will in its judgment be efficient, adequate, just and reasonable. Failure of a water company to comply with state board of health standards adopted under RCW 43.20.050(2)(a) or department standards adopted under chapter 70.116 RCW for purity, volume, and pressure shall be prima facie evidence that the water supplied is insufficient, impure, inadequate, or inefficient.

In ordering improvements in the storage, distribution, or supply of water, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission in a timely fashion, the commission may request that the department petition the court to place the company in receivership. [1989 c 207 § 4; 1961 c 14 § 80.28.030. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

**80.28.040 Commission may order improved service—Water companies, noncompliance, receivership.** Whenever the commission shall find, after hearing, that any rules, regulations, measurements or the standard thereof, practices, acts or services of any such gas company, electrical company or water company are unjust, unreasonable, improper, insufficient, inefficient or inadequate, or that any service which may be reasonably demanded is not furnished, the commission shall fix the reasonable rules, regulations, measurements or the standard thereof, practices, acts or service to be thereafter furnished, imposed, observed and followed, and shall fix the same by order or rule.

In ordering improvements to the service of any water company, the commission shall consult and coordinate with the department. In the event that a water company fails to comply with an order of the commission within the deadline specified in the order, the commission may request that the department petition the court to place the company in receivership. [1989 c 207 § 5; 1961 c 14 § 80.28.040. Prior: 1911 c 117 § 54, part; RRS § 10390, part.]

**80.28.050 Tariff schedules to be filed with commission—Public schedules.** Every gas company, electrical company and water company shall file with the commission and shall print and keep open to public inspection schedules in such form as the commission may prescribe, showing all rates and charges made, established or enforced, or to be charged or enforced, all forms of contract or agreement, all rules and regulations relating to rates, charges or service, used or to be used, and all general privileges and facilities granted or allowed by such gas company, electrical company or water company. [1961 c 14 § 80.28.050. Prior: 1911 c 117 § 27; RRS § 10363.]

*Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.*

**80.28.060 Tariff changes—Statutory notice—Exception—Waiver of provisions during state of emergency.** Unless the commission otherwise orders, no change shall be made in any rate or charge or in any form of contract or agreement or in any rule or regulation relating to any rate, charge or service, or in any general privilege or facility which shall have been filed and published by a gas company, electrical company or water company in compliance with the requirements of RCW 80.28.050 except after thirty days' notice to the commission and publication for thirty days, which notice shall plainly state the changes proposed to be made in the schedule then in force and the time when the change will go into effect and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the commission within thirty days or before the stated effective date of the proposed change, whichever is later. The commission, for good cause shown, may allow changes without requiring the thirty days' notice by duly filing, in such manner as it may direct, an order specifying the changes so to be made and the time when it shall take effect. All such changes shall be immediately indicated upon its schedules by the company affected. When any change is made in any rate or charge, form of contract or agreement, or any rule or regulation relating to any rate or charge or service, or in any general privilege or facility, the effect of which is to increase any rate or charge, then in existence, attention shall be directed on the copy filed with the commission to such increase by some character immediately preceding or following the item in such schedule, such character to be in form as designated by the commission.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 402; 1989 c 152 § 1; 1961 c 14 § 80.28.060. Prior: 1911 c 117 § 28; RRS § 10364.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**80.28.065 Tariff schedule—Energy conservation—Payment by successive property owners—Notice—Rules.**

(1) Upon request by an electrical or gas company, the com-

mission may approve a tariff schedule that contains rates or charges for energy conservation measures, services, or payments provided to individual property owners or customers. The tariff schedule shall require the electrical or gas company to enter into an agreement with the property owner or customer receiving services at the time the conservation measures, services, or payments are initially provided. The tariff schedule may allow for the payment of the rates or charges over a period of time and for the application of the payment obligation to successive property owners or customers at the premises where the conservation measures or services were installed or performed or with respect to which the conservation payments were made.

(2) The electrical or gas company shall record a notice of a payment obligation, containing a legal description, resulting from an agreement under this section with the county auditor or recording officer as provided in RCW 65.04.030.

(3) The commission may prescribe by rule other methods by which an electrical or gas company shall notify property owners or customers of any such payment obligation. [1993 c 245 § 2.]

**Legislative findings—Intent—1993 c 245:** "(1) The legislature finds that:

(a) The ability of utilities to acquire cost-effective conservation measures is instrumental in assuring that Washington citizens have reasonable energy rates and that utilities have adequate energy resources to meet future energy demands;

(b) Customers may be more willing to accept investments in energy efficiency and conservation if real and perceived impediments to property transactions are avoided;

(c) Potential purchasers of real property should be notified of any utility conservation charges at the earliest point possible in the sale.

(2) It is the intent of the legislature to encourage utilities to develop innovative approaches designed to promote energy efficiency and conservation that have limited rate impacts on utility customers. It is not the intent of the legislature to restrict the authority of the utilities and transportation commission to approve tariff schedules.

(3) It is also the intent of the legislature that utilities which establish conservation tariffs should undertake measures to assure that potential purchasers of property are aware of the existence of any conservation tariffs. Measures that may be considered include, but are not limited to:

(a) Recording a notice of a conservation tariff payment obligation, containing a legal description, with the county property records;

(b) Annually notifying customers who have entered agreements of the conservation tariff obligation;

(c) Working with the real estate industry to provide for disclosure of conservation tariff obligations in standardized listing agreements and earnest money agreements; and

(d) Working with title insurers to provide recorded conservation tariff obligations as an informational note to the preliminary commitment for policy of title insurance." [1993 c 245 § 1.]

**80.28.068 Rates—Low-income customers.** Upon request by an electrical or gas company, the commission may approve rates, charges, services, and/or physical facilities at a discount for low-income senior customers and low-income customers. Expenses and lost revenues as a result of these discounts shall be included in the company's cost of service and recovered in rates to other customers. [1999 c 62 § 1.]

**80.28.070 Sliding scale of charges permitted.** Nothing in this chapter shall be taken to prohibit a gas company, electrical company or water company from establishing a sliding scale of charges, whereby a greater charge is made per unit for a lesser than a greater quantity for gas, electricity or

water, or any service rendered or to be rendered. [1961 c 14 § 80.28.070. Prior: 1911 c 117 § 32; RRS § 10368.]

**80.28.074 Legislative declaration.** The legislature declares it is the policy of the state to:

(1) Preserve affordable natural gas and electric services to the residents of the state;

(2) Maintain and advance the efficiency and availability of natural gas and electric services to the residents of the state of Washington;

(3) Ensure that customers pay only reasonable charges for natural gas and electric service;

(4) Permit flexible pricing of natural gas and electric services. [1988 c 166 § 1.]

**80.28.075 Banded rates—Natural gas and electric services.** Upon request by a natural gas company or an electrical company, the commission may approve a tariff that includes banded rates for any nonresidential natural gas or electric service that is subject to effective competition from energy suppliers not regulated by the utilities and transportation commission. "Banded rate" means a rate that has a minimum and maximum rate. Rates may be changed within the rate band upon such notice as the commission may order. [1988 c 166 § 2.]

**80.28.080 Published rates to be charged—Exceptions.** No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: PROVIDED, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: PROVIDED FURTHER, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: AND PROVIDED FURTHER, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under RCW 80.28.240.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or

facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances. [1985 c 427 § 2; 1973 1st ex.s. c 154 § 116; 1961 c 14 § 80.28.080. Prior: 1911 c 117 § 29; RRS § 10365.]

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**80.28.090 Unreasonable preference prohibited.** No gas company, electrical company or water company shall make or grant any undue or unreasonable preference or advantage to any person, corporation, or locality, or to any particular description of service in any respect whatsoever, or subject any particular person, corporation or locality or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [1961 c 14 § 80.28.090. Prior: 1911 c 117 § 30; RRS § 10366.]

**80.28.100 Rate discrimination prohibited—Exception.** No gas company, electrical company or water company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, charge, demand, collect or receive from any person or corporation a greater or less compensation for gas, electricity or water, or for any service rendered or to be rendered, or in connection therewith, except as authorized in this chapter, than it charges, demands, collects or receives from any other person or corporation for doing a like or contemporaneous service with respect thereto under the same or substantially similar circumstances or conditions. [1961 c 14 § 80.28.100. Prior: 1911 c 117 § 31; RRS § 10367.]

*Reduced utility rates for low-income senior citizens and other low-income citizens: RCW 74.38.070.*

**80.28.110 Service to be furnished on reasonable notice.** Every gas company, electrical company or water company, engaged in the sale and distribution of gas, electricity or water, shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto, suitable facilities for furnishing and furnish all available gas, electricity and water as demanded, except that a water company shall not furnish water contrary to the provisions of water system plans approved under chapter 43.20 or 70.116 RCW. [1990 c 132 § 5; 1961 c 14 § 80.28.110. Prior: 1911 c 117 § 33; RRS § 10369.]

**Legislative findings—Severability—1990 c 132:** See note following RCW 43.20.240.

*Duty of company to fix rate for wholesale power on request of public utility district: RCW 54.04.100.*

**80.28.120 Effect on existing contracts.** Every gas, water or electrical company owning, operating or managing a plant or system for the distribution and sale of gas, water or electricity to the public for hire shall be and be held to be a public service company as to such plant or system and as to all gas, water or electricity distributed or furnished therefrom, whether such gas, water or electricity be sold wholesale or retail or be distributed wholly to the general public or in part as surplus gas, water or electricity to manufacturing or industrial concerns or to other public service companies or municipalities for redistribution. Nothing in this title shall be construed to prevent any gas company, electrical company or water company from continuing to furnish its product or the

use of its lines, equipment or service under any contract or contracts in force on June 7, 1911, at the rates fixed in such contract or contracts: PROVIDED, That the commission shall have power, in its discretion, to direct by order that such contract or contracts shall be terminated by the company party thereto and thereupon such contract or contracts shall be terminated by such company as and when directed by such order. [1961 c 14 § 80.28.120. Prior: 1933 c 165 § 1; 1911 c 117 § 34; RRS § 10370.]

**80.28.130 Repairs, improvements, changes, additions, or extensions may be directed.** Whenever the commission shall find, after hearing had upon its own motion or upon complaint, that repairs or improvements, to, or changes in, any gas plant, electrical plant or water system ought to be made, or that any additions or extensions should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for manufacturing, distributing or supplying gas, electricity or water, the commission may enter an order directing that such reasonable repairs, improvements, changes, additions or extensions of such gas plant, electrical plant or water system be made. [1961 c 14 § 80.28.130. Prior: 1911 c 117 § 70; RRS § 10406.]

**80.28.140 Inspection of gas and water meters.** The commission may appoint inspectors of gas and water meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all gas and water meters used or intended to be used for measuring or ascertaining the quantity of gas for light, heat or power, or the quantity of water furnished for any purpose by any public service company to or for the use of any person or corporation, and when found to be or made to be correct such inspectors shall seal all such meters and each of them with some suitable device to be prescribed by the commission.

No public service company shall thereafter furnish, set or put in use any gas or water meter which shall not have been inspected, proved and sealed by an inspector of the commission under such rules and regulations as the commission may prescribe. [1961 c 14 § 80.28.140. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

**80.28.150 Inspection of electric meters.** The commission may appoint inspectors of electric meters whose duty it shall be when required by the commission to inspect, examine, prove and ascertain the accuracy of any and all electric meters used or intended to be used for measuring and ascertaining the quantity of electric current furnished for light, heat or power by any public service company to or for the use of any person or corporation, and to inspect, examine and ascertain the accuracy of all apparatus for testing and proving the accuracy of electric meters, and when found to be or made to be correct the inspector shall stamp or mark all such meters and apparatus with some suitable device to be prescribed by the commission. No public service company shall furnish, set or put in use any electric meters the type of which shall not have been approved by the commission. [1961 c 14 § 80.28.150. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

**80.28.160 Testing apparatus to be furnished.** Every gas company, electrical company and water company shall prepare and maintain such suitable premises, apparatus and facilities as may be required and approved by the commission for testing and proving the accuracy of gas, electric or water meters furnished for use by it by which apparatus every meter may be tested. [1961 c 14 § 80.28.160. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

**80.28.170 Testing at consumer's request.** If any consumer to whom a meter has been furnished shall request the commission in writing to inspect such meter, the commission shall have the same inspected and tested, and if the same, on being so tested, shall be found to be more than four percent if an electric meter, or more than two percent if a gas meter, or more than two percent if a water meter, defective or incorrect to the prejudice of the consumer, the expense of such inspection and test shall be borne by the gas company, electrical company or water company, and if the same, on being so tested shall be found to be correct within the limits of error prescribed by the provisions of this section, the expense of such inspection and test shall be borne by the consumer. [1961 c 14 § 80.28.170. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

**80.28.180 Rules and regulations.** The commission shall prescribe such rules and regulations to carry into effect the provisions of RCW 80.28.140 through 80.28.170 as it may deem necessary, and shall fix the uniform and reasonable charges for the inspection and testing of meters upon complaint. [1961 c 14 § 80.28.180. Prior: 1911 c 117 § 74, part; RRS § 10410, part.]

**80.28.185 Water companies within counties—Commission may regulate.** The commission may develop and enter into an agreement with a county to carry out the regulatory functions of this chapter with regard to water companies located within the boundary of that county. The duration of the agreement, the duties to be performed, and the remuneration to be paid by the commission are subject to agreement by the commission and the county. [1989 c 207 § 6.]

**80.28.190 Gas companies—Certificate—Violations—Commission powers—Penalty—Fees.** (1) No gas company shall, after January 1, 1956, operate in this state any gas plant for hire without first having obtained from the commission under the provisions of this chapter a certificate declaring that public convenience and necessity requires or will require such operation and setting forth the area or areas within which service is to be rendered; but a certificate shall be granted where it appears to the satisfaction of the commission that such gas company was actually operating in good faith, within the confines of the area for which such certificate shall be sought, on June 8, 1955. Any right, privilege, certificate held, owned or obtained by a gas company may be sold, assigned, leased, transferred or inherited as other property, only upon authorization by the commission. The commission shall have power, after hearing, when the applicant requests a certificate to render service in an area already served by a certificate holder under this chapter only when

the existing gas company or companies serving such area will not provide the same to the satisfaction of the commission and in all other cases, with or without hearing, to issue the certificate as prayed for; or for good cause shown to refuse to issue same, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public convenience and necessity may require.

(2) The commission may, at any time, by its order duly entered after a hearing had upon notice to the holder of any certificate hereunder, and an opportunity to such holder to be heard, at which it shall be proven that such holder willfully violates or refuses to observe any of its proper orders, rules or regulations, suspend, revoke, alter or amend any certificate issued under the provisions of this section, but the holder of such certificate shall have all the rights of rehearing, review and appeal as to such order of the commission as is provided herein.

(3) In all respects in which the commission has power and authority under this chapter applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for writs of review to the superior court filed therewith, appeals or mandate filed with the supreme court or the court of appeals of this state considered and disposed of by such courts in the manner, under the conditions, and subject to the limitations and with the effect specified in the Washington utilities and transportation commission laws of this state.

(4) Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids or abets in the violation of any of the provisions of this section or who fails to obey, observe or comply with any order, decision, rule or regulation, directive, demand or requirements, or any provision of this section, is guilty of a gross misdemeanor.

(5) Neither this section, RCW 80.28.200, \*80.28.210, nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations or commerce among the several states of this union except insofar as the same may be permitted under the provisions of the Constitution of the United States and acts of congress.

(6) The commission shall collect the following miscellaneous fees from gas companies: Application for a certificate of public convenience and necessity or to amend a certificate, twenty-five dollars; application to sell, lease, mortgage or transfer a certificate of public convenience and necessity or any interest therein, ten dollars. [2003 c 53 § 383; 1971 c 81 § 141; 1961 c 14 § 80.28.190. Prior: 1955 c 316 § 4.]

\*Reviser's note: RCW 80.28.210 was repealed by 2007 c 142 § 11.

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

#### **80.28.200 Gas companies—Refunds of charges.**

Whenever any gas company whose rates are subject to the jurisdiction of the commission shall receive any refund of amounts charged and collected from it on account of natural gas purchased by it, by reason of any reduction of rates or disallowance of an increase in rates of the seller of such natural gas pursuant to an order of the federal power commission, whether such refund shall be directed by the federal power

commission or by any court upon review of such an order or shall otherwise accrue to such company, the commission shall have power after a hearing, upon its own motion, upon complaint, or upon the application of such company, to determine whether or not such refund should be passed on, in whole or in part, to the consumers of such company and to order such company to pass such refund on to its consumers, in the manner and to the extent determined just and reasonable by the commission. [1961 c 14 § 80.28.200. Prior: 1955 c 316 § 5.]

**80.28.220 Gas companies—Right of eminent domain—Purposes.** Every corporation having for one of its principal purposes the transmission, distribution, sale, or furnishing of natural gas or other type gas for light, heat, or power and holding and owning a certificate of public convenience and necessity from the utilities and transportation commission authorizing the operation of a gas plant, may appropriate, by condemnation, lands and property and interests therein, for the transmission, distribution, sale, or furnishing of such natural gas or other type gas through gas mains or pipelines under the provisions of chapter 8.20 RCW. [1961 c 14 § 80.28.220. Prior: 1957 c 191 § 1.]

**80.28.230 Gas companies—Use for purpose acquired exclusive—Disposition of property.** Any property or interest acquired as provided in RCW 80.28.220 shall be used exclusively for the purposes for which it was acquired: PROVIDED, HOWEVER, That if any such property be sold or otherwise disposed of by said corporations, such sale or disposition shall be by public sale or disposition and advertised in the manner of public sales in the county where such property is located. [1961 c 14 § 80.28.230. Prior: 1957 c 191 § 2.]

**80.28.240 Recovery of damages by utility company for tampering, unauthorized connections, diversion of services.** (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

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

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

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

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

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

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit

and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

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

(4) As used in this section:

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

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

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

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

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

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

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation. [1989 c 11 § 30; 1985 c 427 § 1.]

**Severability—1989 c 11:** See note following RCW 9A.56.220.

**80.28.250 Water companies—Fire hydrants.** A city, town or county may, by ordinance or resolution, require a water company to maintain fire hydrants in the area served by the water company. The utilities and transportation commission has no authority to waive this obligation. [1986 c 119 § 1.]

**80.28.260 Adoption of policies to provide financial incentives for energy efficiency programs.** (1) The commission shall adopt a policy allowing an incentive rate of return on investment (a) for payments made under RCW 19.27A.035 and (b) for programs that improve the efficiency of energy end use if priority is given to senior citizens and low-income citizens in the course of carrying out such programs. The incentive rate of return on investments set forth in this subsection is established by adding an increment of two percent to the rate of return on common equity permitted on the company's other investments.

(2) The commission shall consider and may adopt a policy allowing an incentive rate of return on investment in additional programs to improve the efficiency of energy end use or other incentive policies to encourage utility investment in such programs.

(3) The commission shall consider and may adopt other policies to protect a company from a reduction of short-term earnings that may be a direct result of utility programs to

increase the efficiency of energy use. These policies may include allowing a periodic rate adjustment for investments in end use efficiency or allowing changes in price structure designed to produce additional new revenue. [1996 c 186 § 520; 1990 c 2 § 9.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Effective dates—1990 c 2:** See note following RCW 19.27.040.

**Findings—Severability—1990 c 2:** See notes following RCW 19.27A.015.

**80.28.270 Water companies—Extension, installation, or connection charges.** The commission's jurisdiction over the rates, charges, practices, acts or services of any water company shall include any aspect of line extension, service installation, or service connection. If the charges for such services are not set forth by specific amount in the company's tariff filed with the commission pursuant to RCW 80.28.050, the commission shall determine the fair, just, reasonable, and sufficient charge for such extension, installation, or connection. In any such proceeding in which there is no specified tariffed rate, the burden shall be on the company to prove that its proposed charges are fair, just, reasonable, and sufficient. [1991 c 101 § 2.]

**80.28.275 Water companies—Assumption of substandard water system—Limited immunity from liability.** A water company assuming responsibility for a water system that is not in compliance with state or federal requirements for public drinking water systems, and its agents and employees, are immune from lawsuits or causes of action, based on noncompliance with state or federal requirements for public drinking water systems, which predate the date of assuming responsibility and continue after the date of assuming responsibility, provided that the water company has submitted and is complying with a plan and schedule of improvements approved by the department of health. This immunity shall expire on the earlier of the date the plan of improvements is completed or four years from the date of assuming responsibility. This immunity does not apply to intentional injuries, fraud, or bad faith. [1994 c 292 § 9.]

**Findings—Intent—1994 c 292:** See note following RCW 57.04.050.

**80.28.280 Compressed natural gas—Motor vehicle refueling stations—Public interest.** The legislature finds that compressed natural gas offers significant potential to reduce vehicle emissions and to significantly decrease dependence on petroleum-based fuels. The legislature also finds that well-developed and convenient refueling systems are imperative if compressed natural gas is to be widely used by the public. The legislature declares that the development of compressed natural gas refueling stations are in the public interest. Nothing in this section and RCW 80.28.290 is intended to alter the regulatory practices of the commission or allow the subsidization of one ratepayer class by another. [1991 c 199 § 216.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

*Clean fuel:* RCW 70.120.210.

**80.28.290 Compressed natural gas—Refueling stations—Identify barriers.** The commission shall identify barriers to the development of refueling stations for vehicles operating on compressed natural gas, and shall develop policies to remove such barriers. In developing such policies, the commission shall consider providing rate incentives to encourage natural gas companies to invest in the infrastructure required by such refueling stations. [1991 c 199 § 217.]

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

**80.28.300 Gas, electrical companies encouraged to provide customers with landscaping information and to request voluntary donations for urban forestry.** (1) Gas companies and electrical companies under this chapter are encouraged to provide information to their customers regarding landscaping that includes tree planting for energy conservation.

(2)(a) Gas companies and electrical companies under this chapter may request voluntary donations from their customers for the purposes of urban forestry. The request may be in the form of a check-off on the billing statement or other form of a request for a voluntary donation.

(b) Voluntary donations collected by gas companies and electrical companies under this section may be used by the gas companies and electrical companies to:

(i) Support the development and implementation of evergreen community ordinances, as that term is defined in RCW 35.105.010, for cities, towns, or counties within their service areas; or

(ii) Complete projects consistent with the model evergreen community management plans and ordinances developed under RCW 35.105.050.

(c) Donations received under this section do not contribute to the gross income of a light and power business or gas distribution business under chapter 82.16 RCW. [2008 c 299 § 21; 1993 c 204 § 4.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Findings—1993 c 204:** See note following RCW 35.92.390.

**80.28.303 Conservation service tariff—Contents of filing—Rate base—Duties of commission.** (1) An electrical, gas, or water company may file a conservation service tariff with the commission. The tariff shall provide:

(a) The terms and conditions upon which the company will offer the conservation measures and services specified in the tariff;

(b) The period of time during which the conservation measures and services will be offered; and

(c) The maximum amount of expenditures to be made during a specified time period by the company on conservation measures and services specified in the tariff.

(2) The commission has the same authority with respect to a proposed conservation service tariff as it has with regard to any other schedule or classification the effect of which is to change any rate or charge, including, without limitation, the power granted by RCW 80.04.130 to conduct a hearing concerning a proposed conservation service tariff and the reasonableness and justness thereof, and pending such hearing and the decision thereon the commission may suspend the opera-

tion of the tariff for a period not exceeding ten months from the time the tariff would otherwise go into effect.

(3) An electrical, gas, or water company may from time to time apply to the commission for a determination that specific expenditures may under its tariff constitute bondable conservation investment. A company may request this determination by the commission in separate proceedings for this purpose or in connection with a general rate case. The commission may designate the expenditures as bondable conservation investment as defined in RCW 80.28.005(1) if it finds that such designation is in the public interest.

(4) The commission shall include in rate base all bondable conservation investment. The commission shall approve rates for service by electrical, gas, and water companies at levels sufficient to recover all of the expenditures of the bondable conservation investment included in rate base and the costs of equity and debt capital associated therewith, including, without limitation, the payment of principal, premium, if any, and interest on conservation bonds. The rates so determined may be included in general rate schedules or may be expressed in one or more separate rate schedules. The commission shall not revalue bondable conservation investment for rate-making purposes, to determine that revenues required to recover bondable conservation investment and associated equity and debt capital costs are unjust, unreasonable, or in any way impair or reduce the value of conservation investment assets or that would impair the timing or the amount of revenues arising with respect to conservation investment assets that have been pledged to secure conservation bonds.

(5) Nothing in this chapter precludes the commission from adopting or continuing other conservation policies and programs intended to provide incentives for and to encourage utility investment in improving the efficiency of energy or water end use. However, the policies or programs shall not impair conservation investment assets. This chapter is not intended to be an exclusive or mandatory approach to conservation programs for electrical, gas, and water companies, and no such company is obligated to file conservation service tariffs under this chapter, to apply to the commission for a determination that conservation costs constitute bondable conservation investment within the meaning of this chapter, or to issue conservation bonds.

(6)(a) If a customer of an electrical, gas, or water company for whose benefit the company made expenditures for conservation measures or services ceases to be a customer of such company for one or more of the following reasons, the commission may require that the portion of such conservation expenditures that had been included in rate base but not theretofore recovered in the rates of such company be removed from the rate base of the company:

(i) The customer ceases to be a customer of the supplier of energy or water, and the customer repays to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company; or

(ii) The company sells its property used to serve such customer and the customer ceases to be a customer of the company as a result of such action.

(b) An electrical, gas, or water company may include in a contract for a conservation measure or service, and the

commission may by rule or order require to be included in such contracts, a provision requiring that, if the customer ceases to be a customer of that supplier of energy or water, the customer shall repay to the company the portion of the conservation expenditures made for the benefit of such customer that has not theretofore been recovered in rates of the company. [1994 c 268 § 2.]

**80.28.306 Conservation bonds—Conservation investment assets as collateral—Priority of security interests—Transfers.** (1) Electrical, gas, and water companies, or finance subsidiaries, may issue conservation bonds upon approval by the commission.

(2) Electrical, gas, and water companies, or finance subsidiaries may pledge conservation investment assets as collateral for conservation bonds by obtaining an order of the commission approving an issue of conservation bonds and providing for a security interest in conservation investment assets. A security interest in conservation investment assets is created and perfected only upon entry of an order by the commission approving a contract governing the granting of the security interest and the filing with the department of licensing of a UCC-1 financing statement, showing such pledgor as "debtor" and identifying such conservation investment assets and the bondable conservation investment associated therewith. The security interest is enforceable against the debtor and all third parties, subject to the rights of any third parties holding security interests in the conservation investment assets perfected in the manner described in this section, if value has been given by the purchasers of conservation bonds. An approved security interest in conservation investment assets is a continuously perfected security interest in all revenues and proceeds arising with respect to the associated bondable conservation investment, whether or not such revenues have accrued. Upon such approval, the priority of such security interest shall be as set forth in the contract governing the conservation bonds. Conservation investment assets constitute property for the purposes of contracts securing conservation bonds whether or not the related revenues have accrued.

(3) The relative priority of a security interest created under this section is not defeated or adversely affected by the commingling of revenues arising with respect to conservation investment assets with other funds of the debtor. The holders of conservation bonds shall have a perfected security interest in all cash and deposit accounts of the debtor in which revenues arising with respect to conservation investment assets pledged to such holders have been commingled with other funds, but such perfected security interest is limited to an amount not greater than the amount of such revenues received by the debtor within twelve months before (a) any default under the conservation bonds held by the holders or (b) the institution of insolvency proceedings by or against the debtor, less payments from such revenues to the holders during such twelve-month period. If an event of default occurs under an approved contract governing conservation bonds, the holders of conservation bonds or their authorized representatives, as secured parties, may foreclose or otherwise enforce the security interest in the conservation investment assets securing the conservation bonds, subject to the rights of any third parties holding prior security interests in the con-

servation investment assets perfected in the manner provided in this section. Upon application by the holders of [or] their representatives, without limiting their other remedies, the commission shall order the sequestration and payment to the holders or their representatives of revenues arising with respect to the conservation investment assets pledged to such holders. Any such order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceedings with respect to the debtor. Any surplus in excess of amounts necessary to pay principal, premium, if any, interest, and expenses arising under the contract governing the conservation bonds shall be remitted to the debtor electrical, gas, or water company or the debtor finance subsidiary.

(4) The granting, perfection, and enforcement of security interests in conservation investment assets to secure conservation bonds is governed by this chapter rather than by \*chapter 62A.9 RCW.

(5) A transfer of conservation investment assets by an electrical, gas, or water company to a finance subsidiary, which such parties have in the governing documentation expressly stated to be a sale or other absolute transfer, in a transaction approved in an order issued by the commission and in connection with the issuance by such finance subsidiary of conservation bonds, shall be treated as a true sale, and not as a pledge or other financing, of such conservation investment assets. According the holders of conservation bonds a preferred right to revenues of the electrical, gas, or water company, or the provision by such company of other credit enhancement with respect to conservation bonds, does not impair or negate the characterization of any such transfer as a true sale.

(6) Any successor to an electrical, gas, or water company pursuant to any bankruptcy, reorganization, or other insolvency proceeding shall perform and satisfy all obligations of the company under an approved contract governing conservation bonds, in the same manner and to the same extent as such company before any such proceeding, including, without limitation, collecting and paying to the bondholders or their representatives revenues arising with respect to the conservation investment assets pledged to secure the conservation bonds. [1994 c 268 § 3.]

**\*Reviser's note:** Chapter 62A.9 RCW was repealed in its entirety by 2000 c 250 § 9A-901, effective July 1, 2001. For later enactment, see chapter 62A.9A RCW.

**80.28.309 Costs as bondable conservation investment.** (1) Costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures and services intended to improve the efficiency of energy or water end use shall constitute bondable conservation investment for purposes of RCW 80.28.005, 80.28.303, 80.28.306, and this section, if:

(a) The commission has previously issued a rate order authorizing the inclusion of such costs in rate base; and

(b) The commission authorizes the issuance of conservation bonds secured by conservation investment assets associated with such costs.

(2) If costs incurred before June 9, 1994, by electrical, gas, or water companies with respect to energy or water conservation measures intended to improve the efficiency of

energy or water end use have not previously been considered by the commission for inclusion in rate base, an electrical, gas, or water company may apply to the commission for approval of such costs. If the commission finds that the expenditures are a bondable conservation investment, the commission shall by order designate such expenditures as bondable conservation investment, which shall be subject to RCW 80.28.005, 80.28.303, 80.28.306, and this section. [1994 c 268 § 4.]

**80.28.310 Tariff for irrigation pumping service— Authority for electrical companies to buy back electricity.** Upon request by an electrical company, the commission may approve a tariff for irrigation pumping service that allows the company to buy back electricity from customers to reduce electricity usage by those customers during the electrical company's particular irrigation season. [2001 c 122 § 1.]

**Effective date—2001 c 122:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 2001]." [2001 c 122 § 7.]

## Chapter 80.32 RCW

### ELECTRIC FRANCHISES AND RIGHTS-OF-WAY

#### Sections

80.32.010	Cities and counties may grant franchises—Procedure—Liability to restore road for travel.
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80.32.090	Limitation on use of electricity.
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*Franchises on state highways: Chapter 47.44 RCW.*

**80.32.010 Cities and counties may grant franchises— Procedure—Liability to restore road for travel.** The legislative authority of the city or town having control of any public street or road, or, where the street or road is not within the limits of any incorporated city or town, then the county legislative authority of the county wherein the road or street is situated, may grant authority for the construction, maintenance and operation of transmission lines for transmitting electric power, together with poles, wires and other appurtenances, upon, over, along and across any such public street or road, and in granting this authority the legislative authority of the city or town, or the county legislative authority, as the case may be, may prescribe the terms and conditions on which the transmission line and its appurtenances, shall be constructed, maintained and operated upon, over, along and across the road or street, and the grade or elevation at which the same shall be constructed, maintained and operated: PROVIDED, That on application being made to the county legislative authority for such authority, the county legislative authority shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least fifteen

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days before the day fixed for such hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If after such hearing the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or such part thereof as it deems to be for the public interest, and shall require the transmission line and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. In case any such transmission line is or shall be located in part on private right-of-way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects the private right-of-way, if the crossing is so constructed and maintained as to do no unnecessary damage: PROVIDED, That any person or corporation constructing the crossing or operating the transmission line on or along the county road or county street shall be liable to the county for all necessary expense incurred in restoring the county road or county street to a suitable condition for travel. [1985 c 469 § 62; 1961 c 14 § 80.32.010. Prior: 1903 c 173 § 1; RRS § 5430. Formerly RCW 80.32.010, 80.32.020, and 80.32.030.]

#### **80.32.040 Grant of franchise subject to referendum.**

All grants of franchises or rights for the conduct or distribution of electric energy, electric power, or electric light within any city or town of the state of Washington by the city council or other legislative body or legislative authority thereof, whether granted by ordinance, resolution, or other form of grant, contract, permission or license, shall be subject to popular referendum under the general laws of this state heretofore or hereafter enacted, or as may be provided by the charter provisions, heretofore or hereafter adopted, of any such city or town: PROVIDED, That no petition for referendum may be filed after six months from the date of ordinance, resolution, or other form of grant, contract, permission, or license granting such franchise. [1961 c 14 § 80.32.040. Prior: (i) 1941 c 114 § 1; Rem. Supp. 1941 § 5430-1. (ii) 1941 c 114 § 2; Rem. Supp. 1941 § 5430-2.]

**80.32.050 Sale or lease of plant and franchises.** Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of manufacturing, transmitting or selling electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the plant for manufacturing or distributing electric power or energy of any other corporation, heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: PROVIDED, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-

thirds in amount of the capital stock or the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 173, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 80.32.050. Prior: 1903 c 173 § 3; RRS § 5431.]

**80.32.060 Eminent domain.** Every corporation, incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States, and doing business in this state, for the purpose of manufacturing or transmitting electric power, shall have the right to appropriate real estate and other property for right-of-way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: PROVIDED, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the transmission line thereon has been authorized in accordance with RCW 80.32.010. [1961 c 14 § 80.32.060. Prior: 1903 c 173 § 2; No RRS.]

*Eminent domain by corporations generally: Chapter 8.20 RCW.*

**80.32.070 Right of entry.** Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 80.32.070. Prior: 1899 c 94 § 2; RRS § 11085.]

**80.32.080 Duties of electrical companies exercising power of eminent domain.** Any corporation authorized to do business in this state, which, under the present laws of the state, is authorized to condemn property for the purpose of generating and transmitting electrical power for the operation of railroads or railways, or for municipal lighting, and which by its charter or articles of incorporation, assumes the additional right to sell electric power and electric light to private consumers outside the limits of a municipality and to sell electric power to private consumers within the limits of a municipality, which shall provide in its articles that in respect of the purposes mentioned in this section it will assume and undertake to the state and to the inhabitants thereof the duties and obligations of a public service corporation, shall be deemed to be in respect of such purposes a public service corporation, and shall be held to all the duties, obligations and control, which by law are or may be imposed upon public service corporations. Any such corporation shall have the right to sell electric light outside the limits of a municipality and electric power both inside and outside such limits to private consumers from the electricity generated and transmitted by it for public purposes and not needed by it therefor: PROVIDED, That such corporation shall furnish such excess power at equal rates, quantity and conditions considered, to all consumers alike, and shall supply it to the first applicants therefor until the amount available shall be exhausted: PROVIDED FURTHER, That no such corporation shall be obliged to furnish such excess power to any one consumer to an amount exceeding twenty-five percent of the total amount

of such excess power generated or transmitted by it. In exercising the power of eminent domain for public purposes it shall not be an objection thereto that a portion of the electric current generated will be applied to private purposes, provided the principal uses intended are public: PROVIDED, That all public service or quasi public service corporations shall at no time sell, deliver and dispose of electrical power in bulk to manufacturing concerns at the expense of its public service functions, and any person, firm or corporation that is a patron of such corporation as to such public function, shall have the right to apply to any court of competent jurisdiction to correct any violation of the provisions of RCW 80.32.080 through 80.32.100. [1961 c 14 § 80.32.080. Prior: 1907 c 159 § 1; RRS § 5432.]

**80.32.090 Limitation on use of electricity.** Whenever any corporation has acquired any property by decree of appropriation based on proceedings in court under the provisions of RCW 80.32.080 through 80.32.100, no portion of the electricity generated or transmitted by it by means of the property appropriated under the provisions of RCW 80.32.080 through 80.32.100 shall be used or applied by such corporation for or to a business or trade not under the present laws deemed public or quasi public conducted by itself. [1961 c 14 § 80.32.090. Prior: 1907 c 159 § 2; RRS § 5433.]

**80.32.100 Remedy for violations.** In the event of the violation of any of the requirements of RCW 80.32.080 and 80.32.090 by any corporation availing itself of its provisions, an appropriate suit may be maintained in the name of the state upon the relation of the attorney general, or, if he shall refuse or neglect to act, upon the relation of any individual aggrieved by the violation, or violations, complained of, to compel such corporation to comply with the requirements of RCW 80.32.080 and 80.32.090. A violation of RCW 80.32.080 and 80.32.090 shall cause the forfeiture of the corporate franchise if the corporation refuses or neglects to comply with the orders with respect thereto made in the suit herein provided for. [1961 c 14 § 80.32.100. Prior: 1907 c 159 § 3; RRS § 5434.]

## Chapter 80.36 RCW

### TELECOMMUNICATIONS

#### Sections

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**80.36.005 Definitions.** The definitions in this section apply throughout RCW 80.36.410 through 80.36.475, unless the context clearly requires otherwise.

(1) "Community agency" means local community agencies that administer community service voice mail programs.

(2) "Community service voice mail" means a computerized voice mail system that provides low-income recipients with: (a) An individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a private security code to retrieve messages.

(3) "Department" means the department of social and health services.

(4) "Service year" means the period between July 1st and June 30th.

(5) "Community action agency" means local community action agencies or local community service agencies designated by the department of community, trade, and economic development under chapter 43.63A RCW. [2003 c 134 § 1; 2002 c 104 § 1; 1993 c 249 § 1.]

**Effective date—2003 c 134:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 134 § 12.]

**Effective date—1993 c 249:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]." [1993 c 249 § 4.]

**80.36.010 Eminent domain.** The right of eminent domain is hereby extended to all telecommunications companies organized or doing business in this state. [1985 c 450 § 15; 1961 c 14 § 80.36.010. Prior: 1890 p 292 § 1; RRS § 11338.]

**80.36.020 Right of entry.** Every corporation incorporated under the laws of this state or any state or territory of the United States for the purpose of constructing, operating or maintaining any telecommunications line in this state shall have the right to enter upon any land between the termini of its proposed telecommunications lines for the purpose of examining, locating and surveying the telecommunications line, doing no unnecessary damage thereby. [1985 c 450 § 16; 1961 c 14 § 80.36.020. Prior: 1888 p 65 § 1; RRS § 11339.]

**80.36.030 Extent of appropriation.** Such telecommunications company may appropriate so much land as may be actually necessary for its telecommunications line, with the right to enter upon lands immediately adjacent thereto, for the purpose of constructing, maintaining and operating its line

and making all necessary repair. Such telecommunications company may also, for the purpose aforesaid, enter upon and appropriate such portion of the right-of-way of any railroad company as may be necessary for the construction, maintenance and operation of its telecommunications line: PROVIDED, That such appropriation shall not obstruct such railroad of the travel thereupon, nor interfere with the operation of such railroad. [1985 c 450 § 17; 1961 c 14 § 80.36.030. Prior: 1888 p 66 § 2; RRS § 11342.]

**80.36.040 Use of road, street, and railroad right-of-way—When consent of city necessary.** Any telecommunications company, or the lessees thereof, doing business in this state, shall have the right to construct and maintain all necessary telecommunications lines for public traffic along and upon any public road, street or highway, along or across the right-of-way of any railroad corporation, and may erect poles, posts, piers or abutments for supporting the insulators, wires and any other necessary fixture of their lines, in such manner and at such points as not to incommode the public use of the railroad or highway, or interrupt the navigation of the waters: PROVIDED, That when the right-of-way of such corporation has not been acquired by or through any grant or donation from the United States, or this state, or any county, city or town therein, then the right to construct and maintain such lines shall be secured only by the exercise of right of eminent domain, as provided by law: PROVIDED FURTHER, That where the right-of-way as herein contemplated is within the corporate limits of any incorporated city, the consent of the city council thereof shall be first obtained before such telecommunications lines can be erected thereon. [1985 c 450 § 18; 1961 c 14 § 80.36.040. Prior: 1890 p 292 § 5; RRS § 11352.]

**80.36.050 Use of railroad right-of-way—Penalty for refusal by railroad.** Every railroad operated in this state, and carrying freight and passengers for hire, or doing business in this state, is and shall be designated a "post road," and the corporation or company owning the same shall allow telecommunications companies to construct and maintain telecommunications lines on and along the right-of-way of such railroad.

In case of the refusal or neglect of any railroad company or corporation to comply with the provisions of this section, said company or corporation shall be liable for damages in the sum of not less than one thousand dollars nor more than five thousand dollars for each offense, and one hundred dollars per day during the continuance thereof. [1985 c 450 § 19; 1961 c 14 § 80.36.050. Prior: (i) 1890 p 292 § 3; RRS § 11340. (ii) 1890 p 293 § 9; RRS § 11356.]

**80.36.060 Liability for wilful injury to telecommunications property.** Any person who wilfully and maliciously does any injury to any telecommunications property mentioned in RCW 80.36.070, is liable to the company for five times the amount of actual damages sustained thereby, to be recovered in any court of competent jurisdiction. [1985 c 450 § 20; 1961 c 14 § 80.36.060. Prior: 1890 p 293 § 7; RRS § 11354.]

**80.36.070 Liability for negligent injury to property—Notice of underwater cable.** Any person who injures or destroys, through want of proper care, any necessary or useful fixtures of any telecommunications company, is liable to the company for all damages sustained thereby. Any vessel which, by dragging its anchor or otherwise, breaks, injures or destroys the subaqueous cable of a telecommunications company, subjects its owners to the damages hereinbefore specified.

No telecommunications company can recover damages for the breaking or injury of any subaqueous telecommunications cable, unless such company has previously erected on either bank of the waters under which the cable is placed, a monument indicating the place where the cable lies, and publishes for one month, in some newspaper most likely to give notice to navigators, a notice giving a description and the purpose of the monuments, and the general course, landings and termini of the cable. [1985 c 450 § 21; 1961 c 14 § 80.36.070. Prior: (i) 1890 p 293 § 6; RRS § 11353. (ii) 1890 p 293 § 10; RRS § 11357.]

**80.36.080 Rates, services, and facilities.** All rates, tolls, contracts and charges, rules and regulations of telecommunications companies, for messages, conversations, services rendered and equipment and facilities supplied, whether such message, conversation or service to be performed be over one company or line or over or by two or more companies or lines, shall be fair, just, reasonable and sufficient, and the service so to be rendered any person, firm or corporation by any telecommunications company shall be rendered and performed in a prompt, expeditious and efficient manner and the facilities, instrumentalities and equipment furnished by it shall be safe, kept in good condition and repair, and its appliances, instrumentalities and service shall be modern, adequate, sufficient and efficient. [1985 c 450 § 22; 1961 c 14 § 80.36.080. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

**80.36.090 Service to be furnished on demand.** Every telecommunications company operating in this state shall provide and maintain suitable and adequate buildings and facilities therein, or connected therewith, for the accommodation, comfort and convenience of its patrons and employees.

Every telecommunications company shall, upon reasonable notice, furnish to all persons and corporations who may apply therefor and be reasonably entitled thereto suitable and proper facilities and connections for telephonic communication and furnish telephone service as demanded. [1985 c 450 § 23; 1961 c 14 § 80.36.090. Prior: 1911 c 117 § 35, part; RRS § 10371, part.]

**80.36.100 Tariff schedules to be filed and open to public—Exceptions.** (1) Every telecommunications company shall file with the commission and shall print and keep open to public inspection at such points as the commission may designate, schedules showing the rates, tolls, rentals, and charges of such companies for messages, conversations and services rendered and equipment and facilities supplied for messages and services to be performed within the state between each point upon its line and all other points thereon, and between each point upon its line and all points upon

every other similar line operated or controlled by it, and between each point on its line or upon any line leased, operated or controlled by it and all points upon the line of any other similar company, whenever a through service and joint rate shall have been established or ordered between any two such points.

(2) If no joint rate covering a through service has been established, the several companies in such through service shall file, print and keep open to public inspection as aforesaid the separately established rates, tolls, rentals, and charges applicable for such through service.

(3) The schedules printed as aforesaid shall plainly state the places between which telecommunications service, or both, will be rendered, and shall also state separately all charges and all privileges or facilities granted or allowed, and any rules or regulations which may in anywise change, affect or determine any of the aggregate of the rates, tolls, rentals or charges for the service rendered.

(4) A schedule shall be plainly printed in large type, and a copy thereof shall be kept by every telecommunications company readily accessible to and for convenient inspection by the public at such places as may be designated by the commission, which schedule shall state the rates charged from such station to every other station on such company's line, or on any line controlled and used by it within the state.

(a) All or any of such schedules kept as aforesaid shall be immediately produced by such telecommunications company upon the demand of any person.

(b) A notice printed in bold type, and stating that such schedules are on file and open to inspection by any person, the places where the same are kept, and that the agent will assist such person to determine from such schedules any rate, toll, rental, rule or regulation which is in force shall be kept posted by every telecommunications company in a conspicuous place in every station or office of such company.

(5) This section does not apply to telecommunications companies classified as competitive under RCW 80.36.320 or to telecommunications services classified as competitive under RCW 80.36.330. [2006 c 347 § 1; 1989 c 101 § 9; 1985 c 450 § 24; 1961 c 14 § 80.36.100. Prior: 1911 c 117 § 36; RRS § 10372.]

**80.36.110 Tariff changes—Statutory notice—Exception—Waiver of provisions during state of emergency.**

(1) Except as provided in subsection (2) of this section, unless the commission otherwise orders, no change shall be made in any rate, toll, rental, or charge, that was filed and published by any telecommunications company in compliance with the requirements of RCW 80.36.100, except after notice as required in this subsection.

(a) For changes to any rate, toll, rental, or charge filed and published in a tariff, the company shall provide thirty days' notice to the commission and publication for thirty days as required in the case of original schedules in RCW 80.36.100. The notice shall plainly state the changes proposed to be made in the schedule then in force, and the time when the changed rate, toll, or charge will go into effect, and all proposed changes shall be shown by printing, filing and publishing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Proposed changes may be suspended by the com-

mission within thirty days or before the stated effective date of the proposed change, whichever is later.

(b) The commission for good cause shown may allow changes in rates, charges, tolls, or rentals without requiring the notice and publication provided for in (a) of this subsection, by an order or rule specifying the change to be made and the time when it takes effect, and the manner in which the change will be filed and published.

(c) When any change is made in any rate, toll, rental, or charge, the effect of which is to increase any rate, toll, rental, or charge then existing, attention shall be directed on the copy filed with the commission to the increase by some character immediately preceding or following the item in the schedule, which character shall be in such a form as the commission may designate.

(2)(a) A telecommunications company may file a tariff that decreases any rate, charge, rental, or toll with ten days' notice to the commission and publication without receiving a special order from the commission when the filing does not contain an offsetting increase to another rate, charge, rental, or toll, and the filing company agrees not to file for an increase to any rate, charge, rental, or toll to recover the revenue deficit that results from the decrease for a period of one year.

(b) A telecommunications company may file a promotional offering to be effective, without receiving a special order from the commission, upon filing with the commission and publication. For the purposes of this section, "promotional offering" means a tariff that, for a period of up to ninety days, waives or reduces charges or conditions of service for existing or new subscribers for the purpose of retaining or increasing the number of customers who subscribe to or use a service.

[(3)] During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 403; 2006 c 347 § 2; 2003 c 189 § 2; 1997 c 166 § 1. Prior: 1989 c 152 § 2; 1989 c 101 § 10; 1985 c 450 § 25; 1961 c 14 § 80.36.110; prior: 1911 c 117 § 37; RRS § 10373.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**80.36.120 Joint rates, contracts, etc.** The names of the several companies which are parties to any joint rates, tolls, contracts or charges of telecommunications companies for messages, conversations and service to be rendered shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the companies filing the same to also file copies of the tariff in which they are named as parties. [1985 c 450 § 26; 1961 c 14 § 80.36.120. Prior: 1911 c 117 § 38; RRS § 10374.]

**80.36.130 Published rates to be charged—Exceptions.** (1) Except as provided in RCW 80.04.130 and 80.36.150, no telecommunications company shall charge, demand, collect or receive different compensation for any service rendered or to be rendered than the charge applicable to such service as specified in its schedule on file and in effect at that time, nor shall any telecommunications company refund or remit, directly or indirectly, any portion of the rate or charge so specified, nor extend to any person or corporation any form of contract or agreement or any rule or regulation or any privilege or facility except such as are specified in its schedule filed and in effect at the time, and regularly and uniformly extended to all persons and corporations under like circumstances for like or substantially similar service.

(2) No telecommunications company subject to the provisions of this title shall, directly or indirectly, give any free or reduced service or any free pass or frank for the transmission of messages by telecommunications between points within this state, except to its officers, employees, agents, pensioners, surgeons, physicians, attorneys-at-law, and their families, and persons and corporations exclusively engaged in charitable and eleemosynary work, and ministers of religion, Young Men's Christian Associations, Young Women's Christian Associations; to indigent and destitute persons, and to officers and employees of other telecommunications companies, railroad companies, and street railroad companies.

(3) The commission may accept a tariff that gives free or reduced rate services for a temporary period of time in order to promote the use of the services. [1992 c 68 § 2; 1989 c 101 § 11; 1985 c 450 § 27; 1961 c 14 § 80.36.130. Prior: 1911 c 117 § 40; RRS § 10376. FORMER PART OF SECTION: 1929 c 96 § 1, part now codified in RCW 81.28.080.]

**80.36.135 Alternative regulation of telecommunications companies—Waiver of provisions during state of emergency.** (1) The legislature declares that:

(a) Changes in technology and the structure of the telecommunications industry may produce conditions under which traditional rate of return, rate base regulation of telecommunications companies may not in all cases provide the most efficient and effective means of achieving the public policy goals of this state as declared in RCW 80.36.300, this section, and RCW 80.36.145. The commission should be authorized to employ an alternative form of regulation if that alternative is better suited to achieving those policy goals.

(b) Because of the great diversity in the scope and type of services provided by telecommunications companies, alternative regulatory arrangements that meet the varying circumstances of different companies and their ratepayers may be desirable.

(2) Subject to the conditions set forth in this chapter and RCW 80.04.130, the commission may regulate telecommunications companies subject to traditional rate of return, rate base regulation by authorizing an alternative form of regulation. The commission may determine the manner and extent of any alternative forms of regulation as may in the public interest be appropriate. In addition to the public policy goals declared in RCW 80.36.300, the commission shall consider, in determining the appropriateness of any proposed alternative form of regulation, whether it will:

(a) Facilitate the broad deployment of technological improvements and advanced telecommunications services to underserved areas or underserved customer classes;

(b) Improve the efficiency of the regulatory process;

(c) Preserve or enhance the development of effective competition and protect against the exercise of market power during its development;

(d) Preserve or enhance service quality and protect against the degradation of the quality or availability of efficient telecommunications services;

(e) Provide for rates and charges that are fair, just, reasonable, sufficient, and not unduly discriminatory or preferential; and

(f) Not unduly or unreasonably prejudice or disadvantage any particular customer class.

(3) A telecommunications company or companies subject to traditional rate of return, rate base regulation may petition the commission to establish an alternative form of regulation. The company or companies shall submit with the petition a plan for an alternative form of regulation. The plan shall contain a proposal for transition to the alternative form of regulation and the proposed duration of the plan. The plan must also contain a proposal for ensuring adequate carrier-to-carrier service quality, including service quality standards or performance measures for interconnection, and appropriate enforcement or remedial provisions in the event the company fails to meet service quality standards or performance measures. The commission also may initiate consideration of alternative forms of regulation for a company or companies on its own motion. The commission, after notice and hearing, shall issue an order accepting, modifying, or rejecting the plan within nine months after the petition or motion is filed, unless extended by the commission for good cause. The commission shall order implementation of the alternative plan of regulation unless it finds that, on balance, an alternative plan as proposed or modified fails to meet the considerations stated in subsection (2) of this section.

(4) Not later than sixty days from the entry of the commission's order, the company or companies affected by the order may file with the commission an election not to proceed with the alternative form of regulation as authorized by the commission.

(5) The commission may waive such regulatory requirements under Title 80 RCW for a telecommunications company subject to an alternative form of regulation as may be appropriate to facilitate the implementation of this section. However, the commission may not waive any grant of legal rights to any person contained in this chapter and chapter 80.04 RCW. The commission may waive different regulatory requirements for different companies or services if such different treatment is in the public interest.

(6) Upon petition by the company, and after notice and hearing, the commission may rescind or modify an alternative form of regulation in the manner requested by the company.

(7) The commission or any person may file a complaint under RCW 80.04.110 alleging that a telecommunications company under an alternative form of regulation has not complied with the terms and conditions set forth in the alternative form of regulation. The complainant shall bear the burden of proving the allegations in the complaint.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 414; 2000 c 82 § 1; 1995 c 110 § 5; 1989 c 101 § 1.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**80.36.140 Rates and services fixed by commission, when.** Whenever the commission shall find, after a hearing had upon its own motion or upon complaint, that the rates, charges, tolls or rentals demanded, exacted, charged or collected by any telecommunications company for the transmission of messages by telecommunications, or for the rental or use of any telecommunications line, instrument, wire, appliance, apparatus or device or any telecommunications receiver, transmitter, instrument, wire, cable, apparatus, conduit, machine, appliance or device, or any telecommunications extension or extension system, or that the rules, regulations or practices of any telecommunications company affecting such rates, charges, tolls, rentals or service are unjust, unreasonable, unjustly discriminatory or unduly preferential, or in anywise in violation of law, or that such rates, charges, tolls or rentals are insufficient to yield reasonable compensation for the service rendered, the commission shall determine the just and reasonable rates, charges, tolls or rentals to be thereafter observed and in force, and fix the same by order as provided in this title.

Whenever the commission shall find, after such hearing that the rules, regulations or practices of any telecommunications company are unjust or unreasonable, or that the equipment, facilities or service of any telecommunications company is inadequate, inefficient, improper or insufficient, the commission shall determine the just, reasonable, proper, adequate and efficient rules, regulations, practices, equipment, facilities and service to be thereafter installed, observed and used, and fix the same by order or rule as provided in this title. [1985 c 450 § 28; 1961 c 14 § 80.36.140. Prior: 1911 c 117 § 55; RRS § 10391.]

**80.36.145 Formal investigation and fact-finding—Alternative to full adjudicative proceeding—Waiver of provisions during state of emergency.** (1) The legislature declares that the availability of an alternative abbreviated formal procedure for use by the commission instead of a full adjudicative proceeding may in appropriate circumstances advance the public interest by reducing the time required by the commission for decision and the costs incurred by interested parties and ratepayers. Therefore, the commission is authorized to use formal investigation and fact-finding instead of an adjudicative proceeding under chapter 34.05 RCW when it determines that its use is in the public interest and that a full adjudicative hearing is not necessary to fully develop the facts relevant to the proceeding and the positions of the parties, including intervenors.

(2) The commission may use formal investigation and fact-finding instead of the hearing provided in the following circumstances:

(a) A complaint proceeding under RCW 80.04.110 with concurrence of the respondent when the commission is the complainant or with concurrence of the complainant and respondent when not the commission;

(b) A tariff suspension under RCW 80.04.130; or

(c) A competitive classification proceeding under RCW 80.36.320 and 80.36.330.

(3) In formal investigation and fact-finding the commission may limit the record to written submissions by the parties, including intervenors. The commission shall review the written submissions and, based thereon, shall enter appropriate findings of fact and conclusions of law and its order. When there is a reasonable expression of public interest in the issues under consideration, the commission shall hold at least one public hearing for the receipt of information from members of the public that are not formal intervenors in the proceeding and may elect to convert the proceeding to an adjudicative proceeding at any stage. The assignment of an agency employee or administrative law judge to preside at such public hearing shall not require the entry of an initial order.

(4) The commission shall adopt rules of practice and procedure including rules for discovery of information necessary for the use of formal investigation and fact-finding and for the filing of written submissions. The commission may provide by rule for a number of rounds of written comments: PROVIDED, That the party with the burden of proof shall always have the opportunity to file reply comments.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 407; 1989 c 101 § 3.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**80.36.150 Contracts filed with commission.** (1) Every telecommunications company shall file with the commission, as and when required by it, a copy of any contract, agreement or arrangement in writing with any other telecommunications company, or with any other corporation, association or person relating in any way to the construction, maintenance or use of a telecommunications line or service by, or rates and charges over and upon, any such telecommunications line. The commission shall adopt rules that provide for the filing by telecommunications companies on the public record of the essential terms and conditions of every contract for service. The commission shall not require that customer proprietary information contained in contracts be disclosed on the public record.

(2) The commission shall not treat contracts as tariffs or price lists. The commission may require noncompetitive service to be tariffed unless the company demonstrates that the use of a contract is in the public interest based upon a customer requirement or a competitive necessity for deviation from tariffed rates, terms and conditions, or that the contract is for a new service with limited demand.

(3) Contracts shall be for a stated time period and shall cover the costs for the service contracted for, as determined by commission rule or order. Contracts shall be enforceable

by the contracting parties according to their terms, unless the contract has been rejected by the commission before its stated effective date as improper under the commission's rules and orders, or the requirements of this chapter. If the commission finds a contract to be below cost after it has gone into effect, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(4) Contracts executed and filed prior to July 23, 1989, are deemed lawful and enforceable by the contracting parties according to the contract terms. If the commission finds that any existing contract provides for rates that are below cost, based on commission rules or orders or the requirements of this chapter in effect at the time of the execution of the contract, it may make the appropriate adjustment to the contracting company's revenue requirement in a subsequent proceeding.

(5) If a contract covers competitive and noncompetitive services, the noncompetitive services shall be unbundled and priced separately from all other services and facilities in the contract. Such noncompetitive services shall be made available to all purchasers under the same or substantially the same circumstances at the same rate, terms, and conditions. [1989 c 101 § 8; 1985 c 450 § 29; 1961 c 14 § 80.36.150. Prior: 1911 c 117 § 39; RRS § 10375.]

**80.36.160 Physical connections may be ordered, routing prescribed, and joint rates established.** In order to provide toll telephone service where no such service is available, or to promote the most expeditious handling or most direct routing of toll messages and conversations, or to prevent arbitrary or unreasonable practices which may result in the failure to utilize the toll facilities of all telecommunications companies equitably and effectively, the commission may, on its own motion, or upon complaint, notwithstanding any contract or arrangement between telecommunications companies, investigate, ascertain and, after hearing, by order (1) require the construction and maintenance of suitable connections between telephone lines for the transfer of messages and conversations at a common point or points and, if the companies affected fail to agree on the proportion of the cost thereof to be borne by each such company, prescribe said proportion of cost to be borne by each; and/or (2) prescribe the routing of toll messages and conversations over such connections and the practices and regulations to be followed with respect to such routing; and/or (3) establish reasonable joint rates or charges by or over said lines and connections and just, reasonable and equitable divisions thereof as between the telecommunications companies participating therein.

This section shall not be construed as conferring on the commission jurisdiction, supervision or control of the rates, service or facilities of any mutual, cooperative or farmer line company or association, except for the purpose of carrying out the provisions of this section. [1985 c 450 § 30; 1961 c 14 § 80.36.160. Prior: 1943 c 68 § 1; 1923 c 118 § 1; 1911 c 117 § 73; Rem. Supp. 1943 § 10409.]

**80.36.170 Unreasonable preference prohibited.** No telecommunications company shall make or give any undue or unreasonable preference or advantage to any person, corporation or locality, or subject any particular person, corporation or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 and 80.36.330. [1989 c 101 § 4; 1985 c 450 § 31; 1961 c 14 § 80.36.170. Prior: 1911 c 117 § 42; RRS § 10378.]

**80.36.180 Rate discrimination prohibited.** No telecommunications company shall, directly or indirectly, or by any special rate, rebate, drawback or other device or method, unduly or unreasonably charge, demand, collect or receive from any person or corporation a greater or less compensation for any service rendered or to be rendered with respect to communication by telecommunications or in connection therewith, except as authorized in this title or Title 81 RCW than it charges, demands, collects or receives from any other person or corporation for doing a like and contemporaneous service with respect to communication by telecommunications under the same or substantially the same circumstances and conditions. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. This section shall not apply to contracts offered by a telecommunications company classified as competitive or to contracts for services classified as competitive under RCW 80.36.320 or 80.36.330. [1989 c 101 § 5; 1985 c 450 § 32; 1961 c 14 § 80.36.180. Prior: 1911 c 117 § 41; RRS § 10377.]

**80.36.183 Discounted message toll rates prohibited—Availability of statewide, averaged toll rates.** Notwithstanding any other provision of this chapter, no telecommunications company shall offer a discounted message toll service based on volume that prohibits aggregation of volumes across all territory with respect to which that company functions as an interexchange carrier. The commission shall continue to have the authority to require statewide, averaged toll rates to be made available by any telecommunications company subject to its jurisdiction. [1989 c 101 § 6.]

**80.36.186 Pricing of or access to noncompetitive services—Unreasonable preference or advantage prohibited.** Notwithstanding any other provision of this chapter, no telecommunications company providing noncompetitive services shall, as to the pricing of or access to noncompetitive services, make or grant any undue or unreasonable preference or advantage to itself or to any other person providing telecommunications service, nor subject any telecommunications company to any undue or unreasonable prejudice or competitive disadvantage. The commission shall have primary jurisdiction to determine whether any rate, regulation, or practice of a telecommunications company violates this section. [1989 c 101 § 7.]

**80.36.190 Long and short distance provision.** No telecommunications company subject to the provisions of this title shall charge or receive any greater compensation in the aggregate for the transmission of any long distance conversation or message of like kind for a shorter than for a longer distance over the same line, in the same direction, within this state, the shorter being included within the longer distance, or charge any greater compensation for a through service than the aggregate of the intermediate rates subject to the provision of this title, but this shall not be construed as authorizing any such telecommunications company to charge and receive as great a compensation for a shorter as for a longer distance. Upon application of any telecommunications company the commission may, by order, authorize it to charge less for longer than for a shorter distance service for the transmission of conversation or messages in special cases after investigation, but the order must specify and prescribe the extent to which the telecommunications company making such application is relieved from the operation of this section, and only to the extent so specified and prescribed shall any telecommunications company be relieved from the requirements of this section. [1985 c 450 § 33; 1961 c 14 § 80.36.190. Prior: 1911 c 117 § 44; RRS § 10380.]

**80.36.195 Telecommunications relay system—Long distance discount rates.** Each telecommunications company providing intrastate interexchange voice transmission service shall offer discounts from otherwise applicable long distance rates for service used in conjunction with the statewide relay service authorized under RCW 43.20A.725. Such long distance discounts shall be determined in relation to the additional time required to translate calls through relay operators. In the case of intrastate long distance services provided pursuant to tariff, the commission shall require the incorporation of such discounts. [1992 c 144 § 5.]

**Legislative findings—Severability—1992 c 144:** See notes following RCW 43.20A.720.

**80.36.200 Transmission of messages of other lines.** Every telecommunications company operating in this state shall receive, transmit and deliver, without discrimination or delay, the messages of any other telecommunications company. [1985 c 450 § 34; 1961 c 14 § 80.36.200. Prior: 1911 c 117 § 45; RRS § 10381.]

**80.36.210 Order of sending messages.** It shall be the duty of any telegraph company, doing business in this state, to transmit all dispatches in the order in which they are received, under the penalty of one hundred dollars, to be recovered with costs of suit, by the person or persons whose dispatch is postponed out of its order: PROVIDED, That communications to and from public officers on official business, may have precedence over all other communications: AND, PROVIDED FURTHER, That intelligence of general and public interest may be transmitted for publication out of its order. [1961 c 14 § 80.36.210. Prior: Code 1881 § 2361; RRS § 11344; prior: 1866 p 77 § 20.]

**80.36.220 Duty to transmit messages—Penalty for refusal or neglect.** Telecommunications companies shall receive, exchange and transmit each other's messages with-

out delay or discrimination, and all telecommunications companies shall receive and transmit messages for any person.

In case of the refusal or neglect of any telecommunications company to comply with the provisions of this section, the penalty for the same shall be a fine of not more than five hundred nor less than one hundred dollars for each offense. [1985 c 450 § 35; 1961 c 14 § 80.36.220. Prior: (i) 1890 p 292 § 2; RRS § 11343. (ii) 1890 p 293 § 8; RRS § 11355.]

**80.36.225 Pay telephones—Calls to operator without charge or coin insertion to be provided.** All telecommunications companies and customer-owned, pay telephone providers doing business in this state and utilizing pay telephones shall provide a system whereby calls may be made to the operator without charge and without requiring the use of credit cards or other payment devices, or insertion of any coins into such pay telephone. [1985 c 450 § 36; 1975 c 21 § 1.]

*Emergency calls, yielding line: Chapter 70.85 RCW.*

**80.36.230 Exchange areas for telecommunications companies.** The commission is hereby granted the power to prescribe exchange area boundaries and/or territorial boundaries for telecommunications companies. [1985 c 450 § 37; 1961 c 14 § 80.36.230. Prior: 1941 c 137 § 1; Rem. Supp. 1941 § 11358-1.]

**80.36.240 Exchange areas for telephone companies—Procedure to establish.** The commission in conducting hearings, promulgating rules, and otherwise proceeding to make effective the provisions of RCW 80.36.230 and 80.36.240, shall be governed by, and shall have the powers provided in this title, as amended; all provisions as to review of the commission's orders and appeals to the supreme court or the court of appeals contained in said title, as amended, shall be available to all companies and parties affected by the commission's orders issued under authority of RCW 80.36.230 and 80.36.240. [1971 c 81 § 142; 1961 c 14 § 80.36.240. Prior: 1941 c 137 § 2; Rem. Supp. 1941 § 11358-2.]

**80.36.250 Commission may complain of interstate rates.** The commission may investigate all interstate rates and charges, classifications, or rules or practices relating thereto, for or in relation to the transmission of messages or conversations. Where any acts in relation thereto take place within this state which, in the opinion of the commission, are excessive or discriminatory, or are levied or laid in violation of the federal communications act of June 19, 1934, and acts amendatory thereof or supplementary thereto, or are in conflict with the rulings, orders, or regulations of the Federal Communications Commission, the commission shall apply by petition to the Federal Communications Commission for relief, and may present to such federal commission all facts coming to its knowledge respecting violations of such act or the rulings, orders, or regulations of the federal commission. [1961 c 14 § 80.36.250. Prior: 1911 c 117 § 58; RRS § 10394.]

**80.36.260 Betterments may be ordered.** Whenever the commission shall find, after a hearing had on its own motion or upon complaint, that repairs or improvements to, or changes in, any telecommunications line ought reasonably be made, or that any additions or extensions should reasonably be made thereto in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for telecommunications communications, the commission shall make and serve an order directing that such repairs, improvements, changes, additions or extensions be made in the manner to be specified therein. [1985 c 450 § 38; 1961 c 14 § 80.36.260. Prior: 1911 c 117 § 71; RRS § 10407.]

**80.36.270 Effect on existing contracts.** Nothing in this title shall be construed to prevent any telecommunications company from continuing to furnish the use of its line, equipment or service under any contract or contracts in force on June 7, 1911 or upon the taking effect of any schedule or schedules of rates subsequently filed with the commission, as herein provided, at the rates fixed in such contract or contracts. [1989 c 101 § 12; 1985 c 450 § 39; 1961 c 14 § 80.36.270. Prior: 1911 c 117 § 43; RRS § 10379.]

**80.36.300 Policy declaration.** The legislature declares it is the policy of the state to:

- (1) Preserve affordable universal telecommunications service;
- (2) Maintain and advance the efficiency and availability of telecommunications service;
- (3) Ensure that customers pay only reasonable charges for telecommunications service;
- (4) Ensure that rates for noncompetitive telecommunications services do not subsidize the competitive ventures of regulated telecommunications companies;
- (5) Promote diversity in the supply of telecommunications services and products in telecommunications markets throughout the state; and
- (6) Permit flexible regulation of competitive telecommunications companies and services. [1985 c 450 § 1.]

**80.36.310 Classification as competitive telecommunications companies, services—Initiation of proceedings—Notice and publication—Effective date—Date for final order.** (1) Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their classification.

(2) Any company petition or commission motion for competitive classification shall state an effective date not sooner than thirty days from the filing date. The company must provide notice and publication of the proposed competitive classification in the same manner as provided in RCW 80.36.110 for tariff changes. The proposed classification shall take effect on the stated effective date unless suspended by the commission and set for hearing under chapter 34.05

RCW or set for a formal investigation and fact-finding under RCW 80.36.145. The commission shall enter its final order with respect to any suspended classification within six months from the date of filing of a company's petition or the commission's motion. [1998 c 337 § 4; 1989 c 101 § 14; 1985 c 450 § 3.]

**Severability—1998 c 337:** See note following RCW 80.36.600.

**80.36.320 Classification as competitive telecommunications companies, services—Factors considered—Minimal regulation—Reclassification—Waiver of provisions during state of emergency.** (1) The commission shall classify a telecommunications company as a competitive telecommunications company if the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. The commission may waive any regulatory requirement under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
  - (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission; and
  - (c) Cooperate with commission investigations of customer complaints.
- (3) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if the revocation or reclassification would protect the public interest.

(4) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 408; 2006 c 347 § 3; 2003 c 189 § 3; 1998 c 337 § 5; 1989 c 101 § 15; 1985 c 450 § 4.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—1998 c 337:** See note following RCW 80.36.600.

**80.36.330 Classification as competitive telecommunications companies, services—Effective competition defined—Minimal regulation—Prices and rates—Reclassification—Waiver of provisions during state of emergency.**

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services, including those not subject to commission jurisdiction;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) Competitive telecommunications services are subject to minimal regulation. The commission may waive any regulatory requirement under this title for companies offering a competitive telecommunications service when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A company offering a competitive telecommunications service shall at a minimum:

(a) Keep its accounts according to rules adopted by the commission;

(b) File financial reports for competitive telecommunications services with the commission as required by the commission and in a form and at times prescribed by the commission; and

(c) Cooperate with commission investigations of customer complaints.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the tele-

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communications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.

(9) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 409; 2007 c 26 § 1; 2006 c 347 § 4; 2003 c 189 § 4; 1998 c 337 § 6; 1989 c 101 § 16; 1985 c 450 § 5.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—1998 c 337:** See note following RCW 80.36.600.

**80.36.332 Noncompetitive telecommunications companies, services—Minimal regulation.** (1) A noncompetitive telecommunications company may petition to have packages or bundles of telecommunications services it offers be subject to minimal regulation. The commission shall grant the petition where:

(a) Each noncompetitive service in the packages or bundle is readily and separately available to customers at fair, just, and reasonable prices;

(b) The price of the package or bundle is equal to or greater than the cost for tariffed services plus the cost of any competitive services as determined in accordance with RCW 80.36.330(3); and

(c) The availability and price of the stand-alone noncompetitive services are displayed in the company's tariff and on its web site consistent with commission rules.

(2) For purposes of this section, "minimal regulation" shall have the same meaning as under RCW 80.36.330.

(3) The commission may waive any regulatory requirement under this title with respect to packages or bundles of telecommunications services if it finds those requirements are no longer necessary to protect public interest. [2007 c 26 § 2.]

**80.36.333 Price lists in effect before June 7, 2006—Extension.** (1) Until June 30, 2007, a telecommunications company may continue to maintain on file with the commission any price list that, pursuant to RCW 80.36.100,

80.36.320, and 80.36.330, was on file and in effect before June 7, 2006. The price list is subject to the statutes and rules in effect immediately before June 7, 2006.

(2) The commission may, upon petition by a company with a price list on file before June 7, 2006, extend the deadline in subsection (1) of this section until June 30, 2008. The commission may approve an extension only if the petitioning company demonstrates that it cannot reasonably implement a replacement for its price list by June 30, 2007, and that the extension of time will not result in harm to customers or competition. [2006 c 347 § 5.]

**80.36.338 Withdrawal of price list—Customer information, opportunity to accept changes in rates, terms, or conditions—Cancellation period.** Each company withdrawing a filed price list shall provide each customer receiving service under the price list with information about the rates, terms, and conditions under which the service will continue to be provided. If the rates, terms, and conditions do not change upon withdrawal of the price list, such rates, terms, and conditions shall be binding to the same extent as the price list. If any of the rates, terms, and conditions do change upon withdrawal of the price list, the company must provide each customer with a reasonable opportunity to decide whether to accept the changed rate, term, or condition. If a customer does not cancel service within thirty days after notice of the change is given, the customer will be deemed to have accepted all the rates, terms, and conditions offered by the company. [2006 c 347 § 6.]

**80.36.340 Banded rates.** The commission may approve a tariff which includes banded rates for any telecommunications service if such tariff is in the public interest. "Banded rate" means a rate which has a minimum and a maximum rate. The minimum rate in the rate band shall cover the cost of the service. Rates may be changed within the rate band upon such notice as the commission may order. [1985 c 450 § 6.]

**80.36.350 Registration of new companies—Waiver of provisions during state of emergency.** Each telecommunications company not operating under tariff in Washington on January 1, 1985, shall register with the commission before beginning operations in this state. The registration shall be on a form prescribed by the commission and shall contain such information as the commission may by rule require, but shall include as a minimum the name and address of the company; the name and address of its registered agent, if any; the name, address, and title of each officer or director; its most current balance sheet; its latest annual report, if any; and a description of the telecommunications services it offers or intends to offer.

The commission may require as a precondition to registration the procurement of a performance bond sufficient to cover any advances or deposits the telecommunications company may collect from its customers, or order that such advances or deposits be held in escrow or trust.

The commission may deny registration to any telecommunications company which:

- (1) Does not provide the information required by this section;
- (2) Fails to provide a performance bond, if required;
- (3) Does not possess adequate financial resources to provide the proposed service; or
- (4) Does not possess adequate technical competency to provide the proposed service.

The commission shall take action to approve or issue a notice of hearing concerning any application for registration within thirty days after receiving the application. The commission may approve an application with or without a hearing. The commission may deny an application after a hearing.

A telecommunications company may also submit a petition for competitive classification under RCW 80.36.310 at the time it applies for registration. The commission may act on the registration application and the competitive classification petition at the same time.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 410; 1990 c 10 § 1; 1985 c 450 § 7.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**80.36.360 Exempted actions or transactions.** For the purposes of RCW 19.86.170, actions or transactions of competitive telecommunications companies, or associated with competitive telecommunications services, shall not be deemed otherwise permitted, prohibited, or regulated by the commission. [1985 c 450 § 8.]

**80.36.370 Certain services not regulated.** The commission shall not regulate the following:

- (1) One way broadcast or cable television transmission of television or radio signals;
- (2) Private telecommunications systems;
- (3) Telegraph services;
- (4) Any sale, lease, or use of customer premises equipment except such equipment as is regulated on July 28, 1985;
- (5) Private shared telecommunications services, unless the commission finds, upon notice and investigation, that customers of such services have no alternative access to local exchange telecommunications companies. If the commission makes such a finding, it may require the private shared telecommunications services provider to make alternative facilities or conduit space available on reasonable terms and conditions at reasonable prices;
- (6) Radio communications services provided by a regulated telecommunications company, except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company the commission may regulate the radio communication service of that company. [1990 c 118 § 1; 1985 c 450 § 9.]

**80.36.375 Personal wireless services—Siting microcells and/or minor facilities—Definitions.** (1) If a personal

wireless service provider applies to site several microcells and/or minor facilities in a single geographical area:

(a) If one or more of the microcells and/or minor facilities are not exempt from the requirements of RCW 43.21C.030(2)(c), local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents required by chapter 43.21C RCW that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions under chapter 43.21C RCW regarding all the microcells and/or minor facilities in a single administrative proceeding; and

(b) Local governmental entities are encouraged: (i) To allow the applicant, at the applicant's discretion, to file a single set of documents for land use permits that will apply to all the microcells and/or minor facilities to be sited; and (ii) to render decisions regarding land use permits for all the microcells and/or minor facilities in a single administrative proceeding.

(2) For the purposes of this section:

(a) "Personal wireless services" means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined by federal laws and regulations.

(b) "Microcell" means a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length.

(c) "Minor facility" means a wireless communication facility consisting of up to three antennas, each of which is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length; and the associated equipment cabinet that is six feet or less in height and no more than forty-eight square feet in floor area. [1997 c 219 § 2; 1996 c 323 § 3.]

**Findings—1996 c 323:** See note following RCW 43.70.600.

**80.36.390 Telephone solicitation.** (1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a residential telephone customer and conversation for the purpose of encouraging a person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this

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section, an organization as defined in \*RCW 29.01.090 or 29.01.100 and organized pursuant to \*RCW 29.42.010 shall not be considered a commercial or nonprofit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first thirty seconds of the telephone call.

(3) If, at any time during the telephone contact, the called party states or indicates that he or she does not wish to be called again by the company or organization or wants to have his or her name and individual telephone number removed from the telephone lists used by the company or organization making the telephone solicitation, then:

(a) The company or organization shall not make any additional telephone solicitation of the called party at that telephone number within a period of at least one year; and

(b) The company or organization shall not sell or give the called party's name and telephone number to another company or organization: PROVIDED, That the company or organization may return the list, including the called party's name and telephone number, to the company or organization from which it received the list.

(4) A violation of subsection (2) or (3) of this section is punishable by a fine of up to one thousand dollars for each violation.

(5) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company or organization of this section, the attorney general shall notify the company with a letter of warning that the section has been violated.

(6) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

(7) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories. [1987 c 229 § 13; 1986 c 277 § 2.]

**\*Reviser's note:** RCW 29.01.090, 29.01.100, and 29.42.010 were recodified as RCW 29A.04.085, 29A.04.097, and 29A.80.010, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.085 and 29A.80.010 were subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.085 and 29A.80.010, see RCW 29A.04.086 and 29A.80.011.

**Legislative finding—1986 c 277:** "The legislature finds that certain kinds of telephone solicitation are increasing and that these solicitations interfere with the legitimate privacy rights of the citizens of the state. A study conducted by the utilities and transportation commission, as directed by the forty-ninth legislature, has found that the level of telephone solicitation in this state is significant to warrant regulatory action to protect the privacy rights of the citizens of the state. It is the intent of the legislature to clarify and establish the rights of individuals to reject unwanted telephone solicitations." [1986 c 277 § 1.]

*Charitable solicitations: Chapter 19.09 RCW.*

*Commercial telephone solicitation: Chapter 19.158 RCW.*

**80.36.400 Automatic dialing and announcing device—Commercial solicitation by.** (1) As used in this section:

(a) An automatic dialing and announcing device is a device which automatically dials telephone numbers and plays a recorded message once a connection is made.

(b) Commercial solicitation means the unsolicited initiation of a telephone conversation for the purpose of encouraging a person to purchase property, goods, or services.

(2) No person may use an automatic dialing and announcing device for purposes of commercial solicitation. This section applies to all commercial solicitation intended to be received by telephone customers within the state.

(3) A violation of this section is a violation of chapter 19.86 RCW. It shall be presumed that damages to the recipient of commercial solicitations made using an automatic dialing and announcing device are five hundred dollars.

(4) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating automatic dialing and announcing devices. [1986 c 281 § 2.]

**Legislative finding—1986 c 281:** "The legislature finds that the use of automatic dialing and announcing devices for purposes of commercial solicitation: (1) Deprives consumers of the opportunity to immediately question a seller about the veracity of their claims; (2) subjects consumers to unwarranted invasions of their privacy; and (3) encourages inefficient and potentially harmful use of the telephone network. The legislature further finds that it is in the public interest to prohibit the use of automatic dialing and announcing devices for purposes of commercial solicitation." [1986 c 281 § 1.]

**80.36.410 Washington telephone assistance program—Findings.** (1) The legislature finds that universal telephone service is an important policy goal of the state. The legislature further finds that: (a) Recent changes in the telecommunications industry, such as federal access charges, raise concerns about the ability of low-income persons to continue to afford access to local exchange telephone service; and (b) many low-income persons making the transition to independence from receiving supportive services through community agencies do not qualify for economic assistance from the department.

(2) Therefore, the legislature finds that: (a) It is in the public interest to take steps to mitigate the effects of these changes on low-income persons; and (b) advances in telecommunications technologies, such as community service voice mail provide new and economically efficient ways to secure many of the benefits of universal service to low-income persons who are not customers of local exchange telephone service. [2003 c 134 § 2; 2002 c 104 § 2; 1987 c 229 § 3.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.420 Washington telephone assistance program—Availability, components.** The Washington telephone assistance program shall be available to participants of programs set forth in RCW 80.36.470. Assistance shall consist of the following components:

(1) A discount on service connection fees of fifty percent or more as set forth in RCW 80.36.460.

(2) A waiver of deposit requirements on local exchange service, as set forth in RCW 80.36.460.

(3) A discounted flat rate service for local exchange service, which shall be subject to the following conditions:

(a) The commission shall establish a single telephone assistance rate for all local exchange companies operating in the state of Washington. The telephone assistance rate shall include any federal end user charges and any other charges necessary to obtain local exchange service.

(b) The commission shall, in establishing the telephone assistance rate, consider all charges for local exchange service, including federal end user charges, mileage charges, extended area service, and any other charges necessary to obtain local exchange service.

(c) The telephone assistance rate shall only be available to eligible customers subscribing to the lowest priced local exchange flat rate service, where the lowest priced local exchange flat rate service, including any federal end user charges and any other charges necessary to obtain local exchange service, is greater than the telephone assistance rate.

(d) The cost of providing the service shall be paid, to the maximum extent possible, by a waiver of all or part of federal end user charges and, to the extent necessary, from the telephone assistance fund created by RCW 80.36.430.

(4) A discount on a community service voice mailbox that provides recipients with (a) an individually assigned telephone number; (b) the ability to record a personal greeting; and (c) a secure private security code to retrieve messages. [2003 c 134 § 3; 1990 c 170 § 2; 1987 c 229 § 4.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.430 Washington telephone assistance program—Excise tax—Expenses of community service voice mail.** (1) The Washington telephone assistance program shall be funded by a telephone assistance excise tax on all switched access lines and by funds from any federal government or other programs for this purpose. Switched access lines are defined in RCW 82.14B.020. The telephone assistance excise tax shall be applied equally to all residential and business access lines not to exceed fourteen cents per month. The department shall submit an approved annual budget for the Washington telephone assistance program to the department of revenue no later than March 1st prior to the beginning of each fiscal year. The department of revenue shall then determine the amount of telephone assistance excise tax to be placed on each switched access line and shall inform local exchange companies and the utilities and transportation commission of this amount no later than May 1st. The department of revenue shall determine the amount of telephone assistance excise tax by dividing the total of the program budget funded by the telephone assistance excise tax, as submitted by the department, by the total number of switched access lines in the prior calendar year. The telephone assistance excise tax shall be separately identified on each ratepayer's bill as the "Washington telephone assistance program." All money collected from the telephone assistance excise tax shall be transferred to a telephone assistance fund administered by the department.

(2) Local exchange companies shall bill the fund for their expenses incurred in offering the telephone assistance program, including administrative and program expenses. The department shall disburse the money to the local exchange companies. The department is exempted from having to conclude a contract with local exchange companies in order to effect this reimbursement. The department shall recover its administrative costs from the fund. The department may specify by rule the range and extent of administrative and program expenses that will be reimbursed to local exchange companies.

(3) The department shall enter into an agreement with the department of community, trade, and economic development for an amount not to exceed eight percent of the prior fiscal year's total revenue for the administrative and program expenses of providing community service voice mail services. The community service voice mail service may include toll-free lines in community action agencies through which recipients can access their community service voice mailboxes at no charge. [2004 c 254 § 2; 2003 c 134 § 4; 1990 c 170 § 3; 1987 c 229 § 5.]

**Responsibility for collection of tax—Implementation—2004 c 254:** See notes following RCW 43.20A.725.

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.440 Washington telephone assistance program—Rules.** (1) The commission and the department may adopt any rules necessary to implement RCW 80.36.410 through 80.36.470.

(2) Rules necessary for the implementation of community service voice mail services shall be made by the commission and the department in consultation with the department of community, trade, and economic development. [2003 c 134 § 5; 1990 c 170 § 4; 1987 c 229 § 6.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.450 Washington telephone assistance program—Limitation.** The Washington telephone assistance program shall limit reimbursement to one residential switched access line per eligible household, or one discounted community service voice mailbox per eligible person. [2003 c 134 § 6; 1993 c 249 § 2; 1987 c 229 § 7.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**Effective date—1993 c 249:** See note following RCW 80.36.005.

**80.36.460 Washington telephone assistance program—Deposit waivers, connection fee discounts.** Local exchange companies shall waive deposits on local exchange service for eligible subscribers and provide a fifty percent discount on the company's customary charge for commencing telecommunications service for eligible subscribers. Part or all of the remaining fifty percent of service connection fees may be paid by funds from federal government or other programs for this purpose. The commission or other appropriate agency shall make timely application for any available federal funds. The remaining portion of the connection fee to be paid by the subscriber shall be expressly payable by installment fees spread over a period of months. A subscriber may, however, choose to pay the connection fee in a lump sum.

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Costs associated with the waiver and discount shall be accounted for separately and recovered from the telephone assistance fund. [2003 c 134 § 7; 1990 c 170 § 5; 1987 c 229 § 8.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.470 Washington telephone assistance program—Eligibility.** (1) Adult recipients of department-administered programs for the financially needy which provide continuing financial or medical assistance, food stamps, or supportive services to persons in their own homes are eligible for participation in the telephone assistance program. The department shall notify the participants of their eligibility.

(2) Participants in community service voice mail programs are eligible for participation in services available under RCW 80.36.420 (1), (2), and (3) after completing use of community service voice mail services. Eligibility shall be for a period including the remainder of the current service year and the following service year. Community agencies shall notify the department of participants eligible under this subsection. [2003 c 134 § 8; 2002 c 104 § 3; 1990 c 170 § 6; 1987 c 229 § 9.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.475 Washington telephone assistance program—Report to legislature.** The department shall report to the appropriate committees of the house of representatives and the senate by December 1 of each year on the status of the Washington telephone assistance program. The report shall include the number of participants by qualifying social service programs receiving benefits from the telephone assistance program and the type of benefits participants receive. The report shall also include a description of the geographical distribution of participants, the program's annual revenue and expenditures, and any recommendations for legislative action. [2003 c 134 § 9; 1990 c 170 § 7.]

**Effective date—2003 c 134:** See note following RCW 80.36.005.

**80.36.500 Information delivery services through exclusive number prefix or service access code.** (1) As used in this section:

(a) "Information delivery services" means telephone recorded messages, interactive programs, or other information services that are provided for a charge to a caller through an exclusive telephone number prefix or service access code.

(b) "Information providers" means the persons or corporations that provide the information, prerecorded message, or interactive program for the information delivery service. The information provider generally receives a portion of the revenue from the calls.

(c) "Interactive program" means a program that allows an information delivery service caller, once connected to the information provider's announcement machine, to use the caller's telephone device to access more specific information.

(2) The utilities and transportation commission shall by rule require any local exchange company that offers information delivery services to a local telephone exchange to provide each residential telephone subscriber the opportunity to block access to all information delivery services offered

through the local exchange company. The rule shall take effect by October 1, 1988.

(3) All costs of complying with this section shall be borne by the information providers.

(4) The local exchange company shall inform subscribers of the availability of the blocking service through a bill insert and by publication in a local telephone directory. [1991 c 191 § 8; 1988 c 123 § 2.]

**Legislative finding, intent—1988 c 123:** "(1) The legislature finds that throughout the state there is widespread use of information delivery services, which are also known as information-access telephone services and commonly provided on a designated telephone number prefix. These services operate on a charge-per-call basis, providing revenue for both the information provider and the local exchange company. The marketing practices for these telephone services have at times been misleading to consumers and at other times specifically directed toward minors. The result has been placement of calls by individuals, particularly by children, who are uninformed about the charges that might apply. In addition, children may have secured access to obscene, indecent, and salacious material through these services. The legislature finds that these services can be blocked by certain local exchange companies at switching locations, and that devices exist which allow for blocking within a residence. Therefore, the legislature finds that residential telephone users in the state are entitled to the option of having their phones blocked from access to information delivery services.

(2) It is the intent of the legislature that the utilities and transportation commission and local exchange companies, to the extent feasible, distinguish between information delivery services that are misleading to consumers, directed at minors, or otherwise objectionable and adopt policies and rules that accomplish the purposes of RCW 80.36.500 with the least adverse effect on information delivery services that are not misleading to consumers, directed at minors, or otherwise objectionable." [1988 c 123 § 1.]

**Investigation and report by commission:** "By October 1, 1988, the commission shall investigate and report to the committees on energy and utilities in the house of representatives and the senate on methods to protect minors from obscene, indecent, and salacious materials available through the use of information delivery services. The investigation shall include a study of personal identification numbers, credit cards, scramblers, and beep-tone devices as methods of limiting access." [1988 c 123 § 3.]

**Severability—1988 c 123:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 123 § 4.]

*Information delivery services: Chapter 19.162 RCW.*

**80.36.510 Legislative finding.** The legislature finds that a growing number of companies provide, in a nonresidential setting, telecommunications services necessary to long distance service without disclosing the services provided or the rate, charge or fee. The legislature finds that provision of these services without disclosure to consumers is a deceptive trade practice. [1988 c 91 § 1.]

**80.36.520 Disclosure of alternate operator services.** The utilities and transportation commission shall by rule require, at a minimum, that any telecommunications company, operating as or contracting with an alternate operator services company, assure appropriate disclosure to consumers of the provision and the rate, charge or fee of services provided by an alternate operator services company.

For the purposes of this chapter, "alternate operator services company" means a person providing a connection to intrastate or interstate long-distance services from places including, but not limited to, hotels, motels, hospitals, and customer-owned pay telephones. [1988 c 91 § 2.]

**80.36.522 Alternate operator service companies—Registration—Penalties.** All alternate operator service companies providing services within the state shall register with the commission as a telecommunications company before providing alternate operator services. The commission may deny an application for registration of an alternate operator services company if, after a hearing, it finds that the services and charges to be offered by the company are not for the public convenience and advantage. The commission may suspend the registration of an alternate operator services company if, after a hearing, it finds that the company does not meet the service or disclosure requirements of the commission. Any alternate operator services company that provides service without being properly registered with the commission shall be subject to a penalty of not less than five hundred dollars and not more than one thousand dollars for each and every offense. In case of a continuing offense, every day's continuance shall be a separate offense. The penalty shall be recovered in an action as provided in RCW 80.04.400. [1990 c 247 § 2.]

**80.36.524 Alternate operator service companies—Rules.** The commission may adopt rules that provide for minimum service levels for telecommunications companies providing alternate operator services. The rules may provide a means for suspending the registration of a company providing alternate operator services if the company fails to meet minimum service levels or if the company fails to provide appropriate disclosure to consumers of the protection afforded under this chapter. [1990 c 247 § 3.]

**80.36.530 Violation of consumer protection act—Damages.** In addition to the penalties provided in this title, a violation of RCW 80.36.510, 80.36.520, or 80.36.524 constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of RCW 80.36.510, 80.36.520, or 80.36.524 are not reasonable in relation to the development and preservation of business, and constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. It shall be presumed that damages to the consumer are equal to the cost of the service provided plus two hundred dollars. Additional damages must be proved. [1990 c 247 § 4; 1988 c 91 § 3.]

**80.36.540 Telefacsimile messages—Unsolicited transmission—Penalties.** (1) As used in this section, "telefacsimile message" means the transmittal of electronic signals over telephone lines for conversion into written text.

(2) No person, corporation, partnership, or association shall initiate the unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient.

(3)(a) Except as provided in (b) of this subsection, this section shall not apply to telefacsimile messages sent to a recipient with whom the initiator has had a prior contractual or business relationship.

(b) A person shall not initiate an unsolicited telefacsimile message under the provisions of (a) of this subsection if the person knew or reasonably should have known that the recipient is a governmental entity.

(4) Notwithstanding subsection (3) of this section, it is unlawful to initiate any telefacsimile message to a recipient who has previously sent a written or telefacsimile message to the initiator clearly indicating that the recipient does not want to receive telefacsimile messages from the initiator.

(5) The unsolicited transmission of telefacsimile messages promoting goods or services for purchase by the recipient is a matter affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. The transmission of unsolicited telefacsimile messages is not reasonable in relation to the development and preservation of business. A violation of this section is an unfair or deceptive act in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. Damages to the recipient of telefacsimile messages in violation of this section are five hundred dollars or actual damages, whichever is greater.

(6) Nothing in this section shall be construed to prevent the Washington utilities and transportation commission from adopting additional rules regulating transmissions of telefacsimile messages. [1990 c 221 § 1.]

**80.36.555 Enhanced 911 service—Residential service required.** By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any private shared telecommunications services provider that provides service to residential customers shall assure that the telecommunications system is connected to the public switched network such that calls to 911 result in automatic location identification for each residential unit in a format that is compatible with the existing or planned county enhanced 911 system. [1995 c 243 § 3.]

**Findings—1995 c 243:** "The legislature finds that citizens of the state increasingly rely on the dependability of enhanced 911, a system that allows the person answering an emergency call to immediately determine the location of the emergency without the need of the caller to speak. The legislature further finds that in some cases, calls made from telephones connected to private telephone systems may not be precisely located by the answerer, eliminating some of the benefit of enhanced 911, and that this condition could additionally imperil citizens calling from these locations in an emergency. The legislature also finds that until national standards have been developed to address this condition, information-forwarding requirements should be mandated for only those settings with the most risk, including schools, residences, and some business settings." [1995 c 243 § 1.]

**Severability—1995 c 243:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 243 § 12.]

**80.36.560 Enhanced 911 service—Business service required.** By January 1, 1997, or one year after enhanced 911 service becomes available or a private switch automatic location identification service approved by the Washington utilities and transportation commission is available from the serving local exchange telecommunications company, whichever is later, any commercial shared services provider of private shared telecommunications services for hire or resale to the general public to multiple unaffiliated business users from a single system shall assure that such a system is connected to the public switched network such that calls to

911 result in automatic location identification for each telephone in a format that is compatible with the existing or planned county enhanced 911 system. This section shall apply only to providers of service to businesses containing a physical area exceeding twenty-five thousand square feet, or businesses on more than one floor of a building, or businesses in multiple buildings. [1995 c 243 § 5.]

**Findings—Severability—1995 c 243:** See notes following RCW 80.36.555.

**80.36.600 Universal service program—Planning and preparation—Commission's duties—Approval of legislature required—Definitions.** (1) The commission shall plan and prepare to implement a program for the preservation and advancement of universal telecommunications service which shall not take effect until the legislature approves the program. The purpose of the universal service program is to benefit telecommunications ratepayers in the state by minimizing implicit sources of support and maximizing explicit sources of support that are specific, sufficient, competitively neutral, and technologically neutral to support basic telecommunications services for customers of telecommunications companies in high-cost locations.

(2) In preparing a universal service program for approval by the legislature, the commission shall:

(a) Estimate the cost of supporting all lines located in high-cost locations and the cost of supporting one primary telecommunications line for each residential or business customer located in high-cost locations;

(b) Determine the assessments that must be made on all telecommunications carriers, and the manner of collection, to provide support for:

(i) All residential and business lines located in high-cost locations;

(ii) Only one primary line for each residential or business customer located in high-cost locations;

(c) Designate those telecommunications carriers serving high-cost locations that are eligible to receive support for the benefit of their customers in those locations;

(d) Adopt or prepare to adopt all necessary rules for administration of the program; and

(e) Provide a schedule of all fees and payments proposed or expected to be proposed by the commission under subsection (3)(d) of this section.

(3) Once a program is approved by the legislature and subsequently established, the following provisions apply unless otherwise directed by the legislature:

(a) All transfers of money necessary to provide the support shall be outside the state treasury and not be subject to appropriation;

(b) The commission may delegate to the commission secretary or other staff the authority to resolve disputes or make other decisions necessary to the administration of the program;

(c) The commission may contract with an independent program administrator subject to the direction and control of the commission and may authorize the establishment of an account or accounts in independent financial institutions should that be necessary for administration of the program;

(d) The expenses of an independent program administrator shall be authorized by the commission and shall be paid

out of contributions by the telecommunications carriers participating in the program;

(e) The commission may require the carriers participating in the program, as part of their contribution, to pay into the public service revolving fund the costs of the commission attributable to supervision and administration of the program that are not otherwise recovered through fees paid to the commission.

(4) The commission shall establish standards for review or testing of all telecommunications carriers' compliance with the program for the purpose of ensuring the support received by a telecommunications carrier is used only for the purposes of the program and that each telecommunications carrier is making its proper contribution to the program. The commission may conduct the review or test, or contract with an independent administrator or other person to conduct the review or test.

(5) The commission shall coordinate administration of the program with any federal universal service program and may administer the federal fund in conjunction with the state program if so authorized by federal law.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications carrier" has the same meaning as defined in 47 U.S.C. Sec. 153(44).

(b) "Basic telecommunications services" means the following services:

- (i) Single-party service;
- (ii) Voice grade access to the public switched network;
- (iii) Support for local usage;
- (iv) Dual tone multifrequency signaling (touch-tone);
- (v) Access to emergency services (911);
- (vi) Access to operator services;
- (vii) Access to interexchange services;
- (viii) Access to directory assistance; and
- (ix) Toll limitation services.

(c) "High-cost location" means a location where the cost of providing telecommunications services is greater than a benchmark established by the commission by rule.

(7) Each telecommunications carrier that provides intrastate telecommunications services shall provide whatever information the commission may reasonably require in order to fulfill the commission's responsibilities under subsection (2) of this section. [1999 c 372 § 16; 1998 c 337 § 1.]

**Severability—1998 c 337:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 337 § 8.]

**80.36.610 Universal service program—Authority of commission—Rules—Fees—Legislative intent.** (1) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by RCW 80.36.600. The commission may establish by rule fees to be paid by persons seeking commission action under the federal act, and by parties to pro-

ceedings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program.

(2) The legislature intends that under the future universal service program established in this state:

(a) Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service in the state;

(b) The contributions shall be competitively and technologically neutral; and

(c) The universal service program to be established in accordance with RCW 80.36.600 shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254. [1998 c 337 § 2.]

**Severability—1998 c 337:** See note following RCW 80.36.600.

**80.36.620 Universal service program—Rules.** Any rules regarding universal service adopted by the utilities and transportation commission shall comply with the purpose, as stated in RCW 80.36.600, for establishing a program for the preservation and advancement of universal telecommunications service. Services to be supported are only those basic services defined in \*RCW 80.36.600(7). [1998 c 337 § 3.]

**\*Reviser's note:** RCW 80.36.600 was amended by 1999 c 372 § 16, changing subsection (7) to subsection (6).

**Severability—1998 c 337:** See note following RCW 80.36.600.

**80.36.850 Extended area service defined.** As used in RCW 80.36.855, "extended area service" means the ability to call from one exchange to another exchange without incurring a toll charge. [1989 c 282 § 2.]

**Policy—Program limitations—Report to legislative committees—Program expiration—1989 c 282:** See notes following RCW 80.36.855.

**80.36.855 Extended area service program.** Any business, resident, or community may petition for and shall receive extended area service within the service territory of the local exchange company that provides service to the petitioner under the following conditions:

(1) Any customer, business or residential, interested in obtaining extended area service in their community must collect and submit to the commission the signatures of a representative majority of affected customers in the community. A "representative majority" for purposes of this section consists of fifteen percent of the access lines in that community;

(2) After receipt of the signatures, the commission shall authorize a study to be conducted by the affected local exchange company in order to determine whether a community of interest exists for the implementation of extended area service. For purposes of this section a community of interest shall be found if the average number of calls per customer per month from the area petitioning for extended area service to the area to which extended area service will be implemented is at least five;

(3) If a community of interest exists, the commission shall then calculate any increased rate that would be applied to the area which would have extended area service granted to it. This rate shall be based on the charges to a rate group having the same or similar calling capability as set forth in the tariffs of the local exchange telecommunications company involved;

(4) The affected telecommunications company shall be given the opportunity to propose an alternative plan that might be priced differently and that plan shall be included in the poll of subscribers as an alternative under subsection (5) of this section;

(5) After determining the amount of any additional rate, the commission shall notify the subscribers who will be affected by the increased rate and conduct a poll of those subscribers. If a simple majority votes its approval the commission shall order extended area service; and

(6) Any extended area service program adopted pursuant to this section shall be considered experimental and not binding on the commission in subsequent extended area service proceedings. If an extended area service program adopted pursuant to this section results in a revenue deficiency for a local exchange company, the commission shall allocate the resulting revenue requirement in a manner which produces fair, just and reasonable rates for all classes of customers. [1989 c 282 § 3.]

**Policy—1989 c 282:** "Universal telephone service for the people of the state of Washington is a policy goal of the legislature and has been enacted previously into Washington law. Access to universal and affordable telephone service enhances the economic and social well-being of Washington citizens." [1989 c 282 § 1.]

**Program limitations—Report to legislative committees—1989 c 282:** "The pilot program specified in sections 2 and 3 of this act applies only to extended area service petitions which meet the conditions under section 3 of this act, and have been filed with the commission by January 1, 1989. Any petitions for extended area service filed after January 1, 1989, shall be addressed under terms and conditions determined by the commission. By December 1, 1990, the commission shall submit to the energy and utilities committees of the house of representatives and the senate a report on extended area service. The report shall include:

(1) The status of any experimental, pilot program which provides extended area service developed under this section, and whether such an experimental, pilot program approach should continue to be made available;

(2) The status of all extended area service petitions pending at the commission;

(3) Commission action on the recommendations of the local extended calling advisory committee; and

(4) Commission recommendations for any other legislation addressing the issue of extended area service." [1989 c 282 § 4.] Section 2 of this act is the enactment of RCW 80.36.850. Section 3 of this act is the enactment of RCW 80.36.855.

**Program expiration—1989 c 282:** "The extended area service program under sections 2 through 5 of this act shall expire on December 1, 1990, except for any extended area service obtained by any business residence or community and put in place under section 3 of this act." [1989 c 282 § 5.]

**80.36.900 Severability—1985 c 450.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 450 § 42.]

**80.36.901 Legislative review of 1985 c 450—1989 c 101.** The legislature shall conduct an intensive review of chapter 450, Laws of 1985 during the 1991-1993 biennium to (2008 Ed.)

determine whether the purposes of chapter 450, Laws of 1985 have been achieved and if further relaxation of regulatory requirements is in the public interest. [1989 c 101 § 18; 1985 c 450 § 44.]

## Chapter 80.40 RCW

### UNDERGROUND NATURAL GAS STORAGE ACT

#### Sections

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**80.40.010 Definitions.** As used in this chapter, unless specifically defined otherwise or unless the context indicates otherwise:

"Commission" shall mean the Washington utilities and transportation commission;

"Committee" shall mean the oil and gas conservation committee established by \*RCW 78.52.020;

"Natural gas" shall mean gas either in the earth in its original state or after the same has been produced by removal therefrom of component parts not essential to its use for light and fuel;

"Natural gas company" shall mean every corporation, company, association, joint stock association, partnership or person authorized to do business in this state and engaged in the transportation, distribution, or underground storage of natural gas;

"Underground reservoir" shall mean any subsurface sand, strata, formation, aquifer, cavern or void whether natural or artificially created, suitable for the injection and storage of natural gas therein and the withdrawal of natural gas therefrom;

"Underground storage" shall mean the process of injecting and storing natural gas within and withdrawing natural gas from an underground reservoir: PROVIDED, The withdrawal of gas from an underground reservoir shall not be deemed a taking or producing within the terms of RCW 82.04.100. [1963 c 201 § 2.]

\*Reviser's note: RCW 78.52.020 was repealed by 1994 sp.s. c 9 § 869, effective July 1, 1994.

**80.40.020 Declaration concerning the public interest.** The underground storage of natural gas will promote the economic development of the state and provide for more economic distribution of natural gas to the domestic, commercial and industrial consumers of this state, thereby serving the public interest. [1963 c 201 § 3.]

**80.40.030 Eminent domain.** Any natural gas company having received an order under RCW 80.40.040 shall have the right of eminent domain to be exercised in the manner provided in and subject to the provisions of chapter 8.20

RCW to acquire for its use for the underground storage of natural gas any underground reservoir, as well as such other property or interests in property as may be required to adequately maintain and utilize the underground reservoir for the underground storage of natural gas, including easements and rights-of-way for access to and egress from the underground storage reservoir. The right of eminent domain granted hereby shall apply to property or property interests held in private ownership, provided condemnor has exercised good faith in negotiations for private sale or lease. No property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid. Any property or interest therein so acquired by any natural gas company shall be used exclusively for the purposes for which it was acquired. Any decree of appropriation hereunder shall define and limit the rights condemned and shall provide for the reversion of such rights to the defendant or defendants or their successors in interest upon abandonment of the underground storage project. Good faith exploration work or development work relative to the storage reservoir is conclusive evidence that its use has not been abandoned. The court may include in such decree such other relevant conditions, covenants and restrictions as it may deem fair and equitable. [1963 c 201 § 4.]

**80.40.040 Eminent domain—Application to \*oil and gas conservation committee prerequisite to eminent domain—Procedure.** Any natural gas company desiring to exercise the right of eminent domain to condemn any property or interest in property for the underground storage of natural gas shall first make application to the \*oil and gas conservation committee for an order approving the proposed project. Notice of such application shall be given by the committee to the utilities and transportation commission, to the director of ecology, to the commissioner of public lands, and to all other persons known to have an interest in the property to be condemned. Said notice shall be given in the manner provided by RCW 8.20.020 as amended. The committee shall publish notice of said application at least once each week for three successive weeks in some newspaper of general circulation in the county or counties where the proposed underground storage project is located. If no written requests for hearing on the application are received by the committee within forty-five days from the date of service of notice of the application and publication thereof, the committee may proceed without hearing and issue its order. If a hearing is requested, a public hearing on the application will be held within the county or one of the counties where the proposed underground storage project is located. Any order approving the proposed underground storage project shall contain findings that (1) the underground storage of natural gas in the lands or property sought to be condemned is in the public interest and welfare; (2) the underground reservoir is reasonably practicable, and the applicant has complied with all applicable oil and gas conservation laws of the state of Washington; (3) the underground reservoir sought to be condemned is nonproductive of economically recoverable valuable minerals or materials, or of oil or gas in commercial quantities under either primary or secondary recovery methods, and nonproductive of fresh water in commercial quantities with feasible and reasonable pumping lift; (4) the natural

gas company has acquired the right by grant, lease or other agreement to store natural gas under at least sixty-five percent of the area of the surface of the land under which such proposed underground storage reservoir extends; (5) the natural gas company carries public liability insurance or has deposited collateral in amounts satisfactory to the committee or has furnished a financial statement showing assets in a satisfactory amount, to secure payment of any liability resulting from any occurrence arising out of or caused by the operation or use of any underground reservoir or facilities incidental thereto; (6) the underground storage project will not injure, pollute, or contaminate any usable fresh water resources; (7) the underground storage project will not injure, interfere with, or endanger any mineral resources or the development or extraction thereof. The order of the committee may be reviewed in the manner provided by chapter 34.05 RCW: PROVIDED, That if an appeal is not commenced within thirty days of the date of the order of the committee, the same shall be final and conclusive. [1988 c 127 § 35; 1963 c 201 § 5.]

**\*Reviser's note:** The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

**80.40.050 Rights of company using storage—Rights of owners of condemned land and interests therein.** All natural gas in an underground reservoir utilized for underground storage, whether acquired by eminent domain or otherwise, shall at all times be the property of the natural gas company utilizing said underground storage, its heirs, successors, or assigns; and in no event shall such gas be subject to any right of the owner of the surface of the land under which said underground reservoir lies or of the owner of any mineral interest therein or of any person other than the said natural gas company, its heirs, successors and assigns to release, produce, take, reduce to possession, or otherwise interfere with or exercise any control thereof: PROVIDED, That the right of condemnation hereby granted shall be without prejudice to the rights of the owner of the condemned lands or of the rights and interest therein to drill or bore through the underground reservoir in such a manner as shall protect the underground reservoir against pollution and against the escape of natural gas in a manner which complies with the orders, rules and regulations of the \*oil and gas conservation committee issued for the purpose of protecting underground storage and shall be without prejudice to the rights of the owners of said lands or other rights or interests therein as to all other uses thereof. The additional cost of complying with regulations or orders to protect the underground storage shall be paid by the condemnor. [1963 c 201 § 6.]

**\*Reviser's note:** The duties of the oil and gas conservation committee were transferred to the department of natural resources by 1994 sp.s. c 9, effective July 1, 1994.

**80.40.060 Leases by commissioner of public lands.** The commissioner of public lands is authorized to lease public lands, property, or any interest therein for the purpose of underground storage of natural gas. Any such lease shall be upon such terms and conditions as the said commissioner may deem for the best interests of the state and as are customary and proper for the protection of the rights of the state and

of the lessee and of the owners of the surface of the leased lands, and may be for such primary term as said commissioner may determine and as long thereafter as the lessee continues to use such lands, property, or interest therein for underground storage of gas. [1963 c 201 § 7.]

**80.40.070 Leases by county commissioners.** Whenever it shall appear to the board of county commissioners of any county that it is for the best interests of said county, the taxing districts and the people thereof, that any county-owned or tax-acquired property owned by the county, either absolutely or as trustee, should be leased for the purpose of underground storage of natural gas therein, said board of county commissioners is hereby authorized to enter into written leases under the terms of which any county-owned lands, property, or interest therein are leased for the aforementioned purposes, with or without an option to purchase the land surface. Any such lease shall be upon such terms and conditions as said county commissioners may deem for the best interests of said county and the taxing districts, and may be for such primary term as said board may determine and as long thereafter as the lessee continues to use the said lands, property, or interest therein for underground storage of natural gas. [1963 c 201 § 8.]

**80.40.900 Short title.** This act shall be known as the "Underground Natural Gas Storage Act." [1963 c 201 § 9.]

**80.40.910 Chapter to be liberally construed.** It is intended that the provisions of this chapter shall be liberally construed to accomplish the purposes authorized and provided for. [1963 c 201 § 10.]

**80.40.920 Severability—1963 c 201.** If any part or parts of this chapter or the application thereof to any person or circumstances is held to be unconstitutional such invalidity shall not affect the validity of the remaining portions of this chapter, or the application thereof to other persons or circumstances. [1963 c 201 § 11.]

## Chapter 80.50 RCW

### ENERGY FACILITIES—SITE LOCATIONS

#### Sections

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80.50.904	Effective date—1996 c 4.

**Reviser's note:** Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

*Energy supply emergencies: Chapter 43.21G RCW.*

*Regulation of dangerous wastes associated with energy facilities: RCW 70.105.110.*

*State energy office: Chapter 43.21F RCW.*

*Water pollution control, energy facilities, permits, etc., duties of energy facility site evaluation council: RCW 90.48.262.*

**80.50.010 Legislative finding—Policy—Intent.** The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation of such facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; and to pursue beneficial changes in the environment.

(3) To provide abundant energy at reasonable cost.

(4) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

(5) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay. [2001 c 214 § 1; 1996 c 4 § 1; 1975-'76 2nd ex.s. c 108 § 29; 1970 ex.s. c 45 § 1.]

**Severability—2001 c 214:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 214 § 33.]

**Effective date—2001 c 214:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2001]." [2001 c 214 § 34.]

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

*Nuclear power facilities, joint operation: Chapter 54.44 RCW.*

*State energy office: Chapter 43.21F RCW.*

**80.50.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(2) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(4) "Site" means any proposed or approved location of an energy facility, alternative energy resource, or electrical transmission facility.

(5) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(6) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the

northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(7) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal power commission.

(8) "Electrical transmission facilities" means electrical power lines and related equipment.

(9) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(10) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel, including nuclear materials, for distribution of electricity by electric utilities.

(11) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(12) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(13) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(14) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(15) "Energy plant" means the following facilities together with their associated facilities:

(a) Any stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more, including associated facilities. For the purposes of this subsection, "floating thermal power plants" means a thermal power plant that is suspended on the surface of water by means of a barge, vessel, or other floating platform;

(b) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred

million standard cubic feet of natural gas per day, which has been transported over marine waters;

(c) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(d) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(e) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum into refined products.

(16) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(17) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

(18) "Alternative energy resource" means: (a) Wind; (b) solar energy; (c) geothermal energy; (d) landfill gas; (e) wave or tidal action; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(19) "Secretary" means the secretary of the United States department of energy.

(20) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with cities, towns, and counties prior to accepting applications for all transmission facilities.

(21) "Preapplicant" means a person considering applying for a site certificate agreement for any transmission facility. [2007 c 325 § 1. Prior: 2006 c 205 § 1; 2006 c 196 § 1; 2001 c 214 § 3; 1995 c 69 § 1; 1977 ex.s. c 371 § 2; 1975-'76 2nd ex.s. c 108 § 30; 1970 ex.s. c 45 § 2.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.030 Energy facility site evaluation council—Created—Membership—Support.** (1) There is created and established the energy facility site evaluation council.

(2)(a) The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the event of the chair's absence. The salary of the chair shall be determined under RCW

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43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

(b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington state department of community, trade, and economic development shall provide all administrative and staff support for the council. The director of the department of community, trade, and economic development has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW.

(3)(a) The council shall consist of the directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:

- (i) Department of ecology;
- (ii) Department of fish and wildlife;
- (iii) Department of community, trade, and economic development;
- (iv) Utilities and transportation commission; and
- (v) Department of natural resources.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

(c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy plant is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed

shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person. [2001 c 214 § 4; 1996 c 186 § 108. Prior: 1994 c 264 § 75; 1994 c 154 § 315; 1990 c 12 § 3; 1988 c 36 § 60; 1986 c 266 § 51; prior: 1985 c 466 § 71; 1985 c 67 § 1; 1985 c 7 § 151; prior: 1984 c 125 § 18; 1984 c 7 § 372; 1977 ex.s. c 371 § 3; 1975-'76 2nd ex.s. c 108 § 31; 1974 ex.s. c 171 § 46; 1970 ex.s. c 45 § 3.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Parts and captions not law—Effective date—Severability—1994 c 154:** See RCW 42.52.902, 42.52.904, and 42.52.905.

**Effective date—1990 c 12:** "This act shall take effect July 1, 1990." [1990 c 12 § 12.]

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**Severability—Headings—Effective date—1984 c 125:** See RCW 43.63A.901 through 43.63A.903.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.040 Energy facility site evaluation council—Powers enumerated.** The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, and operational conditions of certification of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To make and contract, when applicable, for independent studies of sites proposed by the applicant;

(7) To conduct hearings on the proposed location of the energy facilities;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy

facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED, That any on-site inspection required by the council shall be performed by other state agencies pursuant to inter-agency agreement: PROVIDED FURTHER, That the council may retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues. [2001 c 214 § 6; 1990 c 12 § 4; 1985 c 67 § 2; 1979 ex.s. c 254 § 1; 1977 ex.s. c 371 § 4; 1975-'76 2nd ex.s. c 108 § 32; 1970 ex.s. c 45 § 4.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Effective date—1990 c 12:** See note following RCW 80.50.030.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.045 Recommendations to secretary, federal energy regulatory commission—Siting electrical transmission corridors—Council designated as state authority for siting transmission facilities.** (1) The council shall consult with other state agencies, utilities, local municipal governments, public interest groups, tribes, and other interested persons to convey their views to the secretary and the federal energy regulatory commission regarding appropriate limits on federal regulatory authority in the siting of electrical transmission corridors in the state of Washington.

(2) The council is designated as the state authority for purposes of siting transmission facilities under the national energy policy act of 2005 and for purposes of other such rules or regulations adopted by the secretary. The council's authority regarding transmission facilities is limited to those transmission facilities that are the subject of section 1221 of the national energy policy act and this chapter.

(3) For the construction and modification of transmission facilities that are the subject of section 1221 of the national energy policy act, the council may: (a) Approve the siting of the facilities; and (b) consider the interstate benefits

expected to be achieved by the proposed construction or modification of the facilities in the state.

(4) When developing recommendations as to the disposition of an application for the construction or modification of transmission facilities under this chapter, the fuel source of the electricity carried by the transmission facilities shall not be considered. [2006 c 196 § 3.]

**80.50.060 Energy facilities to which chapter applies—Applications for certification—Forms—Information.**

(1) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (7) and (15). No construction of such energy facilities may be undertaken, except as otherwise provided in this chapter, after July 15, 1977, without first obtaining certification in the manner provided in this chapter.

(2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.

(3)(a) The provisions of this chapter apply to the construction, reconstruction, or modification of electrical transmission facilities when:

(i) The facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045;

(ii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage of at least one hundred fifteen thousand volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or

(iii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage in excess of one hundred fifteen thousand volts; and (B) located outside an electrical transmission corridor identified in (a)(i) and (ii) of this subsection (3).

(b) For the purposes of this subsection, "modify" means a significant change to an electrical transmission facility and does not include the following: (i) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures; (ii) the relocation of existing electrical transmission line facilities; (iii) the conversion of existing overhead lines to underground; or (iv) the placing of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.

(4) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (7) and (15).

(5) Applications for certification of energy facilities made prior to July 15, 1977, shall continue to be governed by

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the applicable provisions of law in effect on the day immediately preceding July 15, 1977, with the exceptions of RCW 80.50.190 and 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

(6) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require. [2007 c 325 § 2; 2006 c 196 § 4; 2001 c 214 § 2; 1977 ex.s. c 371 § 5; 1975-'76 2nd ex.s. c 108 § 34; 1970 ex.s. c 45 § 6.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.071 Council to receive applications—Fees or charges for application processing or certification monitoring.**

(1) The council shall receive all applications for energy facility site certification. The following fees or charges for application processing or certification monitoring shall be paid by the applicant or certificate holder:

(a) A fee of twenty-five thousand dollars for each proposed site, to be applied toward the cost of the independent consultant study authorized in this subsection, shall accompany the application and shall be a condition precedent to any further consideration or action on the application by the council. The council shall commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment for each site application. The council shall direct the consultant to study any matter which it deems essential to an adequate appraisal of the site. The full cost of the study shall be paid by the applicant: PROVIDED, That said costs exceeding a total of the twenty-five thousand dollars paid pursuant to subsection (1)(a) of this section shall be payable subject to the applicant giving prior approval to such excess amount.

(b) Each applicant shall, in addition to the costs of the independent consultant provided by subsection (1)(a) of this section, pay such reasonable costs as are actually and necessarily incurred by the council and its members as designated in RCW 80.50.030 in processing the application. Such costs shall include, but are not limited to, council member's wages, employee benefits, costs of a hearing examiner, a court reporter, additional staff salaries, wages and employee benefits, goods and services, travel expenses within the state and miscellaneous expenses, as arise directly from processing such application.

Each applicant shall, at the time of application submission, deposit twenty thousand dollars, or such lesser amount as may be specified by council rule, to cover costs provided for by subsection (1)(b) of this section. Reasonable and necessary costs of the council directly attributable to application processing shall be charged against such deposit.

The council shall submit to each applicant a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The applicant shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That such applicant may, at the request of the council, increase the

amount of funds on deposit to cover anticipated expenses during peak periods of application processing. Any funds remaining unexpended at the conclusion of application processing shall be refunded to the applicant, or at the applicant's option, credited against required deposits of certificate holders.

(c) Each certificate holder shall pay such reasonable costs as are actually and necessarily incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility.

Each certificate holder, within thirty days of execution of the site certification agreement, shall deposit twenty thousand dollars, or such other amount as may be specified by council rule, to cover costs provided for by subsection (1)(c) of this section. Reasonable and necessary costs of the council directly attributable to inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction and operation of the facility shall be charged against such deposit.

The council shall submit to each certificate holder a statement of such expenditures actually made during the preceding calendar quarter which shall be in sufficient detail to explain such expenditures. The certificate holder shall pay the state treasurer the amount of such statement to restore the total amount on deposit to the originally established level: PROVIDED, That if the actual, reasonable, and necessary expenditures for inspection and determination of compliance in the preceding calendar quarter have exceeded the amount of funds on deposit, such excess costs shall be paid by the certificate holder.

(2) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the statement from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(3) All payments required of the applicant or certificate holder under this section are to be made to the state treasurer who shall make payments as instructed by the council from the funds submitted. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the applicant or certificate holder. [2006 c 196 § 5; 1977 ex.s. c 371 § 16.]

**80.50.075 Expedited processing of applications.** (1) Any person filing an application for certification of an energy facility or an alternative energy resource facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that the environmental impact of the proposed energy facility is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031 and the project is found under RCW 80.50.090(2) to be consistent and in compliance

with city, county, or regional land use plans or zoning ordinances.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study to further measure the consequences of the proposed energy facility or alternative energy resource facility on the environment, notwithstanding the other provisions of RCW 80.50.071; nor

(b) Hold an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section. [2006 c 205 § 2; 1989 c 175 § 172; 1977 ex.s. c 371 § 17.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**80.50.080 Counsel for the environment.** After the council has received a site application, the attorney general shall appoint an assistant attorney general as a counsel for the environment. The counsel for the environment shall represent the public and its interest in protecting the quality of the environment. Costs incurred by the counsel for the environment in the performance of these duties shall be charged to the office of the attorney general, and shall not be a charge against the appropriation to the energy facility site evaluation council. He shall be accorded all the rights, privileges and responsibilities of an attorney representing a party in a formal action. This section shall not be construed to prevent any person from being heard or represented by counsel in accordance with the other provisions of this chapter. [1977 ex.s. c 371 § 6; 1970 ex.s. c 45 § 8.]

**80.50.085 Council staff to assist applicants, make recommendations.** (1) After the council has received a site application, council staff shall assist applicants in identifying issues presented by the application.

(2) Council staff shall review all information submitted and recommend resolutions to issues in dispute that would allow site approval.

(3) Council staff may make recommendations to the council on conditions that would allow site approval. [2001 c 214 § 5.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**80.50.090 Public hearings.** (1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification. However, the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances. If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional plan-

ning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site.

(3) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held. At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification.

(4) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter. [2006 c 205 § 3; 2006 c 196 § 6; 2001 c 214 § 7; 1989 c 175 § 173; 1970 ex.s. c 45 § 9.]

**Reviser's note:** This section was amended by 2006 c 196 § 6 and by 2006 c 205 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**80.50.100 Recommendations to governor—Approval or rejection of certification—Reconsideration.** (1) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of such an application, or such later time as is mutually agreed by the council and the applicant. If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter, including, but not limited to, conditions to protect state or local governmental or community interests affected by the construction or operation of the energy facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(2) Within sixty days of receipt of the council's report the governor shall take one of the following actions:

- (a) Approve the application and execute the draft certification agreement; or
- (b) Reject the application; or
- (c) Direct the council to reconsider certain aspects of the draft certification agreement.

The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within sixty days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(3) The rejection of an application for certification by the governor shall be final as to that application but shall not pre-

clude submission of a subsequent application for the same site on the basis of changed conditions or new information. [1989 c 175 § 174; 1977 ex.s. c 371 § 8; 1975-'76 2nd ex.s. c 108 § 36; 1970 ex.s. c 45 § 10.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.105 Transmission facilities for petroleum products—Recommendations to governor.** In making its recommendations to the governor under this chapter regarding an application that includes transmission facilities for petroleum products, the council shall give appropriate weight to city or county facility siting standards adopted for the protection of sole source aquifers. [1991 c 200 § 1112.]

**Effective dates—Severability—1991 c 200:** See RCW 90.56.901 and 90.56.904.

**80.50.110 Chapter governs and supersedes other law or regulations—Preemption of regulation and certification by state.** (1) If any provision of this chapter is in conflict with any other provision, limitation, or restriction which is now in effect under any other law of this state, or any rule or regulation promulgated thereunder, this chapter shall govern and control and such other law or rule or regulation promulgated thereunder shall be deemed superseded for the purposes of this chapter.

(2) The state hereby preempts the regulation and certification of the location, construction, and operational conditions of certification of the energy facilities included under RCW 80.50.060 as now or hereafter amended. [1975-'76 2nd ex.s. c 108 § 37; 1970 ex.s. c 45 § 11.]

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.120 Effect of certification.** (1) Subject to the conditions set forth therein any certification shall bind the state and each of its departments, agencies, divisions, bureaus, commissions, boards, and political subdivisions, whether a member of the council or not, as to the approval of the site and the construction and operation of the proposed energy facility.

(2) The certification shall authorize the person named therein to construct and operate the proposed energy facility subject only to the conditions set forth in such certification.

(3) The issuance of a certification shall be in lieu of any permit, certificate or similar document required by any department, agency, division, bureau, commission, board, or political subdivision of this state, whether a member of the council or not. [1977 ex.s. c 371 § 10; 1975-'76 2nd ex.s. c 108 § 38; 1970 ex.s. c 45 § 12.]

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.130 Revocation or suspension of certification—Grounds.** Any certification may be revoked or suspended:

(1) For any material false statement in the application or in the supplemental or additional statements of fact or studies required of the applicant when a true answer would have warranted the council's refusal to recommend certification in the first instance; or

(2) For failure to comply with the terms or conditions of the original certification; or

(3) For violation of the provisions of this chapter, regulations issued thereunder or order of the council. [1970 ex.s. c 45 § 13.]

**80.50.140 Review.** (1) A final decision pursuant to RCW 80.50.100 on an application for certification shall be subject to judicial review pursuant to provisions of chapter 34.05 RCW and this section. Petitions for review of such a decision shall be filed in the Thurston county superior court. All petitions for review of a decision under RCW 80.50.100 shall be consolidated into a single proceeding before the Thurston county superior court. The Thurston county superior court shall certify the petition for review to the supreme court upon the following conditions:

(a) Review can be made on the administrative record;

(b) Fundamental and urgent interests affecting the public interest and development of energy facilities are involved which require a prompt determination;

(c) Review by the supreme court would likely be sought regardless of the determination of the Thurston county superior court; and

(d) The record is complete for review.

The Thurston county superior court shall assign a petition for review of a decision under RCW 80.50.100 for hearing at the earliest possible date and shall expedite such petition in every way possible. If the court finds that review cannot be limited to the administrative record as set forth in subparagraph (a) of this subsection because there are alleged irregularities in the procedure before the council not found in the record, but finds that the standards set forth in subparagraphs (b), (c), and (d) of this subsection are met, the court shall proceed to take testimony and determine such factual issues raised by the alleged irregularities and certify the petition and its determination of such factual issues to the supreme court. Upon certification, the supreme court shall assign the petition for hearing at the earliest possible date, and it shall expedite its review and decision in every way possible.

(2) Objections raised by any party in interest concerning procedural error by the council shall be filed with the council within sixty days of the commission of such error, or within thirty days of the first public hearing or meeting of the council at which the general subject matter to which the error is related is discussed, whichever comes later, or such objection shall be deemed waived for purposes of judicial review as provided in this section.

(3) The rules and regulations adopted by the council shall be subject to judicial review pursuant to the provisions of chapter 34.05 RCW. [1988 c 202 § 62; 1981 c 64 § 3; 1977 ex.s. c 371 § 11; 1970 ex.s. c 45 § 14.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**80.50.150 Enforcement of compliance—Penalties.**

(1) The courts are authorized to grant such restraining orders, and such temporary and permanent injunctive relief as is necessary to secure compliance with this chapter and/or with a site certification agreement issued pursuant to this chapter or a National Pollutant Discharge Elimination System (hereafter

in this section, NPDES) permit issued by the council pursuant to chapter 90.48 RCW or any permit issued pursuant to RCW 80.50.040(14). The court may assess civil penalties in an amount not less than one thousand dollars per day nor more than twenty-five thousand dollars per day for each day of construction or operation in material violation of this chapter, or in material violation of any site certification agreement issued pursuant to this chapter, or in violation of any NPDES permit issued by the council pursuant to chapter 90.48 RCW, or in violation of any permit issued pursuant to RCW 80.50.040(14). The court may charge the expenses of an enforcement action relating to a site certification agreement under this section, including, but not limited to, expenses incurred for legal services and expert testimony, against any person found to be in material violation of the provisions of such certification: PROVIDED, That the expenses of a person found not to be in material violation of the provisions of such certification, including, but not limited to, expenses incurred for legal services and expert testimony, may be charged against the person or persons bringing an enforcement action or other action under this section.

(2) Wilful violation of any provision of this chapter shall be a gross misdemeanor.

(3) Wilful or criminally negligent, as defined in RCW 9A.08.010[(1)](d), violation of any provision of an NPDES permit issued by the council pursuant to chapter 90.48 RCW or any permit issued by the council pursuant to RCW 80.50.040(14) or any emission standards promulgated by the council in order to implement the Federal Clean Air Act and the state implementation plan with respect to energy facilities under the jurisdiction provisions of this chapter shall be deemed a crime, and upon conviction thereof shall be punished by a fine of up to twenty-five thousand dollars per day and costs of prosecution. Any violation of this subsection shall be a gross misdemeanor.

(4) Any person knowingly making any false statement, representation, or certification in any document in any NPDES form, notice, or report required by an NPDES permit or in any form, notice, or report required for or by any permit issued pursuant to \*RCW 80.50.090(14) shall be deemed guilty of a crime, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution.

(5) Every person who violates the provisions of certificates and permits issued or administered by the council shall incur, in addition to any other penalty as provided by law, a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided in this section. The penalty provided in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the council describing such violation with reasonable particularity. The council may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when

deemed in the best interest to carry out the purposes of this chapter, remit or mitigate any penalty provided in this section upon such terms as the council shall deem proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. Any person incurring any penalty under this section may appeal the same to the council. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the council. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the council setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred hereunder is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part. If the amount of any penalty is not paid to the council within thirty days after it becomes due and payable, the attorney general, upon the request of the council, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

(6) Civil proceedings to enforce this chapter may be brought by the attorney general or the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council. Criminal proceedings to enforce this chapter may be brought by the prosecuting attorney of any county affected by the violation on his own motion or at the request of the council.

(7) The remedies and penalties in this section, both civil and criminal, shall be cumulative and shall be in addition to any other penalties and remedies available at law, or in equity, to any person. [1979 ex.s. c 254 § 2; 1979 c 41 § 1; 1977 ex.s. c 371 § 12; 1970 ex.s. c 45 § 15.]

**Reviser's note:** (1) This section was amended by 1979 c 41 § 1 and by 1979 ex.s. c 254 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

\*(2) The reference to RCW 80.50.090(14) appears to be in error; that section has only four subsections and concerns public hearings, not issuance of permits. RCW 80.50.040(12) relates to issuance of permits.

**80.50.160 Availability of information.** The council shall make available for public inspection and copying during regular office hours at the expense of any person requesting copies, any information filed or submitted pursuant to this chapter. [1970 ex.s. c 45 § 16.]

**80.50.175 Study of potential sites—Fee—Disposition of payments.** (1) In addition to all other powers conferred on

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the council under this chapter, the council shall have the powers set forth in this section.

(2) The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.

(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.

(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.

(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.

(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.

(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location. [1983 c 3 § 205; 1977 ex.s. c 371 § 13; 1975-'76 2nd ex.s. c 108 § 40; 1974 ex.s. c 110 § 2.]

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030.** Except for actions of the council under chapter 80.50 RCW, all proposals for legislation and other actions of any branch of government of this state, including state agencies, municipal and public corporations, and counties, to the extent the legislation or other action involved approves, authorizes, permits, or establishes procedures solely for approving, authorizing or permitting, the location,

financing or construction of any energy facility subject to certification under chapter 80.50 RCW, shall be exempt from the "detailed statement" required by RCW 43.21C.030. Nothing in this section shall be construed as exempting any action of the council from any provision of chapter 43.21C RCW. [1977 ex.s. c 371 § 14.]

**80.50.190 Disposition of receipts from applicants.**

The state general fund shall be credited with all receipts from applicants paid to the state pursuant to chapter 80.50 RCW. Such funds shall be used only by the council for the purposes set forth in chapter 80.50 RCW. All expenditures shall be authorized by law. [1977 ex.s. c 371 § 15.]

**80.50.300 Unfinished nuclear power projects—Transfer of all or a portion of a site to a political subdivision or subdivisions of the state—Water rights.**

(1) This section applies only to unfinished nuclear power projects. If a certificate holder stops construction of a nuclear energy facility before completion, terminates the project or otherwise resolves not to complete construction, never introduces or stores fuel for the energy facility on the site, and never operates the energy facility as designed to produce energy, the certificate holder may contract, establish interlocal agreements, or use other formal means to effect the transfer of site restoration responsibilities, which may include economic development activities, to any political subdivision or subdivisions of the state composed of elected officials. The contracts, interlocal agreements, or other formal means of cooperation may include, but are not limited to provisions effecting the transfer or conveyance of interests in the site and energy facilities from the certificate holder to other political subdivisions of the state, including costs of maintenance and security, capital improvements, and demolition and salvage of the unused energy facilities and infrastructure.

(2) If a certificate holder transfers all or a portion of the site to a political subdivision or subdivisions of the state composed of elected officials and located in the same county as the site, the council shall amend the site certification agreement to release those portions of the site that it finds are no longer intended for the development of an energy facility.

Immediately upon release of all or a portion of the site pursuant to this section, all responsibilities for maintaining the public welfare for portions of the site transferred, including but not limited to health and safety, are transferred to the political subdivision or subdivisions of the state. For sites located on federal land, all responsibilities for maintaining the public welfare for all of the site, including but not limited to health and safety, must be transferred to the political subdivision or subdivisions of the state irrespective of whether all or a portion of the site is released.

(3) The legislature finds that for all or a portion of sites that have been transferred to a political subdivision or subdivisions of the state prior to September 1, 1999, ensuring water for site restoration including economic development, completed pursuant to this section can best be accomplished by a transfer of existing surface water rights, and that such a transfer is best accomplished administratively through procedures set forth in existing statutes and rules. However, if a transfer of water rights is not possible, the department of

ecology shall, within six months of the transfer of the site or portion thereof pursuant to subsection (1) of this section, create a trust water right under chapter 90.42 RCW containing between ten and twenty cubic feet per second for the benefit of the appropriate political subdivision or subdivisions of the state. The trust water right shall be used in fulfilling site restoration responsibilities, including economic development. The trust water right shall be from existing valid water rights within the basin where the site is located.

(4) For purposes of this section, "political subdivision or subdivisions of the state" means a city, town, county, public utility district, port district, or joint operating agency. [2000 c 243 § 1; 1996 c 4 § 2.]

**80.50.310 Council actions—Exemption from chapter 43.21C RCW.** Council actions pursuant to the transfer of the site or portions of the site under RCW 80.50.300 are exempt from the provisions of chapter 43.21C RCW. [1996 c 4 § 3.]

**80.50.320 Governor to evaluate council efficiency, make recommendations.** The governor shall undertake an evaluation of the operations of the council to assess means to enhance its efficiency. The assessment must include whether the efficiency of the siting process would be improved by conducting the process under the state environmental policy act in a particular sequence relative to the adjudicative proceeding. The results of this assessment may include recommendations for administrative changes, statutory changes, or expanded staffing levels. [2001 c 214 § 8.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**80.50.330 Preapplication—Siting electrical transmission facilities—Corridors.** (1) For applications to site electrical transmission facilities, the council shall conduct a preapplication process pursuant to rules adopted by the council to govern such process, receive applications as prescribed in RCW 80.50.071, and conduct public meetings pursuant to RCW 80.50.090.

(2) The council shall consider and may recommend certification of electrical transmission facilities in corridors designated for this purpose by affected cities, towns, or counties:

(a) Where the jurisdictions have identified electrical transmission facility corridors as part of their land use plans and zoning maps based on policies adopted in their plans;

(b) Where the proposed electrical transmission facility is consistent with any adopted development regulations that govern the siting of electrical transmission facilities in such corridors; and

(c) Where contiguous jurisdictions and jurisdictions in which related regional electrical transmission facilities are located have either prior to or during the preapplication process undertaken good faith efforts to coordinate the locations of their corridors consistent with RCW 36.70A.100.

(3)(a) In the absence of a corridor designation in the manner prescribed in subsection (2) of this section, the council shall as part of the preapplication process require the preapplicant to negotiate, as provided by rule adopted by the council, for a reasonable time with affected cities, towns, and

counties to attempt to reach agreement about a corridor plan. The application for certification shall identify only the corridor agreed to by the applicant and cities, towns, and counties within the proposed corridor pursuant to the preapplication process.

(b) If no corridor plan is agreed to by the applicant and cities, towns, and counties pursuant to (a) of this subsection, the applicant shall propose a recommended corridor and electrical transmission facilities to be included within the proposed corridor.

(c) The council shall consider the applicant's proposed corridor and electrical transmission facilities as provided in RCW 80.50.090 (2) and (4), and shall make a recommendation consistent with RCW 80.50.090 and 80.50.100. [2007 c 325 § 3.]

**80.50.340 Preapplication—Fees—Plans.** (1) A preapplicant shall pay to the council a fee of ten thousand dollars to be applied to the cost of the preapplication process as a condition precedent to any action by the council, provided that costs in excess of this amount shall be paid only upon prior approval by the preapplicant, and provided further that any unexpended portions thereof shall be returned to the preapplicant.

(2) The council shall consult with the preapplicant and prepare a plan for the preapplication process which shall commence with an informational public hearing within sixty days after the receipt of the preapplication fee as provided in RCW 80.50.090.

(3) The preapplication plan shall include but need not be limited to:

(a) An initial consultation to explain the proposal and request input from council staff, federal and state agencies, cities, towns, counties, port districts, tribal governments, property owners, and interested individuals;

(b) Where applicable, a process to guide negotiations between the preapplicant and cities, towns, and counties within the corridor proposed pursuant to RCW 80.50.330. [2007 c 325 § 4.]

**80.50.350 National interest electric transmission corridors task force—Duties—Recommendations.** (*Expires July 1, 2009.*) (1)(a) A legislative task force on national interest electric transmission corridors is established, with members as provided in this subsection.

(i) The chair and the ranking minority member from the senate water, energy and telecommunications committee or their designees;

(ii) The chair and the ranking minority member from the house of representatives technology, energy and communications committee or their designees;

(iii) The governor shall appoint five members representing the energy facility site evaluation council, local governments, resource agencies, or other persons with appropriate expertise.

(b) The task force shall choose its cochairs representing the senate and house of representatives from among its legislative membership.

(2)(a) The task force shall negotiate the terms of an interstate compact that establishes a regional process for siting

national interest electric transmission corridors satisfactory to the national energy policy act of 2005.

(b) In negotiating the terms of the compact, the task force shall ensure that the compact reflects as close as possible the Washington state energy facility site evaluation council model under this chapter and its procedures to ensure appropriate adjudicative proceedings and mitigation of environmental impacts.

(c) The task force shall negotiate the terms of the compact through processes established and supported by the Pacific Northwest economic region for which the state of Washington is a party as referenced in RCW 43.147.010.

(3) Staff support for the task force members shall be provided from respective committees and appropriate agencies appointed by the governor.

(4) Legislative members of the task force shall be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members, except those representing an employer or organization, are entitled to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(5) The task force shall report its preliminary recommendations on the compact to the appropriate committees of the legislature by January 1, 2008.

(6) The task force shall report its final recommendations on the compact to the appropriate committees of the legislature by September 1, 2008.

(7) This section expires July 1, 2009. [2007 c 326 § 2.]

**Intent—2007 c 326:** "It is the intent of the legislature to create a regional process for the siting of new electric transmission lines related to the national energy policy act of 2005. This regional process will facilitate the siting of new cross borders electric transmission lines by providing a "one stop" licensing process. This act calls for the creation of a legislative task force to establish an interstate compact to assert jurisdiction over national interest electric transmission corridors." [2007 c 326 § 1.]

**80.50.900 Severability—1970 ex.s. c 45.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1970 ex.s. c 45 § 17.]

**80.50.901 Severability—1974 ex.s. c 110.** If any provision of this 1974 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances, is not affected. [1974 ex.s. c 110 § 3.]

**80.50.902 Severability—1977 ex.s. c 371.** If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 371 § 20.]

**80.50.903 Severability—1996 c 4.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 4 § 5.]

**80.50.904 Effective date—1996 c 4.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 6, 1996]. [1996 c 4 § 6.]

### Chapter 80.52 RCW

#### ENERGY FINANCING VOTER APPROVAL ACT

##### Sections

80.52.010	Short title.
80.52.020	Purpose.
80.52.030	Definitions.
80.52.040	Election approval required before issuance of bonds.
80.52.050	Conduct of election.
80.52.060	Form of ballot propositions.
80.52.070	Approval of request for financing authority.
80.52.080	Priorities.
80.52.900	Severability—1981 2nd ex.s. c 6.
80.52.910	Effective dates—1981 2nd ex.s. c 6.

**80.52.010 Short title.** This chapter may be cited as the Washington state energy financing voter approval act. [1981 2nd ex.s. c 6 § 1 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.020 Purpose.** The purpose of this chapter is to provide a mechanism for citizen review and approval of proposed financing for major public energy projects. The development of dependable and economic energy sources is of paramount importance to the citizens of the state, who have an interest in insuring that major public energy projects make the best use of limited financial resources. Because the construction of major public energy projects will significantly increase utility rates for all citizens, the people of the state hereby establish a process of voter approval for such projects. [1981 2nd ex.s. c 6 § 2 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.030 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Public agency" means a public utility district, joint operating agency, city, county, or any other state governmental agency, entity, or political subdivision.

(2) "Major public energy project" means a plant or installation capable, or intended to be capable, of generating electricity in an amount greater than three hundred fifty megawatts, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure. Where two or more such plants are located within the same geographic site, each plant shall be considered a major public energy project. An addition to an existing facility is not deemed to be a major energy project unless the addition itself is capable, or intended to be capable, of generating electricity in an amount greater than three hundred fifty megawatts. A project which is under construction on July 1, 1982, shall not be considered a major public energy project unless the official agency budget or estimate for total construction costs for the project as of July 1, 1982, is more than two hundred percent of the first official estimate of total construction costs as specified in the senate energy and utilities committee WPPSS inquiry report, vol-

ume one, January 12, 1981, and unless, as of July 1, 1982, the projected remaining cost of construction for that project exceeds two hundred million dollars.

(3) "Cost of construction" means the total cost of planning and building a major public energy project and placing it into operation, including, but not limited to, planning cost, direct construction cost, licensing cost, cost of fuel inventory for the first year's operation, interest, and all other costs incurred prior to the first day of full operation, whether or not incurred prior to July 1, 1982.

(4) "Cost of acquisition" means the total cost of acquiring a major public energy project from another party, including, but not limited to, principal and interest costs.

(5) "Bond" means a revenue bond, a general obligation bond, or any other indebtedness issued by a public agency or its assignee.

(6) "Applicant" means a public agency, or the assignee of a public agency, requesting the secretary of state to conduct an election pursuant to this chapter.

(7) "Cost-effective" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the electric power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(8) "System cost" means an estimate of all direct costs of a project or resource over its effective life, including, if applicable, the costs of distribution to the consumer, and, among other factors, waste disposal costs, end-of-cycle costs, and fuel costs (including projected increases), and such quantifiable environmental costs and benefits as are directly attributable to the project or resource. [2002 c 190 § 1; 1995 c 69 § 2; 1981 2nd ex.s. c 6 § 3 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.040 Election approval required before issuance of bonds.** No public agency or assignee of a public agency may issue or sell bonds to finance the cost of construction or the cost of acquisition of a major public energy project, or any portion thereof, unless it has first obtained authority for the expenditure of the funds to be raised by the sale of such bonds for that project at an election conducted in the manner provided in this chapter. [1981 2nd ex.s. c 6 § 4 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.050 Conduct of election.** The election required under RCW 80.52.040 shall be conducted in the manner provided in this section.

(1)(a) If the applicant is a public utility district, joint operating agency, city, or county, the election shall be among the voters of the public utility district, city, or county, or among the voters of the local governmental entities comprising the membership of the joint operating agency.

(b) If the applicant is any public agency other than those described in subsection (1)(a) of this section, or is an assignee of a joint operating agency and not itself a joint operating

agency, the election shall be conducted statewide in the manner provided in \*Title 29 RCW for statewide elections.

(2) The election shall be held at the next statewide general election occurring more than ninety days after submission of a request by an applicant to the secretary of state unless a special election is requested by the applicant as provided in this section.

(3) If no statewide election can be held under subsection (2) of this section within one hundred twenty days of the submission to the secretary of state of a request by an applicant for financing authority under this chapter, the applicant may request that a special election be held if such election is necessary to avoid significant delay in construction or acquisition of the energy project. Within ten days of receipt of such a request for a special election, the secretary of state shall designate a date for the election pursuant to \*\*RCW 29.13.010 and certify the date to the county auditor of each county in which an election is to be held under this section.

(4) Prior to an election under this section, the applicant shall submit to the secretary of state a cost-effectiveness study, prepared by an independent consultant approved by the state finance committee, pertaining to the major public energy project under consideration. The study shall be available for public review and comment for thirty days. At the end of the thirty-day period, the applicant shall prepare a final draft of the study which includes the public comment, if any.

(5) The secretary of state shall certify the ballot issue for the election to be held under this section to the county auditor of each county in which an election is to be held. The certification shall include the statement of the proposition as provided in RCW 80.52.060. The costs of the election shall be relieved by the applicant in the manner provided by \*\*RCW 29.13.045. In addition, the applicant shall reimburse the secretary of state for the applicant's share of the costs related to the preparation and distribution of the voters' pamphlet required by subsection (6) of this section and such other costs as are attributable to any election held pursuant to this section.

(6) Prior to an election under this section, the secretary of state shall provide an opportunity for supporters and opponents of the requested financing authority to present their respective views in a voters' pamphlet which shall be distributed to the voters of the local governmental entities participating in the election. Upon submission of an applicant's request for an election pursuant to this section, the applicant shall provide the secretary of state with the following information regarding each major public energy project for which the applicant seeks financing authority at such election, which information shall be included in the voters' pamphlet:

(a) The name, location, and type of major public energy project, expressed in common terms;

(b) The dollar amount and type of bonds being requested;

(c) If the bond issuance is intended to finance the acquisition of all or a portion of the project, the anticipated total cost of the acquisition of the project;

(d) If the bond issuance is intended to finance the planning or construction of all or a portion of the project, the anticipated total cost of construction of the project;

(e) The projected average rate increase for consumers of the electricity to be generated by the project. The rate

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increase shall be that which will be necessary to repay the total indebtedness incurred for the project, including estimated interest;

(f) A summary of the final cost-effectiveness study conducted under subsection (4) of this section;

(g) The anticipated functional life of the project;

(h) The anticipated decommissioning costs of the project; and

(i) If a special election is requested by the applicant, the reasons for requesting a special election. [1982 c 88 § 1; 1981 2nd ex.s. c 6 § 5 (Initiative Measure No. 394, approved November 3, 1981).]

**Reviser's note:** \*(1) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

\*\* (2) RCW 29.13.010 and 29.13.045 were recodified as RCW 29A.04.320 and 29A.04.410, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

**Effective date—1982 c 88:** "This act shall take effect on July 1, 1982." [1982 c 88 § 2.]

**80.52.060 Form of ballot propositions.** The proposition for each major public energy project listed upon a ballot pursuant to this chapter shall be in the form provided in this section.

(1) If the funds are intended to finance the planning or construction of all or a portion of the project, the proposition shall read substantially as follows:

"Shall (name of applicant) be authorized to spend (dollar amount of financing authority requested) to construct the (name of the project) (type of project) located at (location), the anticipated total construction cost of which is (anticipated cost of construction)?"

(2) If the financing authority is intended to finance the acquisition of all or a portion of the project from another party, the proposition shall read substantially as follows:

"Shall (name of applicant) be authorized to spend (dollar amount of financing authority requested) to acquire the (name of project) (type of project) located at (location), the anticipated total acquisition cost of which is (anticipated cost of acquisition)?"

[1981 2nd ex.s. c 6 § 6 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.070 Approval of request for financing authority.** A request for financing authority pursuant to this chapter shall be considered approved if it receives the approval of a majority of those voting on the request. [1981 2nd ex.s. c 6 § 7 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.080 Priorities.** In planning for future energy expenditures, public agencies shall give priority to projects and resources which are cost-effective. Priority for future bond sales to finance energy expenditures by public agencies shall be given: First, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat

or generating resources of high fuel-conversion efficiency; and fourth, to all other resources. This section does not apply to projects which are under construction on December 3, 1981. [1981 2nd ex.s. c 6 § 8 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.900 Severability—1981 2nd ex.s. c 6.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 6 § 10 (Initiative Measure No. 394, approved November 3, 1981).]

**80.52.910 Effective dates—1981 2nd ex.s. c 6.** Section 8 of this act shall take effect immediately. The remainder of this act shall take effect on July 1, 1982. Public agencies intending to submit a request for financing authority under this act are authorized to institute the procedures specified in section 5(4) of this act prior to the effective date of this act. [1981 2nd ex.s. c 6 § 11 (Initiative Measure No. 394, approved November 3, 1981).]

## Chapter 80.54 RCW

### ATTACHMENTS TO TRANSMISSION FACILITIES

#### Sections

80.54.010	Definitions.
80.54.020	Regulation of rates, terms, and conditions—Criteria.
80.54.030	Commission order fixing rates, terms, or conditions.
80.54.040	Criteria for just and reasonable rate.
80.54.050	Exemptions from chapter.
80.54.060	Adoption of rules.
80.54.070	Uniform attachment rates within utility service area.

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

(1) "Attachment" means any wire or cable for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right-of-way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, which is authorized to construct attachments upon, along, under, or across the public ways.

(3) "Utility" means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government. [1985 c 450 § 40; 1979 c 33 § 1.]

**Severability—Legislative review—1985 c 450:** See RCW 80.36.900 and 80.36.901.

**80.54.020 Regulation of rates, terms, and conditions—Criteria.** The commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient. [1979 c 33 § 2.]

**80.54.030 Commission order fixing rates, terms, or conditions.** Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the commission shall consider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made. [1979 c 33 § 3.]

**80.54.040 Criteria for just and reasonable rate.** A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities. [1979 c 33 § 4.]

**80.54.050 Exemptions from chapter.** Nothing in this chapter shall be deemed to apply to any attachment by one or more electrical companies on the facilities of one or more other electrical companies. [1979 c 33 § 5.]

**80.54.060 Adoption of rules.** The commission shall adopt rules, regulations and procedures relative to the implementation of this chapter. [1979 c 33 § 6.]

**80.54.070 Uniform attachment rates within utility service area.** Notwithstanding any other provision of law, a utility as defined in RCW 80.54.010(3) and any utility not regulated by the utilities and transportation commission shall levy attachment rates which are uniform for all licensees within the utility service area. [1979 c 33 § 7.]

## Chapter 80.58 RCW

### NONPOLLUTING POWER GENERATION EXEMPTION

#### Sections

80.58.010	Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.
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**80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.** The generation of power by a nonpolluting, renewable energy source by an individual natural person not otherwise engaged in the business of power generation is declared to be exempt from all statutes and rules otherwise regulating the generation of power: PROVIDED, That such an individual is hereby authorized to provide such power to the utility servicing the property on which the power is generated and the servicing utility is hereby authorized to accept such power under such terms and conditions as may be agreed to between the parties. [1979 ex.s. c 191 § 11.]

**Chapter 80.60 RCW**

**NET METERING OF ELECTRICITY**

Sections

80.60.005	Findings.
80.60.010	Definitions.
80.60.020	Available on first-come, first-served basis—Interconnected metering systems allowed—Charges to customer-generator.
80.60.030	Net energy measurement—Required calculation—Unused credit—Meter aggregation.
80.60.040	Safety, power quality, and interconnection requirements—Customer-generator's expense—Commission may adopt additional requirements.

**80.60.005 Findings.** The legislature finds that it is in the public interest to:

- (1) Encourage private investment in renewable energy resources;
- (2) Stimulate the economic growth of this state; and
- (3) Enhance the continued diversification of the energy resources used in this state. [1998 c 318 § 1.]

**80.60.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) "Commission" means the utilities and transportation commission.
- (2) "Customer-generator" means a user of a net metering system.
- (3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.
- (4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.
- (5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.
- (6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.
- (7) "Meter aggregation" means the administrative combination of readings from and billing for all meters, regardless of the rate class, on premises owned or leased by a customer-generator located within the service territory of a single electric utility.
- (8) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.

(9) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator over the applicable billing period.

(10) "Net metering system" means a fuel cell, a facility that produces electricity and used and useful thermal energy from a common fuel source, or a facility for the production of electrical energy that generates renewable energy, and that:

- (a) Has an electrical generating capacity of not more than one hundred kilowatts;
- (b) Is located on the customer-generator's premises;
- (c) Operates in parallel with the electric utility's transmission and distribution facilities; and
- (d) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.

(11) "Premises" means any residential property, commercial real estate, or lands, owned or leased by a customer-generator within the service area of a single electric utility.

(12) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.

(13) "Public utility district" means a district authorized by chapter 54.04 RCW.

(14) "Renewable energy" means energy generated by a facility that uses water, wind, solar energy, or biogas from animal waste as a fuel. [2007 c 323 § 1; 2006 c 201 § 1; 2000 c 158 § 1; 1998 c 318 § 2.]

**80.60.020 Available on first-come, first-served basis—Interconnected metering systems allowed—Charges to customer-generator.** (1) An electric utility:

(a) Shall offer to make net metering available to eligible customers-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals 0.25 percent of the utility's peak demand during 1996. On January 1, 2014, the cumulative generating capacity available to net metering systems will equal 0.5 percent of the utility's peak demand during 1996. Not less than one-half of the utility's 1996 peak demand available for net metering systems shall be reserved for the cumulative generating capacity attributable to net metering systems that generate renewable energy;

(b) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(i) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(ii) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(c) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, intercon-

nection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(i) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(ii) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

(2) If a production meter and software is required by the electric utility to provide meter aggregation under RCW 80.60.030(4), the customer-generator is responsible for the purchase of the production meter and software. [2007 c 323 § 2; 2006 c 201 § 2; 2000 c 158 § 2; 1998 c 318 § 3.]

**80.60.030 Net energy measurement—Required calculation—Unused credit—Meter aggregation.** Consistent with the other provisions of this chapter, the net energy measurement must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electric utility, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with RCW 80.60.020; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

(4) If a customer-generator requests, an electric utility shall provide meter aggregation.

(a) For customer-generators participating in meter aggregation, kilowatt-hours credits earned by a net metering system during the billing period first shall be used to offset electricity supplied by the electric utility.

(b) Not more than a total of one hundred kilowatts shall be aggregated among all customer-generators participating in a generating facility under this subsection.

(c) Excess kilowatt-hours credits earned by the net metering system, during the same billing period, shall be credited equally by the electric utility to remaining meters located on all premises of a customer-generator at the designated rate of each meter.

(d) Meters so aggregated shall not change rate classes due to meter aggregation under this section.

(5) On April 30th of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator. [2007 c 323 § 3; 2006 c 201 § 3; 1998 c 318 § 4.]

**80.60.040 Safety, power quality, and interconnection requirements—Customer-generator's expense—Commission may adopt additional requirements.** (1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators, including limitations on the number of customer generators and total capacity of net metering systems that may be interconnected to any distribution feeder line, circuit, or network that the commission or governing body determines are necessary to protect public safety and system reliability.

(3) An electric utility may not require a customer-generator whose net metering system meets the standards in subsections (1) and (2) of this section to comply with additional safety or performance standards, perform or pay for additional tests, or purchase additional liability insurance. However, an electric utility shall not be liable directly or indirectly for permitting or continuing to allow an attachment of a net metering system, or for the acts or omissions of the customer-generator that cause loss or injury, including death, to any third party. [2006 c 201 § 4; 2000 c 158 § 3; 1998 c 318 § 5.]

## Chapter 80.66 RCW

### RADIO COMMUNICATIONS SERVICE COMPANIES

#### Sections

80.66.010 Scope of regulation—Filing of certain agreements.

**80.66.010 Scope of regulation—Filing of certain agreements.** The commission shall not regulate radio communications service companies, except that:

(1) The commission may regulate the rates, services, facilities, and practices of radio communications service companies, within a geographic service area or a portion of a geographic service area in which it is authorized to operate by the federal communications commission if it is the only provider of basic telecommunications service within such geographic service area or such portion of a geographic service area. For purposes of this section, "basic telecommunications service" means voice grade, local exchange telecommunications service.

(2) Actions or transactions of radio communications service companies that are not regulated pursuant to subsection (1) of this section shall not be deemed actions or transactions otherwise permitted, prohibited, or regulated by the commission for purposes of RCW 19.86.170.

(3) Radio communications service companies shall file with the commission copies of all agreements with any of their affiliated interests as defined in RCW 80.16.010, showing the rates, tolls, rentals, contracts, and charges of such affiliated interest for services rendered and equipment and facilities supplied to the radio communications service com-

pany, except that such agreements need not be filed where the services rendered and equipment and facilities supplied are provided by the affiliated interest under a tariff or price list filed with the commission. [1985 c 167 § 2.]

### Chapter 80.70 RCW

#### CARBON DIOXIDE MITIGATION

##### Sections

80.70.010	Definitions.
80.70.020	Applicability of chapter—Carbon dioxide mitigation plan—Mitigation by a third party.
80.70.030	Permanent carbon credits.
80.70.040	Direct investment mitigation projects—Enforcement—Federal requirements may replace this section.
80.70.050	Independent qualified organizations with experience in mitigation activities—Council oversight—Reports.
80.70.060	Costs to be assessed against applicants and holders of site certification agreements.
80.70.070	Rules.

**80.70.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" has the meaning provided in RCW 80.50.020 and includes an applicant for a permit for a fossil-fueled thermal electric generation facility subject to RCW 70.94.152 and 80.70.020(1) (b) or (d).

(2) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(3) "Carbon credit" means a verified reduction in carbon dioxide or carbon dioxide equivalents that is registered with a state, national, or international trading authority or exchange that has been recognized by the council.

(4) "Carbon dioxide equivalents" means a metric measure used to compare the emissions from various greenhouse gases based upon their global warming potential.

(5) "Cogeneration credit" means the carbon dioxide emissions that the council, department, or authority, as appropriate, estimates would be produced on an annual basis by a stand-alone industrial and commercial facility equivalent in operating characteristics and output to the industrial or commercial heating or cooling process component of the cogeneration plant.

(6) "Cogeneration plant" means a fossil-fueled thermal power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978.

(7) "Commercial operation" means the date that the first electricity produced by a facility is delivered for commercial sale to the power grid.

(8) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(9) "Department" means the department of ecology.

(10) "Fossil fuel" means natural gas, petroleum, coal, or any form of solid, liquid, or gaseous fuel derived from such material to produce heat for the generation of electricity.

(11) "Mitigation plan" means a proposal that includes the process or means to achieve carbon dioxide mitigation through use of mitigation projects or carbon credits.

(12) "Mitigation project" means one or more of the following:

(a) Projects or actions that are implemented by the certificate holder or order of approval holder, directly or through its agent, or by an independent qualified organization to mitigate the emission of carbon dioxide produced by the fossil-fueled thermal electric generation facility. This term includes but is not limited to the use of, energy efficiency measures, clean and efficient transportation measures, qualified alternative energy resources, demand side management of electricity consumption, and carbon sequestration programs;

(b) Direct application of combined heat and power (cogeneration);

(c) Verified carbon credits traded on a recognized trading authority or exchange; or

(d) Enforceable and permanent reductions in carbon dioxide or carbon dioxide equivalents through process change, equipment shutdown, or other activities under the control of the applicant and approved as part of a carbon dioxide mitigation plan.

(13) "Order of approval" means an order issued under RCW 70.94.152 with respect to a fossil-fueled thermal electric generation facility subject to RCW 80.70.020(1) (b) or (d).

(14) "Permanent" means that emission reductions used to offset emission increases are assured for the life of the corresponding increase, whether unlimited or limited in duration.

(15) "Qualified alternative energy resource" has the same meaning as in RCW 19.29A.090.

(16) "Station generating capability" means the maximum load a generator can sustain over a given period of time without exceeding design limits, and measured using maximum continuous electric generation capacity, less net auxiliary load, at average ambient temperature and barometric pressure.

(17) "Total carbon dioxide emissions" means:

(a) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020(1) (a) and (b), the amount of carbon dioxide emitted over a thirty-year period based on the manufacturer's or designer's guaranteed total net station generating capability, new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use; and

(b) For a fossil-fueled thermal electric generation facility described under RCW 80.70.020(1) (c) and (d), the amount of carbon dioxide emitted over a thirty-year period based on the proposed increase in the amount of electrical output of the facility that exceeds the station generation capability of the facility prior to the applicant applying for certification or an order of approval pursuant to RCW 80.70.020(1) (c) and (d), new equipment heat rate, an assumed sixty percent capacity factor for facilities under the council's jurisdiction or sixty percent of the operational limitations on facilities subject to an order of approval, and taking into account any enforceable limitations on operational hours or fuel types and use. [2004 c 224 § 1.]

**80.70.020 Applicability of chapter—Carbon dioxide mitigation plan—Mitigation by a third party.** (1) The provisions of this chapter apply to:

(a) New fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more and fossil-fueled floating thermal electric generation facilities of one hundred thousand kilowatts or more under \*RCW 80.50.020(14)(a), for which an application for site certification is made to the council after July 1, 2004;

(b) New fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, for which an application for an order of approval has been submitted after July 1, 2004;

(c) Fossil-fueled thermal electric generation facilities with station-generating capability of three hundred fifty thousand kilowatts or more that have an existing site certification agreement and, after July 1, 2004, apply to the council to increase the output of carbon dioxide emissions by fifteen percent or more through permanent changes in facility operations or modification or equipment; and

(d) Fossil-fueled thermal electric generation facilities with station-generating capability of more than twenty-five thousand kilowatts, but less than three hundred fifty thousand kilowatts, except for fossil-fueled floating thermal electric generation facilities under the council's jurisdiction, that have an existing order of approval and, after July 1, 2004, apply to the department or authority, as appropriate, to permanently modify the facility so as to increase its station-generating capability by at least twenty-five thousand kilowatts or to increase the output of carbon dioxide emissions by fifteen percent or more, whichever measure is greater.

(2)(a) A proposed site certification agreement submitted to the governor under RCW 80.50.100 and a final site certification agreement issued under RCW 80.50.100 shall include an approved carbon dioxide mitigation plan.

(b) For fossil-fueled thermal electric generation facilities not under jurisdiction of the council, the order of approval shall require an approved carbon dioxide mitigation plan.

(c) Site certification agreement holders or order of approval holders may request, at any time, a change in conditions of an approved carbon dioxide mitigation plan if the council, department, or authority, as appropriate, finds that the change meets all requirements and conditions for approval of such plans.

(3) An applicant for a fossil-fueled thermal electric generation facility shall include one or a combination of the following carbon dioxide mitigation options as part of its mitigation plan:

(a) Payment to a third party to provide mitigation;

(b) Direct purchase of permanent carbon credits; or

(c) Investment in applicant-controlled carbon dioxide mitigation projects, including combined heat and power (cogeneration).

(4) Fossil-fueled thermal electric generation facilities that receive site certification approval or an order of approval shall provide mitigation for twenty percent of the total carbon dioxide emissions produced by the facility.

(5) If the certificate holder or order of approval holder chooses to pay a third party to provide the mitigation, the mitigation rate shall be one dollar and sixty cents per metric ton of carbon dioxide to be mitigated. For a cogeneration plant, the monetary amount is based on the difference between twenty percent of the total carbon dioxide emissions and the cogeneration credit.

(a) Through rule making, the council may adjust the rate per ton biennially as long as any increase or decrease does not exceed fifty percent of the current rate. The department or authority shall use the adjusted rate established by the council pursuant to this subsection for fossil-fueled thermal electric generation facilities subject to the provisions of this chapter.

(b) In adjusting the mitigation rate the council shall consider, but is not limited to, the current market price of a ton of carbon dioxide. The council's adjusted mitigation rate shall be consistent with RCW 80.50.010(3).

(6) The applicant may choose to make to the third party a lump sum payment or partial payment over a period of five years.

(a) Under the lump sum payment option, the payment amount is determined by multiplying the total carbon dioxide emissions by the twenty percent mitigation requirement under subsection (4) of this section and by the per ton mitigation rate established under subsection (5) of this section.

(b) No later than one hundred twenty days after the start of commercial operation, the certificate holder or order of approval holder shall make a one-time payment to the independent qualified organization for the amount determined under subsection (5) of this section.

(c) As an alternative to a one-time payment, the certificate holder or order of approval holder may make a partial payment of twenty percent of the amount determined under subsection (5) of this section no later than one hundred twenty days after commercial operation and a payment in the same amount or as adjusted according to subsection (5)(a) of this section, on the anniversary date of the initial payment in each of the following four years. With the initial payment, the certificate holder or order of approval holder shall provide a letter of credit or other comparable security acceptable to the council or the department for the remaining eighty percent mitigation payment amount including possible changes to the rate per metric ton from rule making under subsection (5)(a) of this section. [2004 c 224 § 2.]

**\*Reviser's note:** RCW 80.50.020 was amended by 2007 c 325 § 1, changing subsection (14) to subsection (15).

**80.70.030 Permanent carbon credits.** (1) Carbon dioxide mitigation plans relying on purchase of permanent carbon credits must meet the following criteria:

(a) Credits must derive from real, verified, permanent, and enforceable carbon dioxide or carbon dioxide equivalents emission mitigation not otherwise required by statute, regulation, or other legal requirements;

(b) The credits must be acquired after July 1, 2004; and

(c) The credits may not have been used for other carbon dioxide mitigation projects.

(2) Permanent carbon credits purchased for project mitigation shall not be resold unless approved by the council, department, or authority. [2004 c 224 § 3.]

**80.70.040 Direct investment mitigation projects—Enforcement—Federal requirements may replace this section.** (1) The carbon dioxide mitigation option that provides for direct investment shall be implemented through mitigation projects conducted directly by, or under the control of, the certificate holder or order of approval holder.

(2) Mitigation projects must be approved by the council, department, or authority, as appropriate, and made a condition of the proposed and final site certification agreement or order of approval. Direct investment mitigation projects shall be approved if the mitigation projects provide a reasonable certainty that the performance requirements of the mitigation projects will be achieved and the mitigation projects were implemented after July 1, 2004. No certificate holder or order of approval holder shall be required to make direct investments that would exceed the cost of making a lump sum payment to a third party, had the certificate holder or order of approval holder chosen that option under RCW 80.70.020.

(3) Mitigation projects must be fully in place within a reasonable time after the start of commercial operation. Failure to implement an approved mitigation plan is subject to enforcement under chapter 80.50 or 70.94 RCW.

(4) The certificate holder or order of approval holder may not use more than twenty percent of the total funds for the selection, monitoring, and evaluation of mitigation projects and the management and enforcement of contracts.

(5)(a) For facilities under the jurisdiction of the council, the implementation of a carbon dioxide mitigation project, other than purchase of a carbon credit shall be monitored by an independent entity for conformance with the performance requirements of the carbon dioxide mitigation plan. The independent entity shall make available the mitigation project monitoring results to the council.

(b) For facilities under the jurisdiction of the department or authority pursuant to RCW 80.70.020(1) (b) or (c), the implementation of a carbon dioxide mitigation project, other than a purchase of carbon dioxide equivalent emission reduction credits, shall be monitored by the department or authority issuing the order of approval.

(6) Upon promulgation of federal requirements for carbon dioxide mitigation for fossil-fueled thermal electric generation facilities, those requirements may be deemed by the council, department, or authority to be equivalent and a replacement for the requirements of this section. [2004 c 224 § 4.]

**80.70.050 Independent qualified organizations with experience in mitigation activities—Council oversight—Reports.** (1) The council shall maintain a list of independent qualified organizations with proven experience in emissions mitigation activities and a demonstrated ability to carry out their activities in an efficient, reliable, and cost-effective manner.

(2) An independent qualified organization shall not use more than twenty percent of the total funds for selection, monitoring, and evaluation of mitigation projects and the management and enforcement of contracts. None of these funds shall be used to lobby federal, state, and local agencies, their elected officials, officers, or employees.

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(3) Before signing contracts to purchase offsets with funds from certificate holders or order of approval holders, an independent qualified organization must demonstrate to the council that the mitigation projects it proposes to use provides a reasonable certainty that the performance requirements of the carbon dioxide mitigation projects will be achieved.

(4) The independent qualified organization shall permit the council to appoint up to three persons to inspect plans, operation, and compliance activities of the organization and to audit financial records and performance measures for carbon dioxide mitigation projects using carbon dioxide mitigation money paid by certificate holders or order of approval holders under this chapter.

(5) An independent qualified organization must file biennial reports with the council, the department, or authority on the performance of carbon dioxide mitigation projects, including the amount of carbon dioxide reductions achieved and a statement of cost for the mitigation period. [2004 c 224 § 5.]

**80.70.060 Costs to be assessed against applicants and holders of site certification agreements.** Reasonable and necessary costs incurred by the council in implementing and administering this chapter shall be assessed against applicants and holders of site certification agreements that are subject to the requirements of this chapter. [2004 c 224 § 6.]

**80.70.070 Rules.** The council, department, and authority shall adopt rules to carry out this chapter. [2004 c 224 § 7.]

## Chapter 80.80 RCW

### GREENHOUSE GASES EMISSIONS— BASELOAD ELECTRIC GENERATION PERFORMANCE STANDARD

#### Sections

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**80.80.005 Findings—Intent.** (1) The legislature finds that:

(a) Washington is especially vulnerable to climate change because of the state's dependence on snow pack for summer stream flows and because the expected rise in sea levels threatens our coastal communities. Extreme weather, a warming Pacific Northwest, reduced snow pack, and sea level rise are four major ways that climate change is disrupting Washington's economy, environment, and communities;

(b) Washington's greenhouse gases emissions are continuing to increase, despite international scientific consensus that worldwide emissions must be reduced significantly below current levels to avert catastrophic climate change;

(c) Washington state greenhouse gases are substantially caused by the transportation sector of the economy;

(d) Washington has been a leader in actions to slow the increase of greenhouse gases emissions, such as being the first state in the nation to adopt a carbon dioxide mitigation program for new thermal electric plants, mandating integrated resource planning for electric utilities to include life-cycle costs of carbon dioxide emissions, adopting clean car standards and stronger appliance energy efficiency standards, increasing production and use of renewable liquid fuels, and increasing renewable energy sources by electric utilities;

(e) A greenhouse gases emissions performance standard will work in unison with the state's carbon dioxide mitigation policy, chapter 80.70 RCW and its related rules, for fossil-fueled thermal electric generation facilities located in the state;

(f) While these actions are significant, there is a need to assess the trend of greenhouse gases emissions statewide over the next several decades, and to take sufficient actions so that Washington meets its responsibility to contribute to the global actions needed to reduce the impacts and the pace of global warming;

(g) Actions to reduce greenhouse gases emissions will spur technology development and increase efficiency, thus resulting in benefits to Washington's economy and businesses; and

(h) The state of Washington has an obligation to provide clear guidance for the procurement of baseload electric generation to alleviate regulatory uncertainty while addressing risks that can affect the ability of electric utilities to make necessary and timely investments to ensure an adequate, reliable, and cost-effective supply of electricity.

(2) The legislature finds that companies that generate greenhouse gases emissions or manufacture products that generate such emissions are purchasing carbon credits from landowners and from other companies that provide carbon credits. Companies that are purchasing carbon credits would benefit from a program to trade and to bank carbon credits. Washington forests are one of the most effective resources that can absorb carbon dioxide from the atmosphere. Forests, and other planted lands and waters, provide carbon storage and mitigate greenhouse gases emissions. Washington contains the most productive forests in the world and both public and private landowners could benefit from a carbon storage trading and banking program.

(3) The legislature intends by this chapter to establish statutory goals for the statewide reduction in greenhouse gases emissions and to adopt the recommendations provided by the Washington climate change challenge stakeholder group, which is charged with designing and recommending a comprehensive set of policies to the legislature and the governor on how to achieve the goals. The legislature further intends by this chapter to authorize immediate actions in the electric power generation sector for the reduction of greenhouse gases emissions.

(4) The legislature finds that:

(a) To the extent energy efficiency and renewable resources are unable to satisfy increasing energy and capacity needs, the state will rely on clean and efficient fossil fuel-fired generation and will encourage the development of cost-effective, highly efficient, and environmentally sound supply resources to provide reliability and consistency with the state's energy priorities;

(b) It is vital to ensure all electric utilities internalize the significant and underrecognized cost of emissions and to reduce Washington consumers' exposure to costs associated with future regulation of these emissions, which is consistent with the objectives of integrated resource planning by electric utilities under chapter 19.280 RCW; and

(c) The state of California recently enacted a law establishing a greenhouse gases emissions performance standard for electric utility procurement of baseload electric generation that is based on the emissions of a combined-cycle thermal electric generation facility fueled by natural gas.

(5) The legislature finds that the climate change challenge stakeholder group provides a process for identifying the policies necessary to achieve the economic and emissions reduction goals in \*RCW 80.80.020 in a manner that maximizes economic opportunities and job creation in Washington. [2007 c 307 § 1.]

\*Reviser's note: RCW 80.80.020 was repealed by 2008 c 14 § 13.

**80.80.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for consumer-owned utilities under its jurisdiction; or (b) an independent auditor selected by a consumer-owned utility that is not under the jurisdiction of the state auditor.

(3) "Average available greenhouse gases [gas] emissions output" means the level of greenhouse gases [gas] emissions as surveyed and determined by the energy policy division of the department of community, trade, and economic development under RCW 80.80.050.

(4) "Baseload electric generation" means electric generation from a power plant that is designed and intended to provide electricity at an annualized plant capacity factor of at least sixty percent.

(5) "Cogeneration facility" means a power plant in which the heat or steam is also used for industrial or commercial heating or cooling purposes and that meets federal energy regulatory commission standards for qualifying facilities under the public utility regulatory policies act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(6) "Combined-cycle natural gas thermal electric generation facility" means a power plant that employs a combination of one or more gas turbines and steam turbines in which electricity is produced in the steam turbine from otherwise lost waste heat exiting from one or more of the gas turbines.

(7) "Commission" means the Washington utilities and transportation commission.

(8) "Consumer-owned utility" means a municipal utility formed under Title 35 RCW, a public utility district formed

under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, or port district within which an industrial district has been established as authorized by Title 53 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(9) "Department" means the department of ecology.

(10) "Distributed generation" means electric generation connected to the distribution level of the transmission and distribution grid, which is usually located at or near the intended place of use.

(11) "Electric utility" means an electrical company or a consumer-owned utility.

(12) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.

(13) "Governing board" means the board of directors or legislative authority of a consumer-owned utility.

(14) "Greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(15) "Long-term financial commitment" means:

(a) Either a new ownership interest in baseload electric generation or an upgrade to a baseload electric generation facility; or

(b) A new or renewed contract for baseload electric generation with a term of five or more years for the provision of retail power or wholesale power to end-use customers in this state.

(16) "Plant capacity factor" means the ratio of the electricity produced during a given time period, measured in kilowatt-hours, to the electricity the unit could have produced if it had been operated at its rated capacity during that period, expressed in kilowatt-hours.

(17) "Power plant" means a facility for the generation of electricity that is permitted as a single plant by the energy facility site evaluation council or a local jurisdiction.

(18) "Upgrade" means any modification made for the primary purpose of increasing the electric generation capacity of a baseload electric generation facility. "Upgrade" does not include routine or necessary maintenance, installation of emission control equipment, installation, replacement, or modification of equipment that improves the heat rate of the facility, or installation, replacement, or modification of equipment for the primary purpose of maintaining reliable generation output capability that does not increase the heat input or fuel usage as specified in existing generation air quality permits as of July 22, 2007, but may result in incidental increases in generation capacity. [2007 c 307 § 2.]

**80.80.030 Achieving greenhouse gases emissions reduction goals—Submission of policy recommendations to legislature by governor.** (1) The governor shall develop policy recommendations to the legislature on how the state can achieve the greenhouse gases emissions reduction goals established under \*RCW 80.80.020. These recommendations must include, but are not limited to:

(a) How market mechanisms, such as a load-based cap and trade system, would assist in achieving the greenhouse gases emissions reduction goals;

(b) How geologic injection, forest sequestration, and other carbon sequestration options could be used to achieve state greenhouse gases emissions reduction goals;

(c) A process for replacing the highest emitting thermal electric plants that have exceeded their expected useful life with newer technologies that have lower greenhouse gases emissions levels;

(d) Methods to utilize indigenous resources, such as landfill gas, geothermal resources, and other assets that might reduce greenhouse gases emissions consistent with the purposes of this chapter;

(e) How regulatory and tax policies for electric utilities could be improved to help achieve these goals in a manner that is equitable for electric utilities and consumers.

(2) Recommendations under subsection (1) of this section shall be submitted to the appropriate committees of the house of representatives and the senate for consideration in the 2008 legislative session. [2007 c 307 § 4.]

\*Reviser's note: RCW 80.80.020 was repealed by 2008 c 14 § 13.

**80.80.040 Greenhouse gases emissions performance standards—Rules—Sequestration.** (1) Beginning July 1, 2008, the greenhouse gases emissions performance standard for all baseload electric generation for which electric utilities enter into long-term financial commitments on or after such date is the lower of:

(a) One thousand one hundred pounds of greenhouse gases per megawatt-hour; or

(b) The average available greenhouse gases emissions output as determined under RCW 80.80.050.

(2) All baseload electric generation facilities in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of long-term financial commitments. All baseload electric generation that commences operation after June 30, 2008, and is located in Washington, must comply with the greenhouse gases emissions performance standard established in subsection (1) of this section.

(3) All electric generation facilities or power plants powered exclusively by renewable resources, as defined in RCW 19.280.020, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section.

(4) All cogeneration facilities in the state that are fueled by natural gas or waste gas or a combination of the two fuels, and that are in operation as of June 30, 2008, are deemed to be in compliance with the greenhouse gases emissions performance standard established under this section until the facilities are the subject of a new ownership interest or are upgraded.

(5) In determining the rate of emissions of greenhouse gases for baseload electric generation, the total emissions associated with producing electricity shall be included.

(6) The department shall establish an output-based methodology to ensure that the calculation of emissions of greenhouse gases for a cogeneration facility recognizes the total usable energy output of the process, and includes all greenhouse gases emitted by the facility in the production of both electrical and thermal energy. In developing and implement-

ing the greenhouse gases emissions performance standard, the department shall consider and act in a manner consistent with any rules adopted pursuant to the public utilities regulatory policy act of 1978 (16 U.S.C. Sec. 824a-3), as amended.

(7) The following greenhouse gases emissions produced by baseload electric generation owned or contracted through a long-term financial commitment shall not be counted as emissions of the power plant in determining compliance with the greenhouse gases emissions performance standard:

(a) Those emissions that are injected permanently in geological formations;

(b) Those emissions that are permanently sequestered by other means approved by the department; and

(c) Those emissions sequestered or mitigated as approved under subsection (13) of this section.

(8) In adopting and implementing the greenhouse gases emissions performance standard, the department of community, trade, and economic development energy policy division, in consultation with the commission, the department, the Bonneville power administration, the western electricity coordination council, the energy facility site evaluation council, electric utilities, public interest representatives, and consumer representatives, shall consider the effects of the greenhouse gases emissions performance standard on system reliability and overall costs to electricity customers.

(9) In developing and implementing the greenhouse gases emissions performance standard, the department shall, with assistance of the commission, the department of community, trade, and economic development energy policy division, and electric utilities, and to the extent practicable, address long-term purchases of electricity from unspecified sources in a manner consistent with this chapter.

(10) The directors of the energy facility site evaluation council and the department shall each adopt rules under chapter 34.05 RCW in coordination with each other to implement and enforce the greenhouse gases emissions performance standard. The rules necessary to implement this section shall be adopted by June 30, 2008.

(11) In adopting the rules for implementing this section, the energy facility site evaluation council and the department shall include criteria to be applied in evaluating the carbon sequestration plan, for baseload electric generation that will rely on subsection (7) of this section to demonstrate compliance, but that will commence sequestration after the date that electricity is first produced. The rules shall include but not be limited to:

(a) Provisions for financial assurances, as a condition of plant operation, sufficient to ensure successful implementation of the carbon sequestration plan, including construction and operation of necessary equipment, and any other significant costs;

(b) Provisions for geological or other approved sequestration commencing within five years of plant operation, including full and sufficient technical documentation to support the planned sequestration;

(c) Provisions for monitoring the effectiveness of the implementation of the sequestration plan;

(d) Penalties for failure to achieve implementation of the plan on schedule;

(e) Provisions for an owner to purchase emissions reductions in the event of the failure of a sequestration plan under subsection (13) of this section; and

(f) Provisions for public notice and comment on the carbon sequestration plan.

(12)(a) Except as provided in (b) of this subsection, as part of its role enforcing the greenhouse gases emissions performance standard, the department shall determine whether sequestration or a plan for sequestration will provide safe, reliable, and permanent protection against the greenhouse gases entering the atmosphere from the power plant and all ancillary facilities.

(b) For facilities under its jurisdiction, the energy facility site evaluation council shall contract for review of sequestration or the carbon sequestration plan with the department consistent with the conditions under (a) of this subsection, consider the adequacy of sequestration or the plan in its adjudicative proceedings conducted under RCW 80.50.090(3), and incorporate specific findings regarding adequacy in its recommendation to the governor under RCW 80.50.100.

(13) A project under consideration by the energy facility site evaluation council by July 22, 2007, is required to include all of the requirements of subsection (11) of this section in its carbon sequestration plan submitted as part of the energy facility site evaluation council process. A project under consideration by the energy facility site evaluation council by July 22, 2007, that receives final site certification agreement approval under chapter 80.50 RCW shall make a good faith effort to implement the sequestration plan. If the project owner determines that implementation is not feasible, the project owner shall submit documentation of that determination to the energy facility site evaluation council. The documentation shall demonstrate the steps taken to implement the sequestration plan and evidence of the technological and economic barriers to successful implementation. The project owner shall then provide to the energy facility site evaluation council notification that they shall implement the plan that requires the project owner to meet the greenhouse gases emissions performance standard by purchasing verifiable greenhouse gases emissions reductions from an electric generating facility located within the western interconnection, where the reduction would not have occurred otherwise or absent this contractual agreement, such that the sum of the emissions reductions purchased and the facility's emissions meets the standard for the life of the facility. [2007 c 307 § 5.]

**80.80.050 Public comment—Commercially available turbines—Rate of greenhouse gases emissions—Reports—Rules.** The energy policy division of the department of community, trade, and economic development shall provide an opportunity for interested parties to comment on the development of a survey of new combined-cycle natural gas thermal electric generation turbines commercially available and offered for sale by manufacturers and purchased in the United States to determine the average rate of emissions of greenhouse gases for these turbines. The department of community, trade, and economic development shall report the results of its survey to the legislature every five years, beginning June 30, 2013. The department of community, trade, and economic development shall adopt by rule the

average available greenhouse gases emissions output every five years beginning five years after July 22, 2007. [2007 c 307 § 7.]

**80.80.060 Electrical companies—Baseload electric generation—Long-term financial commitments—Rules.**

(1) No electrical company may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(2) In order to enforce the requirements of this chapter, the commission shall review in a general rate case or as provided in subsection (5) of this section any long-term financial commitment entered into by an electrical company after June 30, 2008, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(3) In determining whether a long-term financial commitment is for baseload electric generation, the commission shall consider the design of the power plant and its intended use, based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the commission determines is relevant under the circumstances.

(4) Upon application by an electric utility, the commission may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) Upon application by an electrical company, the commission shall determine whether the company's proposed decision to acquire electric generation or enter into a power purchase agreement for electricity complies with the greenhouse gases emissions performance standard established under RCW 80.80.040, whether the company has a need for the resource, and whether the specific resource selected is appropriate. The commission shall take into consideration factors such as the company's forecasted loads, need for energy, power plant technology, expected costs, and other associated investment decisions. The commission shall not decide in a proceeding under this subsection (5) issues involving the actual costs to construct and operate the selected resource, cost recovery, or other issues reserved by the commission for decision in a general rate case or other proceeding for recovery of the resource or contract costs. A proceeding under this subsection (5) shall be conducted pursuant to chapter 34.05 RCW (part IV). The commission shall adopt rules to provide that the schedule for a proceeding under this subsection takes into account both (a) the needs of the parties to the proposed resource acquisition or power purchase agreement for timely decisions that allow transactions to be completed; and (b) the procedural rights to be provided to parties in chapter 34.05 RCW (part IV), including intervention, discovery, briefing, and hearing.

(6) An electrical company may account for and defer for later consideration by the commission costs incurred in connection with the long-term financial commitment, including operating and maintenance costs, depreciation, taxes, and

cost of invested capital. The deferral begins with the date on which the power plant begins commercial operation or the effective date of the power purchase agreement and continues for a period not to exceed twenty-four months; provided that if during such period the company files a general rate case or other proceeding for the recovery of such costs, deferral ends on the effective date of the final decision by the commission in such proceeding. Creation of such a deferral account does not by itself determine the actual costs of the long-term financial commitment, whether recovery of any or all of these costs is appropriate, or other issues to be decided by the commission in a general rate case or other proceeding for recovery of these costs.

(7) The commission shall consult with the department to apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040. The department shall report to the commission whether baseload electric generation will comply with the greenhouse gases emissions performance standard for the duration of the period the baseload electric generation is supplied to the electrical company.

(8) The commission shall adopt rules for the enforcement of this section with respect to electrical companies and adopt procedural rules for approving costs incurred by an electrical company under subsection (4) of this section.

(9) The commission shall adopt rules necessary to implement this section by December 31, 2008. [2007 c 307 § 8.]

**80.80.070 Consumer-owned utilities—Baseload electric generation—Long-term financial commitments.** (1)

No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation supplied under such a long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(2) The governing board shall review and make a determination on any long-term financial commitment by the utility, pursuant to this chapter and after consultation with the department, to determine whether the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040. No consumer-owned utility may enter into a long-term financial commitment unless the baseload electric generation to be supplied under that long-term financial commitment complies with the greenhouse gases emissions performance standard established under RCW 80.80.040.

(3) In confirming that a long-term financial commitment is for baseload electric generation, the governing board shall consider the design of the power plant and the intended use of the power plant based upon the electricity purchase contract, if any, permits necessary for the operation of the power plant, and any other matter the governing board determines is relevant under the circumstances.

(4) The governing board may provide a case-by-case exemption from the greenhouse gases emissions performance standard to address: (a) Unanticipated electric system reliability needs; or (b) catastrophic events or threat of significant financial harm that may arise from unforeseen circumstances.

(5) The governing board shall apply the procedures adopted by the department to verify the emissions of greenhouse gases from baseload electric generation under RCW 80.80.040, and may request assistance from the department in doing so.

(6) For consumer-owned utilities, the auditor is responsible for auditing compliance with this chapter and rules adopted under this chapter that apply to those utilities and the attorney general is responsible for enforcing that compliance. [2007 c 307 § 9.]

**80.80.080 Greenhouse gases emissions performance standards—Review—Report.** For the purposes of RCW 80.80.040 through 80.80.080 and 80.70.020, the department, in consultation with the department of community, trade, and economic development energy policy division, the energy facility site evaluation council, the commission, and the governing boards of consumer-owned utilities, shall review the greenhouse gases emissions performance standard established in this chapter to determine need, applicability, and effectiveness no less than every five years following July 22, 2007, or upon implementation of a federal or state law or rule regulating carbon dioxide emissions of electric utilities, and report to the legislature. [2007 c 307 § 10.]

## Chapter 80.98 RCW CONSTRUCTION

### Sections

80.98.010	Continuation of existing law.
80.98.020	Title, chapter, section headings not part of law.
80.98.030	Invalidity of part of title not to affect remainder.
80.98.040	Repeals and saving.
80.98.050	Emergency—1961 c 14.

**80.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 14 § 80.98.010.]

**80.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 80.98.020.]

**80.98.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 80.98.030.]

**80.98.040 Repeals and saving.** See 1961 c 14 § 80.98.040.

**80.98.050 Emergency—1961 c 14.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 80.98.050.]

# Title 81

## TRANSPORTATION

### Chapters

- 81.01** General provisions.
- 81.04** Regulations—General.
- 81.08** Securities.
- 81.12** Transfers of property.
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#### Easements

*of public service companies taxable as personalty: RCW 84.20.010.  
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*Eminent domain by corporations: Chapter 8.20 RCW.*

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*county roads and bridges: Chapter 36.55 RCW.  
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*Highway user tax structure: Chapter 46.85 RCW.*

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*Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.*

*Taxation of rolling stock: State Constitution Art. 12 § 17.*

*Traffic control at work sites: Chapter 47.36 RCW.*

### Chapter 81.01 RCW GENERAL PROVISIONS

#### Sections

- 81.01.010 Adoption of provisions of chapter 80.01 RCW.

**81.01.010 Adoption of provisions of chapter 80.01 RCW.** The provisions of chapter 80.01 RCW, as now or hereafter amended, apply to Title 81 RCW as fully as though they were set forth herein. [1961 c 14 § 81.01.010.]

### Chapter 81.04 RCW REGULATIONS—GENERAL

#### Sections

- 81.04.010 Definitions.
- 81.04.020 Procedure before commission and courts.
- 81.04.030 Number of witnesses may be limited.
- 81.04.040 Witness fees and mileage.
- 81.04.050 Protection against self-incrimination.
- 81.04.060 Deposition—Service of process.
- 81.04.070 Inspection of books, papers, and documents.
- 81.04.075 Manner of serving papers.
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- 81.04.090 Forms of records to be prescribed.
- 81.04.100 Production of out-of-state books and records.
- 81.04.110 Complaint—Hearing.
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- 81.04.140 Order requiring joint action.
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- 81.04.280 Purchase and sale of stock by employees.
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- 81.04.300 Budgets to be filed—Supplementary budgets.

81.04.310	Commission's control over expenditures.
81.04.320	Budget rules and regulations.
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81.04.387	Penalties—Violations by other corporations.
81.04.390	Penalties—Violations by persons.
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81.04.405	Additional penalties—Violations by public service companies and officers, agents, and employees.
81.04.410	Orders and rules conclusive.
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81.04.490	Application to municipal utilities—Safety regulation of municipal gas and hazardous liquid pipelines.
81.04.500	Duties of attorney general.
81.04.510	Engaging in business or operating without approval or authority—Procedure.
81.04.530	Controlled substances, alcohol.
81.04.540	Regulation of common carriers, railroad safety practices.
81.04.550	Railroad safety administration.

**81.04.010 Definitions.** As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

(1) "Commission" means the utilities and transportation commission.

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

(3) "Corporation" includes a corporation, company, association, or joint stock association.

(4) "Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.

(5) "Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.

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

(7) "Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such street railroad, within this state.

(8) "Street railroad company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating, or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

(9) "Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all facilities and equipment, used, operated, controlled, or owned by or in connection with any such railroad.

(10) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

(11) "Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, commercial ferries, motor freight carriers, auto transportation companies, charter party carriers and excursion service carriers, private nonprofit transportation providers, solid waste collection companies, household goods carriers, hazardous liquid pipeline companies, and every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing, or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

(12) "Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha, or electric motors.

(13) "Commercial ferry" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating, or managing any vessel over and upon the waters of this state.

(14) "Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, and handling of the property transported, and the transmission of credit.

(15) "Transportation of persons" includes any service in connection with the receiving, carriage, and delivery of persons transported and their baggage and all facilities used, or necessary to be used in connection with the safety, comfort, and convenience of persons transported.

(16) "Public service company" includes every common carrier.

(17) The term "service" is used in this title in its broadest and most inclusive sense. [2007 c 234 § 4; 1993 c 427 § 9; 1991 c 272 § 3; 1981 c 13 § 2; 1961 c 14 § 81.04.010. Prior: 1955 c 316 § 3; prior: 1929 c 223 § 1, part; 1923 c 116 § 1, part; 1911 c 117 § 8, part; RRS § 10344, part.]

**Effective dates—1991 c 272:** See RCW 81.108.901.

**81.04.020 Procedure before commission and courts.** Each commissioner shall have power to administer oaths, certify to all official acts, and to issue subpoenas for the attendance of witnesses and the production of papers, waybills,

books, accounts, documents and testimony in any inquiry, investigation, hearing or proceeding in any part of the state.

The superior court of the county in which any such inquiry, investigation, hearing or proceeding may be had, shall have power to compel the attendance of witnesses and the production of papers, waybills, books, accounts, documents and testimony as required by such subpoena. The commission or the commissioner before which the testimony is to be given or produced, in case of the refusal of any witness to attend or testify or produce any papers required by the subpoena, shall report to the superior court in and for the county in which the proceeding is pending by petition, setting forth that due notice has been given of the time and place of attendance of said witnesses, or the production of said papers, and that the witness has been summoned in the manner prescribed in this chapter, and that the fees and mileage of the witness have been paid or tendered to the witness for his attendance and testimony, and that the witness has failed and refused to attend or produce the papers required by the subpoena, before the commission, in the cause or proceedings named in the notice and subpoena, or has refused to answer questions propounded to him in the course of such proceeding, and ask an order of said court, compelling the witness to attend and testify before the commission. The court, upon the petition of the commission, shall enter an order directing the witness to appear before said court at a time and place to be fixed by the court in such order, and then and there show cause why he has not responded to said subpoena. A copy of said order shall be served upon said witness. If it shall appear to the court that said subpoena was regularly issued by the commission, the court shall thereupon enter an order that said witness appear before the commission at said time and place as fixed in said order, and testify or produce the required papers, and upon failing to obey said order, said witness shall be dealt with as for contempt of court. [1961 c 14 § 81.04.020. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

**81.04.030 Number of witnesses may be limited.** In all proceedings before the commission the commission shall have the right, in their discretion, to limit the number of witnesses testifying upon any subject or proceeding to be inquired of before the commission. [1961 c 14 § 81.04.030. Prior: 1911 c 117 § 75, part; RRS § 10413, part.]

**81.04.040 Witness fees and mileage.** Each witness who appears under subpoena shall receive for his attendance four dollars per day and ten cents per mile traveled by the nearest practicable route in going to and returning from the place of hearing. No witness shall be entitled to fees or mileage from the state when summoned at the instance of the public service companies affected. [1961 c 14 § 81.04.040. Prior: 1955 c 79 § 3; 1911 c 117 § 76, part; RRS § 10414, part.]

**81.04.050 Protection against self-incrimination.** The claim by any witness that any testimony sought to be elicited may tend to incriminate him shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding, excepting in a prosecution for perjury. The commis-

sioner shall have power to compel the attendance of witnesses at any place within the state. [1961 c 14 § 81.04.050. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

**81.04.060 Deposition—Service of process.** The commission shall have the right to take the testimony of any witness by deposition, and for that purpose the attendance of witnesses and the production of books, waybills, documents, papers and accounts may be enforced in the same manner as in the case of hearings before the commission, or any member thereof. Process issued under the provisions of this chapter shall be served as in civil cases. [1961 c 14 § 81.04.060. Prior: 1911 c 117 § 76, part; RRS § 10414, part.]

**81.04.070 Inspection of books, papers, and documents.** The commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers and documents of any public service company, and the commission, or any commissioner, may examine under oath any officer, agent or employee of such public service company in relation thereto, and with reference to the affairs of such company: PROVIDED, That any person other than a commissioner who shall make any such demand shall produce his authority from the commission to make such inspection. [1961 c 14 § 81.04.070. Prior: 1911 c 117 § 77; RRS § 10415.]

**81.04.075 Manner of serving papers.** All notices, applications, complaints, findings of fact, opinions and orders required by this title to be served may be served by mail and service thereof shall be deemed complete when a true copy of such paper or document is deposited in the post office properly addressed and stamped. [1961 c 14 § 81.04.075. Prior: 1933 c 165 § 7; RRS § 10458-1. Formerly RCW 81.04.370.]

**81.04.080 Annual report—Other reports.** Every public service company shall annually furnish to the commission a report in such form as the commission may require, and shall specifically answer all questions propounded to it by the commission. The commission may prescribe the period of time within which all public service companies subject to this title must have, as near as may be, a uniform system of accounts, and the manner in which the accounts must be kept. The detailed report must contain all the required statistics for the period of twelve months ending on the last day of any particular month prescribed by the commission for any public service company. The reports must be made out under oath and filed with the commission at its office in Olympia on a date the commission specifies by rule, unless additional time is granted by the commission. The commission may require any public service company to file monthly reports of earnings and expenses, and to file periodical or special reports, or both, concerning any matter the commission is authorized or required, by this or any other law, to inquire into or keep itself informed about, or which it is required to enforce, the periodical or special reports to be under oath whenever the commission so requires. [2007 c 234 § 5; 1989 c 107 § 2; 1961 c 14 § 81.04.080. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

**81.04.090 Forms of records to be prescribed.** The commission may, in its discretion, prescribe the forms of any and all accounts, records and memoranda to be kept by public service companies, including the accounts, records and memoranda of the movement of traffic, sales of its product, the receipts and expenditures of money. The commission shall at all times have access to all accounts, records and memoranda kept by public service companies, and may employ special agents or examiners, who shall have power to administer oaths and authority, under the order of the commission, to examine witnesses and to inspect and examine any and all accounts, records and memoranda kept by such companies. The commission may, in its discretion, prescribe the forms of any and all reports, accounts, records and memoranda to be furnished and kept by any public service company whose line or lines extend beyond the limits of this state, which are operated partly within and partly without the state, so that the same shall show any information required by the commission concerning the traffic movement, receipts and expenditures appertaining to those parts of the line within the state. [1961 c 14 § 81.04.090. Prior: 1911 c 117 § 78, part; RRS § 10416, part.]

**81.04.100 Production of out-of-state books and records.** The commission may by order with or without hearing require the production within this state, at such time and place as it may designate, of any books, accounts, papers or records kept by any public service company in any office or place without this state, or at the option of the company verified copies thereof, so that an examination thereof may be made by the commission or under its direction. [1961 c 14 § 81.04.100. Prior: 1933 c 165 § 2; 1911 c 117 § 79; RRS § 10421.]

**81.04.110 Complaint—Hearing.** Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service company or any person, persons, or entity acting as a public service company in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

When two or more public service companies or a person, persons, or entity acting as a public service company, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing pub-

lic service companies in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service company or companies complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or company complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission. [1994 c 37 § 2; 1961 c 14 § 81.04.110. Prior: 1913 c 145 § 1; 1911 c 117 § 80; RRS § 10422.]

**Intent—1994 c 37:** "It is the intent of the legislature to clarify that the utilities and transportation commission has the authority to make more efficient use of its resources, provide quicker resolution of complaints regarding transportation tariff matters, eliminate duplicative hearings on classification and violation matters, and to make certain that criminal proceedings involving alleged violations of transportation tariffs not be dismissed because of confusion regarding whether a defendant has received a classification by the commission." [1994 c 37 § 1.]

**81.04.120 Hearing—Order—Record.** At the time fixed for the hearing mentioned in RCW 81.04.110, the complainant and the person or corporation complained of shall be entitled to be heard and introduce such evidence as he or it may desire. The commission shall issue process to enforce the attendance of all necessary witnesses. At the conclusion of such hearing the commission shall make and render findings concerning the subject matter and facts inquired into and enter its order based thereon. A copy of such order, certified under the seal of the commission, shall be served upon the person or corporation complained of, or his or its attorney, which order shall, of its own force, take effect and become operative twenty days after the service thereof, except as otherwise provided. Where an order cannot, in the judgment of the commission, be complied with within twenty days, the commission may prescribe such additional time as in its judgment is reasonably necessary to comply with the order, and may, on application and for good cause shown, extend the time for compliance fixed in its order. A full and complete record of all proceedings had before the commission, or any member thereof, on any formal hearing had, and all testimony shall be taken down by a stenographer appointed by the commission, and the parties shall be entitled to be heard in person or by attorney. In case of an action to review any order

of the commission, a transcript of such testimony, together with all exhibits introduced, and of the record and proceedings in the cause, shall constitute the record of the commission. [1961 c 14 § 81.04.120. Prior: 1911 c 117 § 81; RRS § 10423.]

**81.04.130 Suspension of tariff change—Waiver of provisions during state of emergency.** Whenever any public service company, subject to regulation by the commission as to rates and service, files with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, fare, charge, rental, or toll previously charged, the commission may, either upon its own motion or upon complaint, upon notice, hold a hearing concerning the proposed change and the reasonableness and justness of it. Pending the hearing and the decision, the commission may suspend the operation of the rate, fare, charge, rental, or toll, if the change is proposed by a common carrier other than a solid waste collection company, for a period not exceeding seven months, and, if proposed by a solid waste collection company, for a period not exceeding ten months from the time the change would otherwise go into effect. After a full hearing the commission may make the order in reference to the change as would be provided in a hearing initiated after the change had become effective.

At any hearing involving any change in any schedule, classification, rule, or regulation the effect of which is to increase any rate, fare, charge, rental, or toll theretofore charged, the burden of proof to show that the increase is just and reasonable is upon the public service company. When any common carrier files any tariff, classification, rule, or regulation the effect of which is to decrease any rate, fare, or charge, the burden of proof to show that such decrease is just and reasonable is upon the common carrier.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 404; 2007 c 234 § 6; 1993 c 300 § 1; 1984 c 143 § 1; 1961 c 14 § 81.04.130. Prior: 1941 c 162 § 1; 1937 c 169 § 2; 1933 c 165 § 3; 1915 c 133 § 1; 1911 c 117 § 82; Rem. Supp. 1941 § 10424.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.04.140 Order requiring joint action.** Whenever any order of the commission shall require joint action by two or more public service companies, such order shall specify that the same shall be made at their joint cost, and the companies affected shall have thirty days, or such further time, as the commission may prescribe, within which to agree upon the part or division of cost which each shall bear, and costs of operation and maintenance in the future, or the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations. If at the expiration of such time such companies shall fail to file with the commission a statement that an agreement has been made for the division or apportionment of such cost, the division of costs of operation and maintenance to be incurred in the future and

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the proportion of charges or revenue each shall receive from such joint service and the rules to govern future operations, the commission shall have authority, after further hearing, to enter a supplemental order fixing the proportion of such cost or expense to be borne by each company, and the manner in which the same shall be paid and secured. [1961 c 14 § 81.04.140. Prior: 1911 c 117 § 83; RRS § 10425.]

**81.04.150 Remunerative rate—Change without authorization prohibited—Waiver of provisions during state of emergency.** Whenever the commission finds, after a hearing upon its own motion or upon complaint as provided in this chapter, that any rate, toll, rental, or charge that has been the subject of complaint and inquiry is sufficiently remunerative to the public service company subject to regulation by the commission as to rates and service affected by it, the commission may order that the rate, toll, rental, or charge must not be changed, altered, abrogated, or discontinued, nor must there be any change in the classification that will change or alter the rate, toll, rental, or charge without first obtaining the consent of the commission authorizing the change to be made.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 405; 2007 c 234 § 7; 1984 c 143 § 2; 1961 c 14 § 81.04.150. Prior: 1911 c 117 § 84; RRS § 10426.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.04.160 Rules.** The commission may adopt rules that pertain to the comfort and convenience of the public using the services of public service companies that are subject to regulation by the commission as to services provided. [2007 c 234 § 8; 1961 c 14 § 81.04.160. Prior: 1911 c 117 § 85; RRS § 10427.]

**81.04.200 Rehearing before commission.** Any public service company affected by any order of the commission, and deeming itself aggrieved, may, after the expiration of two years from the date of such order taking effect, petition the commission for a rehearing upon the matters involved in such order, setting forth in such petition the grounds and reasons for such rehearing, which grounds and reasons may comprise and consist of changed conditions since the issuance of such order, or by showing a result injuriously affecting the petitioner which was not considered or anticipated at the former hearing, or that the effect of such order has been such as was not contemplated by the commission or the petitioner, or for any good and sufficient cause which for any reason was not considered and determined in such former hearing. Upon the filing of such petition, such proceedings shall be had thereon as are provided for hearings upon complaint, and such orders may be reviewed as are other orders of the commission: PROVIDED, That no order superseding the order of the commission denying such rehearing shall be granted by the court

pending the review. In case any order of the commission shall not be reviewed, but shall be complied with by the public service company, such petition for rehearing may be filed within six months from and after the date of the taking effect of such order, and the proceedings thereon shall be as in this section provided. The commission, may, in its discretion, permit the filing of a petition for rehearing at any time. No order of the commission upon a rehearing shall affect any right of action or penalty accruing under the original order unless so ordered by the commission. [1961 c 14 § 81.04.200. Prior: 1911 c 117 § 89; RRS § 10431.]

**81.04.210 Commission may change orders.** The commission may at any time, upon notice to the public service company affected, and after opportunity to be heard as provided in the case of complaints rescind, alter or amend any order or rule made, issued or promulgated by it, and any order or rule rescinding, altering or amending any prior order or rule shall, when served upon the public service company affected, have the same effect as herein provided for original orders and rules. [1961 c 14 § 81.04.210. Prior: 1911 c 117 § 90; RRS § 10432.]

**81.04.220 Reparations.** After a complaint is made to the commission concerning the reasonableness of any rate, fare, toll, rental or charge for any service performed by any public service company subject to regulation by the commission as to rates and service, and the complaint is investigated by the commission, and the commission determines both that the public service company has charged an excessive or exorbitant amount for the service and that any party complainant is entitled to an award of damages, the commission shall order the public service company to pay the complainant the excess amount found to have been charged, whether the excess amount was charged and collected before or after the filing of the complaint, with interest from the date of the collection of the excess amount. [2007 c 234 § 9; 1961 c 14 § 81.04.220. Prior: 1943 c 258 § 1; 1937 c 29 § 1; Rem. Supp. 1943 § 10433.]

**81.04.230 Overcharges—Refund.** When complaint has been made to the commission that any public service company has charged an amount for any service rendered in excess of the lawful rate in force at the time such charge was made, and the same has been investigated and the commission has determined that the overcharge allegation is true, the commission may order that the public service company pay to the complainant the amount of the overcharge so found, whether such overcharge was made before or after the filing of said complaint, with interest from the date of collection of such overcharge. [1961 c 14 § 81.04.230. Prior: 1937 c 29 § 2; RRS § 10433-1.]

**81.04.235 Limitation of actions.** All complaints against public service companies for recovery of overcharges shall be filed with the commission within two years from the time the cause of action accrues, and not after, except as hereinafter provided, and except that if claim for the overcharge has been presented in writing to the public service company within the two-year period of limitation, said period shall be

extended to include six months from the time notice in writing is given by the public service company to the claimant of disallowance of the claim, or any part or parts thereof, specified in the notice.

If on or before expiration of the two-year period of limitation for the recovery of overcharges, a public service company begins action under RCW 81.28.270 for recovery of charges in respect of the same transportation service, or, without beginning action, collects charges in respect of that service, said period of limitation shall be extended to include ninety days from the time such action is begun or such charges are collected by the carrier.

All complaints against public service companies for the recovery of damages not based on overcharges shall be filed with the commission within six months from the time the cause of action accrues except as hereinafter provided.

The six-month period of limitation for recovery of damages not based on overcharges shall be extended for a like period and under the same conditions as prescribed for recovery of overcharges. If the six-month period for recovery of damages not based on overcharges has expired at the time action is commenced under RCW 81.28.270 for recovery of charges with respect to the same transportation service, or, without beginning such action, charges are collected with respect to that service, complaints therefor shall be filed with the commission within ninety days from the commencement of such action or the collection of such charges by the carrier. [1963 c 59 § 4; 1961 c 14 § 81.04.235. Prior: 1955 c 79 § 5.]

**81.04.236 When cause of action deemed to accrue.** The cause of action for the purposes of RCW 81.04.235, 81.04.240, and 81.28.270 shall be deemed to accrue: (a) In respect of a shipment of property, upon delivery or tender of delivery thereof by the carrier, and not after; (b) in respect of goods or service or services other than a shipment of property, upon the rendering of an invoice or statement of charges by the public service company, and not after.

The provisions of this section shall extend to and embrace cases in which the cause of action has heretofore accrued as well as cases in which the cause of action may hereafter accrue. [1961 c 14 § 81.04.236. Prior: 1955 c 79 § 6.]

**81.04.240 Action in court on reparations and overcharges—Procedure.** If the public service company subject to regulation by the commission as to rates and service does not comply with the order of the commission for the payment of damages or overcharges within the time limited in the order, action may be brought in any superior court where service may be had upon the company to recover the amount of damages or overcharges with interest. The commission shall certify and file its record in the case, including all exhibits, with the clerk of the court within thirty days after the action is started. The action must be heard on the evidence and exhibits introduced before and certified by the commission.

If the complainant prevails in the action, the court shall enter judgment for the amount of damages or overcharges with interest and award the complainant reasonable attorney's fees, and the cost of preparing and certifying the record for the benefit of and to be paid to the commission by com-

plainant, and deposited by the commission in the public service revolving fund, the sums to be fixed and collected as a part of the costs of the action.

If the order of the commission is found contrary to law or erroneous by the rejection of testimony properly offered, the court shall remand the cause to the commission with instructions to receive the testimony so proffered and rejected and enter a new order based upon the evidence theretofore taken and such as it is directed to receive.

The court may remand any action it reverses to the commission for further action.

Appeals to the supreme court shall lie as in other civil cases. Action to recover damages or overcharges must be filed in the superior court within one year from the date of the order of the commission.

The procedure provided in this section is exclusive, and neither the supreme court nor any superior court has jurisdiction except as provided. [2007 c 234 § 10; 1961 c 14 § 81.04.240. Prior: 1955 c 79 § 4; 1943 c 258 § 2; 1937 c 29 § 3; Rem. Supp. 1943 § 10433-2.]

**81.04.250 Determination of rates.** The commission may, upon complaint or upon its own motion, prescribe and authorize just and reasonable rates for the transportation of persons or property for any public service company subject to regulation by the commission as to rates and service, whenever and as often as it deems necessary or proper. The commission shall, before any hearing upon the complaint or motion, notify the complainants and the carrier concerned of the time and place of the hearing by giving at least ten days' written notice thereof, specifying that at the time and place designated a hearing will be held for the purpose of prescribing and authorizing the rates. The notice is sufficient to authorize the commission to inquire into and pass upon the matters designated in this section.

In exercising this power, the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing just and reasonable rates.

In the exercise of this power, the commission may consider, in addition to other factors, the following:

- (1) The effect of the rates upon movement of traffic by the carriers;
- (2) The public need for adequate transportation facilities, equipment, and service at the lowest level of charges consistent with the provision, maintenance, and renewal of the facilities, equipment, and service; and
- (3) The carrier need for revenue of a level that under honest, efficient, and economical management is sufficient to cover the cost, including all operating expenses, depreciation accruals, rents, and taxes of every kind, of providing adequate transportation service, plus an amount equal to the percentage of that cost as is reasonably necessary for the provision, maintenance, and renewal of the transportation facilities or equipment and a reasonable profit to the carrier. The relation of carrier expenses to carrier revenues may be deemed the proper test of a reasonable profit. [2007 c 234 § 11; 1984 c 143 § 3; 1961 c 14 § 81.04.250. Prior: 1951 c 75 § 1; 1933 c 165 § 4; 1913 c 182 § 1; 1911 c 117 § 92; RRS § 10441.]

(2008 Ed.)

**81.04.260 Summary proceedings.** Whenever the commission shall be of opinion that any public service company is failing or omitting, or about to fail or omit, to do anything required of it by law, or by order, direction or requirement of the commission, or is doing anything, or about to do anything, or permitting anything, or about to permit anything to be done contrary to or in violation of law or of any order, direction or requirement of the commission authorized by this title, it shall direct the attorney general to commence an action or proceeding in the superior court of the state of Washington for Thurston county, or in the superior court of any county in which such company may do business, in the name of the state of Washington on the relation of the commission, for the purpose of having such violations or threatened violations stopped and prevented, either by mandamus or injunction. The attorney general shall thereupon begin such action or proceeding by petition to such superior court, alleging the violation complained of, and praying for appropriate relief by way of mandamus or injunction. It shall thereupon be the duty of the court to specify a time, not exceeding twenty days after the service of the copy of the petition, within which the public service company complained of must answer the petition. In case of default in answer or after answer, the court shall immediately inquire into the facts and circumstances in such manner as the court shall direct, without other or formal pleadings, and without respect to any technical requirement. Such persons or corporations as the court may deem necessary or proper to be joined as parties, in order to make its judgment, order or writ effective, may be joined as parties. The final judgment in any such action or proceeding shall either dismiss the action or proceeding or direct that the writ of mandamus or injunction, or both, issue as prayed for in the petition, or in such other modified form as the court may determine will afford appropriate relief. Appellate review of the final judgment may be sought in the same manner and with the same effect as review of judgments of the superior court in actions to review orders of the commission. All provisions of this chapter relating to the time of review, the manner of perfecting the same, the filing of briefs, hearings and supersedeas, shall apply to appeals to the supreme court or the court of appeals under the provisions of this section. [1988 c 202 § 64; 1971 c 81 § 143; 1961 c 14 § 81.04.260. Prior: 1911 c 117 § 93; RRS § 10442.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**81.04.270 Accounts to be kept separate.** Any public service company, subject to regulation by the commission as to rates and services [service], that engages in the sale of merchandise or appliances or equipment shall keep separate accounts, as prescribed by the commission, of its capital employed in such business and of its revenues therefrom and operating expenses thereof. The capital employed in such business is not a part of the fair value of the company's property for rate making purposes, and the revenues from or operating expenses of such business are not a part of the operating revenues and expenses of the company as a public service company. [2007 c 234 § 12; 1961 c 14 § 81.04.270. Prior: 1933 c 165 § 8; RRS § 10458-2.]

**81.04.280 Purchase and sale of stock by employees.** A public service company subject to regulation by the com-

mission as to rates and service shall not: (1) Permit any employee to sell, offer for sale, or solicit the purchase of any security of any other person or corporation during such hours as such employee is engaged to perform any duty of such public service company; (2) by any means or device, require any employee to purchase or contract to purchase any of its securities or those of any other person or corporation; or (3) require any employee to permit the deduction from his wages or salary of any sum as a payment or to be applied as a payment of any purchase or contract to purchase any security of such public service company or of any other person or corporation. [2007 c 234 § 13; 1961 c 14 § 81.04.280. Prior: 1933 c 165 § 9; RRS § 10458-3.]

**81.04.290 Sale of stock to employees and patrons.** A corporate public service company, either heretofore or hereafter organized under the laws of this state, may sell to its employees and patrons any increase of its capital stock, or part thereof, without first offering it to existing stockholders: PROVIDED, That such sale is approved by the holders of a majority of the capital stock, at a regular or special meeting held after notice given as to the time, place, and object thereof as provided by law and the bylaws of the company. Such sales shall be at prices and in amounts for each purchaser and upon terms and conditions as set forth in the resolution passed at the stockholders' meeting, or in a resolution passed at a subsequent meeting of the board of trustees if the resolution passed at the stockholders' meeting shall authorize the board to determine prices, amounts, terms, and conditions, except that in either event a minimum price for the stock must be fixed in the resolution passed at the stockholders' meeting. [1961 c 14 § 81.04.290. Prior: 1955 c 79 § 7; 1923 c 110 § 1; RRS § 10344-1.]

**81.04.300 Budgets to be filed—Supplementary budgets.** The commission may regulate, restrict, and control the budgets of expenditures of public service companies subject to regulation by the commission as to rates and service. The commission may require each company to prepare a budget showing the amount of money which, in its judgment, is needed during the ensuing year for maintenance, operation, and construction, classified by accounts as prescribed by the commission, and shall within ten days of the date it is approved by the company file it with the commission for its investigation and approval or rejection. When a budget has been filed, the commission shall examine into and investigate it to determine whether the expenditures therein proposed are fair and reasonable and not contrary to public interest.

Adjustments or additions to budget expenditures may be made from time to time during the year by filing a supplementary budget with the commission for its investigation and approval or rejection. [2007 c 234 § 14; 1961 c 14 § 81.04.300. Prior: 1959 c 248 § 15; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**81.04.310 Commission's control over expenditures.** The commission may, both as to original and supplementary budgets, prior to the making or contracting for the expenditure of any item therein, and after notice to the company and a hearing thereon, reject any item of the budget. The commis-

sion may require any company to furnish further information, data, or detail as to any proposed item of expenditure.

Failure of the commission to object to any item of expenditure within sixty days of the filing of any original budget or within thirty days of the filing of any supplementary budget shall constitute authority to the company to proceed with the making of or contracting for such expenditure, but such authority may be terminated at any time by objection made thereto by the commission prior to the making of or contracting for such expenditure.

Examination, investigation, and determination of the budget by the commission shall not bar or estop it from later determining whether any of the expenditures made thereunder are fair, reasonable, and commensurate with the service, material, supplies, or equipment received. [1961 c 14 § 81.04.310. Prior: 1959 c 248 § 16; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**81.04.320 Budget rules and regulations.** The commission may prescribe the necessary rules and regulations to place RCW 81.04.300 through 81.04.330 in operation. It may by general order, exempt in whole or in part from the operation thereof companies whose gross operating revenues are less than twenty-five thousand dollars a year. The commission may upon request of any company withhold from publication during such time as the commission may deem advisable, any portion of any original or supplementary budget relating to proposed capital expenditures. [1961 c 14 § 81.04.320. Prior: 1959 c 248 § 17; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**81.04.330 Effect of unauthorized expenditure—Emergencies.** Any public service company subject to regulation by the commission as to rates and service may make or contract for any rejected item of expenditure, but in such case the rejected item of expenditure shall not be allowed as an operating expense, or as to items of construction, as a part of the fair value of the company's property used and useful in serving the public: PROVIDED, That such items of construction may at any time thereafter be so allowed in whole or in part upon proof that they are used and useful. Any company may upon the happening of any emergency caused by fire, flood, explosion, storm, earthquake, riot, or insurrection, or for the immediate preservation or restoration to condition of usefulness of any of its property, the usefulness of which has been destroyed by accident, make the necessary expenditure therefor free from the operation of RCW 81.04.300 through 81.04.330.

Any finding and order entered by the commission is effective until vacated and set aside in proper proceedings for review thereof. [2007 c 234 § 15; 1961 c 14 § 81.04.330. Prior: 1959 c 248 § 18; prior: 1933 c 165 § 10, part; RRS § 10458-4, part.]

**81.04.350 Depreciation and retirement accounts.** The commission may after hearing require any public service company subject to regulation by the commission as to rates and service to carry proper and adequate depreciation or retirement accounts in accordance with such rules, regulations, and forms of accounts as the commission may pre-

scribe. The commission may from time to time ascertain and by order fix the proper and adequate rates of depreciation or retirement of the several classes of property of each public service company. Each public service company shall conform its depreciation or retirement accounts to the rates so prescribed. In fixing the rate of the annual depreciation or retirement charge, the commission may consider the rate and amount theretofore charged by the company for depreciation or retirement.

The commission may exercise like power and authority over all other reserve accounts of public service companies. [2007 c 234 § 16; 1961 c 14 § 81.04.350. Prior: 1937 c 169 § 4; 1933 c 165 § 13; RRS § 10458-7.]

**81.04.360 Excessive earnings to reserve fund.** If any public service company subject to regulation by the commission as to rates and service earns in the period of five consecutive years immediately preceding the commission order fixing rates for such company a net utility operating income in excess of a reasonable rate of return upon the fair value of its property used and useful in the public service, the commission shall take official notice of such fact and of whether any such excess earnings were invested in such company's plant or otherwise used for purposes beneficial to the consumers of such company and may consider such facts in fixing rates for such company. [2007 c 234 § 17; 1961 c 14 § 81.04.360. Prior: 1959 c 285 § 3; 1933 c 165 § 14; RRS § 10458-8.]

**81.04.380 Penalties—Violations by public service companies.** Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense. [1961 c 14 § 81.04.380. Prior: 1911 c 117 § 94; RRS § 10443.]

**81.04.385 Penalties—Violations by officers, agents, and employees of public service companies and persons or entities acting as public service companies.** Every officer, agent or employee of any public service company or any person, persons, or entity acting as a public service company, who shall violate or fail to comply with, or who procures, aids or abets any violation by any public service company of any provision of this title, or who shall fail to obey, observe or comply with any order of the commission, or any provision of any order of the commission, or who procures, aids or abets any such public service company in its failure to obey, observe and comply with any such order or provision, shall be guilty of a gross misdemeanor. [1994 c 37 § 3; 1961

c 14 § 81.04.385. Prior: 1911 c 117 § 95; RRS § 10444. Formerly RCW 81.04.390, part.]

**Intent—1994 c 37:** See note following RCW 81.04.110.

**81.04.387 Penalties—Violations by other corporations.** Every corporation, other than a public service company, which shall violate any provision of this title, or which shall fail to obey, observe or comply with any order of the commission under authority of this title, so long as the same shall be and remain in force, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every such violation shall be a separate and distinct offense, and the penalty shall be recovered in an action as provided in RCW 81.04.400. [1961 c 14 § 81.04.387. Prior: 1911 c 117 § 96; RRS § 10445. Formerly RCW 81.04.380, part.]

**81.04.390 Penalties—Violations by persons.** (1) Except as provided in subsection (2) of this section, every person who, either individually, or acting as an officer or agent of a corporation other than a public service company, violates any provision of this title, or fails to observe, obey, or comply with any order made by the commission under this title, so long as the same is or remains in force, or who procures, aids, or abets any such corporation in its violation of this title, or in its failure to obey, observe, or comply with any such order, is guilty of a gross misdemeanor.

(2) A violation pertaining to equipment on motor carriers transporting hazardous material is a misdemeanor. [2003 c 53 § 385; 1980 c 104 § 5; 1961 c 14 § 81.04.390. Prior: 1911 c 117 § 97; RRS § 10446.]

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

**81.04.400 Actions to recover penalties—Disposition of fines, fees, penalties.** Actions to recover penalties under this title shall be brought in the name of the state of Washington in the superior court of Thurston county, or in the superior court of any county in or through which such public service company may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions, except as otherwise herein provided. All fines and penalties recovered by the state under this title shall be paid into the treasury of the state and credited to the state general fund or such other fund as provided by law: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 241; 1969 ex.s. c 199 § 38; 1961 c 14 § 81.04.400. Prior: 1911 c 117 § 98; RRS § 10447.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**81.04.405 Additional penalties—Violations by public service companies and officers, agents, and employees.** In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates or who procures, aids or abets in the violation of any provision of this title or any order, rule, reg-

ulation or decision of the commission, every person or corporation violating the provisions of any cease and desist order issued pursuant to RCW 81.04.510, and every person or entity found in violation pursuant to a complaint under RCW 81.04.110, shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due. The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as it may deem proper. If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or application for remission or mitigation has not been made within fifteen days after violator has received notice of the disposition of such application the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise herein provided. All penalties recovered under this title shall be paid into the state treasury and credited to the public service revolving fund. [1994 c 37 § 4; 1973 c 115 § 2; 1963 c 59 § 3.]

**Intent—1994 c 37:** See note following RCW 81.04.110.

**81.04.410 Orders and rules conclusive.** In all actions between private parties and public service companies involving any rule or order of the commission, and in all actions for the recovery of penalties provided for in this title, or for the enforcement of the orders or rules issued and promulgated by the commission, the said orders and rules shall be conclusive unless set aside or annulled in a review as in this title provided. [1961 c 14 § 81.04.410. Prior: 1911 c 117 § 99; RRS § 10448.]

**81.04.420 Commission intervention where order or rule is involved.** In all court actions involving any rule or order of the commission, where the commission has not been made a party, the commission shall be served with a copy of all pleadings, and shall be entitled to intervene. Where the fact that the action involves a rule or order of the commission does not appear until the time of trial, the court shall immediately direct the clerk to notify the commission of the pendency of such action, and shall permit the commission to intervene in such action.

The failure to comply with the provisions of this section shall render void and of no effect any judgment in such action, where the effect of such judgment is to modify or nullify any rule or order of the commission. [1961 c 14 § 81.04.420. Prior: 1943 c 67 § 1; Rem. Supp. 1943 § 10448-1.]

**81.04.430 Findings of department prima facie correct.** Whenever the commission has issued or promulgated any order or rule, in any writ of review brought by a public service company to determine the reasonableness of such order or rule, the findings of fact made by the commission shall be prima facie correct, and the burden shall be upon said public service company to establish the order or rule to be unreasonable or unlawful. [1961 c 14 § 81.04.430. Prior: 1911 c 117 § 100; RRS § 10449.]

**81.04.440 Companies liable for damages.** In case any public service company shall do, cause to be done or permit to be done any act, matter or thing prohibited, forbidden or declared to be unlawful, or shall omit to do any act, matter or thing required to be done, either by any law of this state, by this title or by any order or rule of the commission, such public service company shall be liable to the persons or corporations affected thereby for all loss, damage or injury caused thereby or resulting therefrom, and in case of recovery if the court shall find that such act or omission was wilful, it may, in its discretion, fix a reasonable counsel or attorney's fee, which shall be taxed and collected as part of the costs in the case. An action to recover for such loss, damage or injury may be brought in any court of competent jurisdiction by any person or corporation. [1961 c 14 § 81.04.440. Prior: 1911 c 117 § 102; RRS § 10451.]

**81.04.450 Certified copies of orders, rules, etc.—Evidentiary effect.** Upon application of any person the commission shall furnish certified copies of any classification, rate, rule, regulation or order established by such commission, and the printed copies published by authority of the commission, or any certified copy of any such classification, rate, rule, regulation or order, with seal affixed, shall be admissible in evidence in any action or proceeding, and shall be sufficient to establish the fact that the charge, rate, rule, order or classification therein contained is the official act of the commission. When copies of any classification, rate, rule, regulation or order not contained in the printed reports, or copies of papers, accounts or records of public service companies filed with the commission shall be demanded from the commission for proper use, the commission shall charge a reasonable compensation therefor. [1961 c 14 § 81.04.450. Prior: 1911 c 117 § 103; RRS § 10452.]

**81.04.460 Commission to enforce public service laws—Employees as peace officers.** It shall be the duty of the commission to enforce the provisions of this title and all other acts of this state affecting public service companies, the enforcement of which is not specifically vested in some other officer or tribunal. Any employee of the commission may, without a warrant, arrest any person found violating in his presence any provision of this title, or any rule or regulation

adopted by the commission: PROVIDED, That each such employee shall be first specifically designated in writing by the commission or a member thereof as having been found to be a fit and proper person to exercise such authority. Upon being so designated such person shall be a peace officer and a police officer for the purposes herein mentioned. [1961 c 173 § 2; 1961 c 14 § 81.04.460. Prior: 1911 c 117 § 101; RRS § 10450.]

**81.04.470 Right of action not released—Penalties cumulative.** This title shall not have the effect to release or waive any right of action by the state or any person for any right, penalty or forfeiture which may have arisen or may hereafter arise under any law of this state; and all penalties accruing under this title shall be cumulative of each other, and a suit for the recovery of one penalty shall not be a bar to the recovery of any other: PROVIDED, That no contract, receipt, rule or regulation shall exempt any corporation engaged in transporting livestock by railway from liability of a common carrier, or carrier of livestock which would exist had no contract, receipt, rule or regulation been made or entered into. [1961 c 14 § 81.04.470. Prior: 1911 c 117 § 104; RRS § 10453. Formerly RCW 81.04.470 and 81.04.480.]

**81.04.490 Application to municipal utilities—Safety regulation of municipal gas and hazardous liquid pipelines.** Nothing in this title shall authorize the commission to make or enforce any order affecting rates, tolls, rentals, contracts or charges or service rendered, or the safety, adequacy or sufficiency of the facilities, equipment, instrumentalities or buildings, or the reasonableness of rules or regulations made, furnished, used, supplied or in force affecting any street railroad owned and operated by any city or town, but all other provisions enumerated herein shall apply to public utilities owned by any city or town. The commission shall regulate the safety of all hazardous liquid and gas pipelines constructed, owned, or operated by any city or town under chapter 81.88 RCW. [2007 c 142 § 10; 1961 c 14 § 81.04.490. Prior: 1911 c 117 § 105; RRS § 10454.]

**81.04.500 Duties of attorney general.** It shall be the duty of the attorney general to represent and appear for the people of the state of Washington and the commission in all actions and proceedings involving any question under this title, or under or in reference to any act or order of the commission; and it shall be the duty of the attorney general generally to see that all laws affecting any of the persons or corporations herein enumerated are complied with, and that all laws, the enforcement of which devolves upon the commission, are enforced, and to that end he is authorized to institute, prosecute and defend all necessary actions and proceedings. [1961 c 14 § 81.04.500. Prior: 1911 c 117 § 5; RRS § 10341.]

**81.04.510 Engaging in business or operating without approval or authority—Procedure.** Whether or not any person or corporation is conducting business requiring operating authority, or has performed or is performing any act requiring approval of the commission without securing such approval, shall be a question of fact to be determined by the

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commission. Whenever the commission believes that any person or corporation is engaged in operations without the necessary approval or authority required by any provision of this title, it may institute a special proceeding requiring such person or corporation to appear before the commission at a location convenient for witnesses and the production of evidence and bring with him books, records, accounts and other memoranda, and give testimony under oath as to his operations or acts, and the burden shall rest upon such person or corporation of proving that his operations or acts are not subject to the provisions of this chapter. The commission may consider any and all facts that may indicate the true nature and extent of the operations or acts and may subpoena such witnesses and documents as it deems necessary.

After having made the investigation herein described, the commission is authorized and directed to issue the necessary order or orders declaring the operations or acts to be subject to, or not subject to, the provisions of this title. In the event the operations or acts are found to be subject to the provisions of this title, the commission is authorized and directed to issue cease and desist orders to all parties involved in the operations or acts.

In proceedings under this section no person or corporation shall be excused from testifying or from producing any book, waybill, document, paper or account before the commission when ordered to do so, on the ground that the testimony or evidence, book, waybill, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture; but no person or corporation shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any account, transaction, matter or thing concerning which he shall under oath have testified or produced documentary evidence in proceedings under this section: PROVIDED, That no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony. [1973 c 115 § 15.]

**81.04.530 Controlled substances, alcohol.** A person or employer operating as a motor carrier shall comply with the requirements of the United States department of transportation federal motor carrier safety regulations as contained in Title 49 C.F.R. Part 382, controlled substances and alcohol use and testing. A person or employer who begins or conducts commercial motor vehicle operations without having a controlled substance and alcohol testing program that is in compliance with the requirements of Title 49 C.F.R. Part 382 is subject to a penalty, under the process set forth in RCW 81.04.405, of up to one thousand five hundred dollars and up to an additional five hundred dollars for each motor vehicle driver employed by the person or employer who is not in compliance with the motor vehicle driver testing requirements. A person or employer having actual knowledge that a driver has tested positive for controlled substances or alcohol who allows a positively tested person to continue to perform a safety-sensitive function is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars. [1999 c 351 § 6.]

**81.04.540 Regulation of common carriers, railroad safety practices.** (1) The commission shall cooperate with

the federal government and the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers, to the end that the transportation of property and passengers by common carriers in interstate or foreign commerce into and through the state of Washington may be regulated and that the laws of the United States and the state of Washington are enforced and administered cooperatively in the public interest.

(2) In addition to its authority concerning interstate commerce under this title, the commission may regulate common carriers in interstate commerce within the state under the authority of and in accordance with any act of congress that vests in or delegates to the commission such authority as an agency of the United States government or under an agreement with the United States department of transportation, or its successor, or any other commission or agency delegated or authorized to regulate interstate or foreign commerce by common carriers.

(3) For the purpose of participating with the United States department of transportation in investigation and inspection activities necessary to enforce federal railroad safety regulations, the commission has regulatory jurisdiction over the safety practices for railroad equipment, facilities, rolling stock, and operations in the state. [2007 c 234 § 2.]

**81.04.550 Railroad safety administration.** The commission shall administer the railroad safety provisions of this title to the fullest extent allowed under 49 U.S.C. Sec. 20106 and state law. [2007 c 234 § 3.]

### Chapter 81.08 RCW SECURITIES

#### Sections

81.08.010	Definition.
81.08.012	"Evidence of indebtedness"—Limitation of term.
81.08.020	Control vested in state.
81.08.030	Authority to issue.
81.08.040	Prior to issuance—Filing required—Contents.
81.08.080	Capitalization of franchise or merger contract prohibited.
81.08.090	Accounting for disposition of proceeds.
81.08.100	Issuance made contrary to this chapter—Penalties.
81.08.110	Penalty against company.
81.08.120	Penalty against individual.
81.08.130	Assumption of obligation or liability—Compliance with filing requirements.
81.08.140	State not obligated.
81.08.150	Authority of commission—Not affected by requirements of this chapter.

**81.08.010 Definition.** "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under this title, except any "household goods carrier" subject to chapter 81.80 RCW or any "solid waste collection company" subject to chapter 81.77 RCW. [2007 c 234 § 18; 1981 c 13 § 3; 1965 ex.s. c 105 § 3; 1961 c 14 § 81.08.010. Prior: 1959 c 248 § 3; 1957 c 205 § 2; 1953 c 95 § 9; prior: 1933 c 151 § 1, part; RRS § 10439-1, part.]

**81.08.012 "Evidence of indebtedness"—Limitation of term.** The term "evidence of indebtedness," as used in this chapter, shall not include conditional sales contracts or pur-

chase money chattel mortgages. [1961 c 14 § 81.08.012. Prior: 1951 c 227 § 2.]

**81.08.020 Control vested in state.** The power of public service companies to issue stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness and to create liens on their property situated within this state is a special privilege, the right of supervision, regulation, restriction, and control of which is and shall continue to be vested in the state, and such power shall be exercised as provided by law and under such rules and regulations as the commission may prescribe. [1961 c 14 § 81.08.020. Prior: 1933 c 151 § 2; RRS § 10439-2.]

**81.08.030 Authority to issue.** A public service company may issue stock and stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness payable on demand or at periods of more than twelve months after the date thereof, for the following purposes only: The acquisition of property, or the construction, completion, extension, or improvement of its facilities, or the improvement or maintenance of its service, or the issuance of stock dividends, or the discharge or refunding of its obligations, or the reimbursement of moneys actually expended from income or from any other moneys in the treasury of the company not secured by or obtained from the issue of stock or stock certificates or other evidence of interest or ownership, or bonds, notes or other evidence of indebtedness of the company for any of the aforesaid purposes except maintenance of service, in cases where the applicant keeps its accounts and vouchers for such expenditures in such manner as to enable the commission to ascertain the amount of money so expended and the purpose for which the expenditure was made. [1961 c 14 § 81.08.030. Prior: 1953 c 95 § 10; 1937 c 30 § 1; 1933 c 151 § 3; RRS § 10439-3.]

**81.08.040 Prior to issuance—Filing required—Contents.** Any public service company that undertakes to issue stocks, stock certificates, other evidence of interest or ownership, bonds, notes, or other evidences of indebtedness shall file with the commission before such issuance:

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

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

(3) A statement as to why the transaction is in the public interest. [1994 c 251 § 8; 1961 c 14 § 81.08.040. Prior: 1933 c 151 § 4; RRS § 10439-4.]

**81.08.080 Capitalization of franchise or merger contract prohibited.** The commission shall have no power to authorize the capitalization of the right to be a corporation, or to authorize the capitalization of any franchise or permit whatsoever or the right to own, operate or enjoy any such franchise or permit in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such

franchise, permit or right; nor shall any contract for consolidation or lease be capitalized, nor shall any public service company hereafter issue any bonds, notes or other evidences of indebtedness against or as a lien upon any contract for consolidation or merger. [1961 c 14 § 81.08.080. Prior: 1933 c 151 § 7; RRS § 10439-7.]

**81.08.090 Accounting for disposition of proceeds.**

The commission shall have the power to require public service companies to account for the disposition of the proceeds of all sales of stocks and stock certificates or other evidence of interest or ownership, and bonds, notes and other evidences of indebtedness, in such form and detail as it may deem advisable, and to establish such rules and regulations as it may deem reasonable and necessary to insure the disposition of such proceeds for the purpose or purposes specified in its order. [1961 c 14 § 81.08.090. Prior: 1933 c 151 § 8; RRS § 10439-8.]

**81.08.100 Issuance made contrary to this chapter—**

**Penalties.** If a public service company issues any stock, stock certificate, or other evidence of interest or ownership, bond, note, or other evidence of indebtedness, contrary to the provisions of this chapter, the company may be subject to penalty under RCW 81.08.110 and 81.08.120. [1994 c 251 § 9; 1961 c 14 § 81.08.100. Prior: 1933 c 151 § 9; RRS § 10439-9.]

**81.08.110 Penalty against company.** Every public service company which, directly or indirectly, issues or causes to be issued, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, in nonconformity with the provisions of this chapter, or which applies the proceeds from the sale thereof, or any part thereof, to any purpose other than the purpose or purposes allowed by this chapter shall be subject to a penalty of not more than one thousand dollars for each offense. Every violation of any such order, rules, direction, demand or requirement of the department, or of any provision of this chapter, shall be a separate and distinct offense and in case of a continuing violation every day's continuance thereof shall be deemed to be a separate and distinct offense.

The act, omission or failure of any officer, agent or employee of any public service company acting within the scope of his official duties or employment, shall in every case be deemed to be the act, omission or failure of such public service company. [1994 c 251 § 10; 1961 c 14 § 81.08.110. Prior: 1933 c 151 § 11; RRS § 10439-11.]

**81.08.120 Penalty against individual.** Every officer, agent, or employee of a public service company, and every other person who knowingly authorizes, directs, aids in, issues or executes, or causes to be issued or executed, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness contrary to the provisions of this chapter, or who knowingly makes any false statement or representation or with knowledge of its falsity files or causes to be filed with the commission any false statement or representation or causes or assists to be applied the proceeds or any part thereof, from the sale

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of any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, to any purpose not allowed by this chapter or who, with knowledge that any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, has been issued or executed in violation of any of the provisions of this chapter negotiates, or causes the same to be negotiated, shall be guilty of a gross misdemeanor. [1994 c 251 § 11; 1961 c 14 § 81.08.120. Prior: 1933 c 151 § 12; RRS § 10439-12.]

**81.08.130 Assumption of obligation or liability— Compliance with filing requirements.**

Any public service company that assumes any obligation or liability as guarantor, indorser, surety or otherwise in respect to the securities of any other person, firm or corporation, when such securities are payable at periods of more than twelve months after the date thereof, shall comply with the filing requirements of RCW 81.08.040. [1994 c 251 § 12; 1961 c 14 § 81.08.130. Prior: 1933 c 151 § 13; RRS § 10439-13.]

**81.08.140 State not obligated.** No provision of this chapter, and no deed or act done or performed under or in connection therewith, shall be held or construed to obligate the state of Washington to pay or guarantee, in any manner whatsoever, any stock or stock certificate or other evidence of interest or ownership, or bond, note or other evidence of indebtedness, authorized, issued or executed under the provisions of this chapter. [1961 c 14 § 81.08.140. Prior: 1933 c 151 § 14; RRS § 10439-14.]

**81.08.150 Authority of commission—Not affected by requirements of this chapter.** No action by a public service company in compliance with nor by the commission in conformance with the requirements of this chapter may in any way affect the authority of the commission over rates, service, accounts, valuations, estimates, or determinations of costs, or any matters whatsoever that may come before it. [1994 c 251 § 13.]

**Chapter 81.12 RCW**

**TRANSFERS OF PROPERTY**

Sections

81.12.010	Definition.
81.12.020	Order required to sell, merge, etc.
81.12.030	Disposal without authorization void.
81.12.040	Authority required to acquire property or securities of company.
81.12.050	Rules and regulations.
81.12.060	Penalty.

**81.12.010 Definition.** "Public service company," as used in this chapter, means every common carrier subject to regulation as to rates and service by the utilities and transportation commission under the provisions of this title. It does not include common carriers subject to regulation by the federal energy regulatory commission or the United States department of transportation, household goods carriers subject to chapter 81.80 RCW, or solid waste collection companies subject to chapter 81.77 RCW. This section does not apply to transfers of permits or certificates. [2007 c 234 § 19;

1981 c 13 § 4; 1969 ex.s. c 210 § 4; 1965 ex.s. c 105 § 4; 1963 c 59 § 5; 1961 c 14 § 81.12.010. Prior: 1953 c 95 § 12; 1941 c 159 § 1, part; Rem. Supp. 1941 § 10440a.]

**81.12.020 Order required to sell, merge, etc.** No public service company shall sell, lease, assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: PROVIDED, That this section shall not apply to any sale, lease, assignment or other disposal of such franchises, properties or facilities to a public utility district. [1961 c 14 § 81.12.020. Prior: 1945 c 75 § 1; 1941 c 159 § 2; Rem. Supp. 1945 § 10440b.]

**81.12.030 Disposal without authorization void.** Any such sale, lease, assignment, or other disposition, merger or consolidation made without authority of the commission shall be void. [1961 c 14 § 81.12.030. Prior: 1941 c 159 § 3; Rem. Supp. 1941 § 10440c.]

**81.12.040 Authority required to acquire property or securities of company.** No public service company shall, directly or indirectly, purchase, acquire, or become the owner of any of the franchises, properties, facilities, capital stocks or bonds of any other public service company unless authorized so to do by the commission. Nothing contained in this chapter shall prevent the holding of stocks or other securities heretofore lawfully acquired or prohibit, upon the surrender or exchange of said stocks or other securities pursuant to a reorganization plan, the purchase, acquisition, taking or holding by the owner of a proportionate amount of the stocks or other securities of any new corporation organized to take over at foreclosure or other sale, the property of the corporation the stocks or securities of which have been thus surrendered or exchanged. Any contract by any public service company for the purchase, acquisition, assignment or transfer to it of any of the stocks or other securities of any other public service company, directly or indirectly, without the approval of the commission shall be void and of no effect. [1961 c 14 § 81.12.040. Prior: 1941 c 159 § 4; Rem. Supp. 1941 § 10440d.]

**81.12.050 Rules and regulations.** The commission shall have power to promulgate rules and regulations to make effective the provisions of this chapter. [1961 c 14 § 81.12.050. Prior: 1941 c 159 § 5; Rem. Supp. 1941 § 10440e.]

**81.12.060 Penalty.** The provisions of RCW 81.04.380 and 81.04.385 as to penalties shall be applicable to public service companies, their officers, agents and employees failing to comply with the provisions of this chapter. [1961 c 14 § 81.12.060. Prior: 1941 c 159 § 6; Rem. Supp. 1941 § 10440f.]

## Chapter 81.16 RCW AFFILIATED INTERESTS

### Sections

81.16.010	Definitions.
81.16.020	Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove.
81.16.030	Payments to affiliated interest disallowed if not reasonable.
81.16.040	Satisfactory proof, what constitutes.
81.16.050	Commission's control is continuing.
81.16.060	Summary order on nonapproved payments.
81.16.070	Summary order on payments after disallowance.
81.16.075	Application of chapter—Solid waste collection companies.
81.16.080	Court action to enforce orders.
81.16.090	Review of orders.

### **81.16.010 Definitions.** As used in this chapter:

(1) "Public service company" means every corporation engaged in business as a common carrier and subject to regulation as to rates and service by the utilities and transportation commission under this title.

(2) "Affiliated interest" means:

(a) Every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of any public service company engaged in any intrastate business in this state;

(b) Every corporation and person, other than those above specified, in any chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public service company;

(c) Every corporation five percent or more of whose voting securities are owned by any person or corporation owning five percent or more of the voting securities of such public service company or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

(d) Every corporation or person with which the public service company has a management or service contract; and

(e) Every person who is an officer or director of such public service company or of any corporation in any chain of successive ownership of five percent or more of voting securities. [2007 c 234 § 20; 1969 ex.s. c 210 § 5; 1961 c 14 § 81.16.010. Prior: 1953 c 95 § 13; 1933 c 152 § 1, part; RRS § 10440-1, part.]

**81.16.020 Dealings with affiliated interests—Prior filing with commission required—Commission may disapprove.** Every public service company shall file with the commission a verified copy, or a verified summary if unwritten, of a contract or arrangement providing for the furnishing of management, supervisory construction, engineering, accounting, legal, financial, or similar services, or any contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those enumerated in this section, hereafter made or entered into between a public service company and any affiliated interest as defined in this chapter, including open account advances from or to the affiliated interests. The filing must be made prior to the effective date of the contract or arrangement. Modifications or amendments to the contracts or arrangements with affiliated interests must be filed with the commission prior to the effective date of the modification or amendment. The commission

may at any time after receipt of the contract or arrangement institute an investigation and disapprove the contract, arrangement, or amendment thereto if the commission finds the public service company has failed to prove that it is reasonable and consistent with the public interest. The commission may disapprove any such contract or arrangement if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service described in this section. [1998 c 47 § 6; 1961 c 14 § 81.16.020. Prior: 1941 c 160 § 1; 1933 c 152 § 1; Rem. Supp. 1941 § 10440-2.]

**81.16.030 Payments to affiliated interest disallowed if not reasonable.** In any proceeding, whether upon the commission's own motion or upon complaint, involving the rates or practices of any public service company, the commission may exclude from the accounts of the public service company any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as described in this section, under existing contracts or arrangements with the affiliated interest unless the public service company establishes the reasonableness of the payment or compensation. In the proceeding the commission shall disallow the payment or compensation, in whole or in part, in the absence of satisfactory proof that it is reasonable in amount. In such a proceeding, any payment or compensation may be disapproved or disallowed by the commission, in whole or in part, if satisfactory proof is not submitted to the commission of the cost to the affiliated interest of rendering the service or furnishing the property or service described in this section. [1998 c 47 § 7; 1961 c 14 § 81.16.030. Prior: 1933 c 152 § 3; RRS § 10440-3.]

**81.16.040 Satisfactory proof, what constitutes.** No proof shall be satisfactory, within the meaning of RCW 81.16.010 through 81.16.030, unless it includes the original (or verified copies) of the relevant cost records and other relevant accounts of the affiliated interest, or such abstract thereof or summary taken therefrom, as the commission may deem adequate, properly identified and duly authenticated: PROVIDED, HOWEVER, That the commission may, where reasonable, approve or disapprove such contracts or arrangements without the submission of such cost records or accounts. [1961 c 14 § 81.16.040. Prior: 1933 c 152 § 4; RRS § 10440-4.]

**81.16.050 Commission's control is continuing.** The commission shall have continuing supervisory control over the terms and conditions of such contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that a contract or arrangement has been filed with, or the commission has approved entry into such contracts or arrangements, as described herein, shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement, it appears that the payments provided for or made were or are unreason-

able. Every order of the commission approving any such contract or arrangement shall be expressly conditioned upon the reserved power of the commission to revise and amend the terms and conditions thereof, if, when and as necessary to protect and promote the public interest. [1998 c 47 § 8; 1961 c 14 § 81.16.050. Prior: 1933 c 152 § 5; RRS § 10440-5.]

**81.16.060 Summary order on nonapproved payments.** Whenever the commission shall find upon investigation that any public service company is giving effect to any such contract or arrangement without such contract or arrangement having been filed or approved, the commission may issue a summary order prohibiting the public service company from treating any payments made under the terms of such contract or arrangement as operating expenses or as capital expenditures for rate or valuation purposes, unless and until such contract or arrangement has been filed with the commission or until payments have received the approval of the commission. [1998 c 47 § 9; 1961 c 14 § 81.16.060. Prior: 1933 c 152 § 6; RRS § 10440-6.]

**81.16.070 Summary order on payments after disallowance.** Whenever the commission finds upon investigation that any public service company is making payments to an affiliated interest, although the payments have been disallowed or disapproved by the commission in a proceeding involving the public service company's rates or practices, the commission shall issue a summary order directing the public service company to not treat the payments as operating expenses or capital expenditures for rate or valuation purposes, unless and until the payments have received the approval of the commission. [1998 c 47 § 10; 1961 c 14 § 81.16.070. Prior: 1933 c 152 § 7; RRS § 10440-7.]

**81.16.075 Application of chapter—Solid waste collection companies.** This chapter does not apply to a determination of the base for collection rates for solid waste collection companies meeting the requirements under RCW 81.77.160(3). [1997 c 434 § 2.]

**81.16.080 Court action to enforce orders.** The superior court of Thurston county is authorized to enforce such orders to cease and desist by appropriate process, including the issuance of a preliminary injunction, upon the suit of the commission. [1961 c 14 § 81.16.080. Prior: 1933 c 152 § 8; RRS § 10440-8.]

**81.16.090 Review of orders.** Any public service company or affiliated interest deeming any decision or order of the commission to be in any respect or manner improper, unjust or unreasonable may have the same reviewed in the courts in the same manner and by the same procedure as is now provided by law for review of any other order or decision of the commission. [1961 c 14 § 81.16.090. Prior: 1933 c 152 § 9; RRS § 10440-9.]

**Chapter 81.20 RCW**  
**INVESTIGATION OF PUBLIC**  
**SERVICE COMPANIES**

## Sections

81.20.010	Definition.
81.20.020	Cost of investigation may be assessed against company.
81.20.030	Interest on unpaid assessment—Action to collect.
81.20.040	Commission's determination of necessity as evidence.
81.20.050	Order of commission not subject to review.
81.20.060	Limitation on frequency of investigations.

**81.20.010 Definition.** As used in this chapter, the term "public service company" means any person, firm, association, or corporation, whether public or private, operating a utility or public service enterprise subject in any respect to regulation by the utilities and transportation commission under the provisions of this title or Title 22 RCW. [1961 c 14 § 81.20.010. Prior: 1953 c 95 § 14; 1939 c 203 § 1; RRS § 10458-6.]

**81.20.020 Cost of investigation may be assessed against company.** Whenever the commission in any proceeding upon its own motion or upon complaint shall deem it necessary in order to carry out the duties imposed upon it by law to investigate the books, accounts, practices and activities of, or make any valuation or appraisal of the property of any public service company, or to investigate or appraise any phase of its operations, or to render any engineering or accounting service to or in connection with any public service company, and the cost thereof to the commission exceeds in amount the ordinary regulatory fees paid by such public service company during the preceding calendar year or estimated to be paid during the current year, whichever is more, such public service company shall pay the expenses reasonably attributable and allocable to such investigation, valuation, appraisal or services. The commission shall ascertain such expenses, and, after giving notice and an opportunity to be heard, shall render a bill therefor by registered mail to the public service company, either at the conclusion of the investigation, valuation, appraisal or services, or from time to time during its progress. Within thirty days after a bill has been mailed such public service company shall pay to the commission the amount of the bill, and the commission shall transmit such payment to the state treasurer who shall credit it to the public service revolving fund. The total amount which any public service company shall be required to pay under the provisions of this section in any calendar year shall not exceed one percent of the gross operating revenues derived by such public service company from its intrastate operations during the last preceding calendar year. If such company did not operate during all of the preceding year the calculations shall be based upon estimated gross revenues for the current year. [1961 c 14 § 81.20.020. Prior: 1939 c 203 § 2(a); RRS § 10458-6a(a).]

**81.20.030 Interest on unpaid assessment—Action to collect.** Amounts so assessed against any public service company not paid within thirty days after mailing of the bill therefor, shall draw interest at the rate of six percent per annum from the date of mailing of the bill. Upon failure of the public service company to pay the bill, the attorney gen-

eral shall proceed in the name of the state by civil action in the superior court for Thurston county against such public service company to collect the amount due, together with interest and costs of suit. [1961 c 14 § 81.20.030. Prior: 1939 c 203 § 2(b); RRS § 10458-6a(b).]

**81.20.040 Commission's determination of necessity as evidence.** In such action the commission's determination of the necessity of the investigation, valuation, appraisal or services shall be conclusive evidence of such necessity, and its findings and determination of facts expressed in bills rendered pursuant to RCW 81.20.020 through 81.20.060 or in any proceedings determinative of such bills shall be prima facie evidence of such facts. [1961 c 14 § 81.20.040. Prior: 1939 c 203 § 2(c); RRS § 10458-6a(c).]

**81.20.050 Order of commission not subject to review.** In view of the civil action provided for in RCW 81.20.020 through 81.20.060 any order made by the commission in determining the amount of such bill shall not be reviewable in court, but the mere absence of such right of review shall not prejudice the rights of defendants in the civil action. [1961 c 14 § 81.20.050. Prior: 1939 c 203 § 2(d); RRS § 10458-6a(d).]

**81.20.060 Limitation on frequency of investigations.** Expenses of a complete valuation, rate and service investigation shall not be assessed against a public service company under this chapter if such company shall have been subjected to and paid the expenses of a complete valuation, rate and service investigation during the preceding five years, unless the properties or operations of the company have materially changed or there has been a substantial change in its value for rate making purposes or in other circumstances and conditions affecting rates and services. [1961 c 14 § 81.20.060. Prior: 1939 c 203 § 2(e); RRS § 10458-6a(e).]

**Chapter 81.24 RCW**  
**REGULATORY FEES**

## Sections

81.24.010	Companies to file reports of gross revenue and pay fees—Exempt companies.
81.24.020	Fees of auto transportation companies—Statement filing.
81.24.030	Fees of every commercial ferry—Statement filing.
81.24.050	Fees to approximate reasonable cost of regulation.
81.24.060	Intent of legislature—Regulatory cost records to be kept by commission.
81.24.070	Disposition of fees.
81.24.075	Delinquent fee payments.
81.24.080	Penalty for failure to pay fees—Disposition of fees and penalties.
81.24.090	Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.

*Corporations, annual license fees of public service companies: RCW 23B.01.570.*

*Highway user tax structure: Chapter 46.85 RCW.*

*Mileage fees on auto stages: RCW 46.16.125.*

**81.24.010 Companies to file reports of gross revenue and pay fees—Exempt companies.** (1) Every company subject to regulation by the commission, except those listed in subsection (3) of this section, shall, on or before the date

specified by the commission for filing annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one-tenth of one percent of the first fifty thousand dollars of gross operating revenue, plus two-tenths of one percent of any gross operating revenue in excess of fifty thousand dollars, except railroad companies which shall each pay to the commission a fee equal to one and one-half percent of its intrastate gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. Any railroad association that qualifies as a nonprofit charitable organization under the federal internal revenue code section 501(c)(3) is exempt from the fee required under this subsection.

(2) The percentage rates of gross operating revenue to be paid in any one year may be decreased by the commission for any class of companies subject to the payment of such fees, by general order entered before March 1st of such year, and for such purpose railroad companies are classified as class two. Every other company subject to regulation by the commission, for which regulatory fees are not otherwise fixed by law, shall pay fees as herein provided and shall constitute additional classes according to kinds of businesses engaged in.

(3) This section does not apply to private nonprofit transportation providers, auto transportation companies, charter party carriers and excursion service carriers, solid waste collection companies, motor freight carriers, household goods carriers, commercial ferries, and low-level radioactive waste storage facilities. [2007 c 234 § 21; 2003 c 296 § 2; 1996 c 196 § 1; 1990 c 48 § 2; 1977 ex.s. c 48 § 1; 1969 ex.s. c 210 § 6; 1963 c 59 § 11; 1961 c 14 § 81.24.010. Prior: 1957 c 185 § 1; 1955 c 125 § 4; prior: 1939 c 123 § 1, part; 1937 c 158 § 1, part; 1929 c 107 § 1, part; 1923 c 107 § 1, part; 1921 c 113 § 1, part; RRS § 10417, part.]

**81.24.020 Fees of auto transportation companies—Statement filing.** On or before the date specified by the commission for filing annual reports under RCW 81.04.080, every auto transportation company must file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding year and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue. The commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

The percentage rate of gross operating revenue to be paid in any period may be decreased by the commission by general order entered before the fifteenth day of the month preceding the month in which the fee is due. [2003 c 296 § 3; 1997 c 215 § 1; 1961 c 14 § 81.24.020. Prior: 1955 c 125 § 5; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

**81.24.030 Fees of every commercial ferry—Statement filing.** Every commercial ferry shall, on or before the date specified by the commission for filing annual reports

under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee of two-fifths of one percent of the amount of gross operating revenue: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section. The percentage rate of gross operating revenue to be paid in any year may be decreased by the commission by general order entered before March 1st of such year. [2003 c 296 § 4; 1993 c 427 § 10; 1981 c 13 § 5; 1961 c 14 § 81.24.030. Prior: 1955 c 125 § 6; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

**81.24.050 Fees to approximate reasonable cost of regulation.** In fixing the percentage rates of gross operating revenue to be paid by companies under RCW 81.24.010, 81.24.020, and 81.24.030, the commission shall consider all moneys then in the public service revolving fund and the fees currently to be paid into such fund, to the end that the fees collected from the companies, or classes of companies, covered by each respective section shall be approximately the same as the reasonable cost of supervising and regulating such companies, or classes of companies, respectively. [1983 c 3 § 206; 1961 c 14 § 81.24.050. Prior: 1955 c 125 § 8; prior: (i) 1939 c 123 § 1, part; 1937 c 158 § 1, part; RRS § 10417, part. (ii) 1937 c 158 § 2, part; RRS § 10417-1, part. (iii) 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part. (iv) 1939 c 123 § 2, part; 1937 c 158 § 3, part; RRS § 10417-2, part. (v) 1949 c 124 § 1, part; Rem. Supp. 1949 § 10417-2, part.]

**81.24.060 Intent of legislature—Regulatory cost records to be kept by commission.** It is the intent and purpose of the legislature that the several groups of public service companies shall each contribute sufficient in fees to the commission to pay the reasonable cost of regulating the several groups respectively. The commission shall keep accurate records of the costs incurred in regulating and supervising the several groups of companies subject to regulation or supervision and such records shall be open to inspection by all interested parties. The records and data upon which the commission's determination is made shall be considered prima facie correct in any proceeding instituted to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses. [1961 c 14 § 81.24.060. Prior: 1937 c 158 § 7; RRS § 10417-5.]

**81.24.070 Disposition of fees.** All moneys collected under the provisions of this chapter shall within thirty days be paid to the state treasurer and by him deposited to the public service revolving fund. [1961 c 14 § 81.24.070. Prior: 1937 c 158 § 6; RRS § 10417-4.]

**81.24.075 Delinquent fee payments.** Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 2.]

**81.24.080 Penalty for failure to pay fees—Disposition of fees and penalties.** Every person, firm, company or corporation, or the officers, agents or employees thereof, failing or neglecting to pay the fees herein required shall be guilty of a misdemeanor. All fines and penalties collected under the provisions of this chapter shall be deposited into the public service revolving fund of the state treasury: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 242; 1979 ex.s. c 198 § 2; 1961 c 14 § 81.24.080. Prior: 1923 c 107 § 2; 1921 c 113 § 3; RRS § 10419.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**81.24.090 Pipeline safety fee—Reports—Procedure to contest fees—Regulatory incentive program.** (1)(a) Every hazardous liquid pipeline company as defined in RCW 81.88.010 shall pay an annual pipeline safety fee to the commission. The pipeline safety fees received by the commission shall be deposited in the pipeline safety account created in RCW 81.88.050.

(b) The aggregate amount of fees set shall be sufficient to recover the reasonable costs of administering the pipeline safety program, taking into account federal funds used to offset the costs. The fees established under this section shall be designed to generate revenue not exceeding appropriated levels of funding for the current fiscal year. At a minimum, the fees established under this section shall be sufficient to adequately fund pipeline inspection personnel, the timely review of pipeline safety and integrity plans, the timely development of spill response plans, the timely development of accurate maps of pipeline locations, participation in federal pipeline safety efforts to the extent allowed by law, and the staffing of the citizens committee on pipeline safety.

(c) Increases in the aggregate amount of fees over the immediately preceding fiscal year are subject to the requirements of RCW 43.135.055.

(2) The commission shall by rule establish the methodology it will use to set the appropriate fee for each entity subject to this section. The methodology shall provide for an equitable distribution of program costs among all entities subject to the fee. The fee methodology shall provide for:

(a) Direct assignment of average costs associated with annual standard inspections, including the average number of inspection days per year. In establishing these directly assignable costs, the commission shall consider the requirements and guidelines of the federal government, state safety standards, and good engineering practice[s]; and

(b) A uniform and equitable means of estimating and allocating costs of other duties relating to inspecting pipelines for safety that are not directly assignable, including but not limited to design review and construction inspections, specialized inspections, incident investigations, geographic mapping system design and maintenance, and administrative support.

(3) The commission shall require reports from those entities subject to this section in the form and at such time as necessary to set the fees. After considering the reports supplied by the entities, the commission shall set the amount of the fee

payable by each entity by general order entered before July 1st of each year.

(4) For companies subject to RCW 81.24.010, the commission shall collect the pipeline safety fee as part of the fee specified in RCW 81.24.010. The commission shall allocate the moneys collected under RCW 81.24.010 between the pipeline safety program and for other regulatory purposes. The commission shall adopt rules that assure that fee moneys related to the pipeline safety program are maintained separately from other moneys collected by the commission under this chapter.

(5) Any payment of the fee imposed by this section made after its due date must include a late fee of two percent of the amount due. Delinquent fees accrue interest at the rate of one percent per month.

(6) The commission shall keep accurate records of the costs incurred in administering its hazardous liquid pipeline safety program, and the records are open to inspection by interested parties. The records and data upon which the commission's determination is made shall be prima facie correct in any proceeding to challenge the reasonableness or correctness of any order of the commission fixing fees and distributing regulatory expenses.

(7) If any entity seeks to contest the imposition of a fee imposed under this section, that entity shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission.

(8) After establishing the fee methodology by rule as required in subsection (2) of this section, the commission shall create a regulatory incentive program for pipeline safety programs in collaboration with the citizens committee on pipeline safety. The regulatory incentive program created by the commission shall not shift costs among companies paying pipeline safety fees and shall not decrease revenue to pipeline safety programs. The regulatory incentive program shall not be implemented until after the review conducted according to \*RCW 81.88.150. [2001 c 238 § 3.]

**\*Reviser's note:** RCW 81.88.150 was repealed by 2007 c 142 § 11.

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**Chapter 81.28 RCW  
COMMON CARRIERS IN GENERAL**

Sections	
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81.28.020	Duty of carriers to expedite traffic.
81.28.030	Routing of freight—Connecting companies—Damages.
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- 81.28.250 Investigation and determination of interstate rates—Application for federal relief.
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- 81.28.290 Investigation of accidents, wrecks.

*Charges, prohibition against discrimination: State Constitution Art. 12 § 15.*

*Common carrier may bridge state waterway: RCW 79.110.130.*

*Constitutional limitations generally: State Constitution Art. 12.*

*Department of transportation as common carrier: RCW 47.60.220.*

*Free transportation to public officers prohibited: State Constitution Art. 2 § 39.*

*Legislature may establish maximum rates for transportation: State Constitution Art. 12 § 18.*

*Lien for transportation, storage, etc.: Chapter 60.60 RCW.*

*Monopolies and trusts prohibited: State Constitution Art. 12 § 22.*

*Municipal transportation systems: Title 35 RCW.*

*Regulation of common carriers: State Constitution Art. 12 § 13.*

#### **81.28.010 Duties as to rates, services, and facilities.**

All charges made for any service rendered or to be rendered in the transportation of persons or property, or in connection therewith, by any common carrier subject to regulation by the commission as to rates and service, or by any two or more such common carriers, must be just, fair, reasonable, and sufficient.

Every common carrier shall construct, furnish, maintain and provide, safe, adequate, and sufficient service facilities and equipment to enable it to promptly, expeditiously, safely, and properly receive, transport, and deliver all persons or property offered to or received by it for transportation, and to promote the safety, health, comfort, and convenience of its patrons, employees, and the public.

All rules and regulations issued by any such common carrier affecting or pertaining to the transportation of persons or property must be just and reasonable. [2007 c 234 § 22; 1961 c 14 § 81.28.010. Prior: 1911 c 117 § 9; RRS § 10345.]

#### **81.28.020 Duty of carriers to expedite traffic.**

Every common carrier subject to regulation by the commission as to rates and service shall under reasonable rules and regulations promptly and expeditiously receive, transport, and deliver all persons or property offered to or received by it for transportation. [2007 c 234 § 23; 1961 c 14 § 81.28.020. Prior: 1911 c 117 § 10; RRS § 10346.]

#### **81.28.030 Routing of freight—Connecting companies—Damages.**

All common carriers subject to regulation by the commission as to rates and service and doing business wholly within this state shall, upon receipt of any article of freight, promptly forward the same to its marked destination, by the route directed by the shipper, or if no directions are given by shipper, then to any connecting company whose line or route reaches nearest to the point to which such freight is marked.

Any such common carrier failing to comply with this section is liable for any damages that may be sustained, either to the shipper or consignee, from any cause, upon proof that the damages resulted from a failure of the transportation company to comply with this section.

Suit for damages may be instituted either at the place of shipping or destination, either by the shipper or consignee, and before any court competent and qualified to hear and determine like causes between persons who reside in the court's district. [2007 c 234 § 24; 1961 c 14 § 81.28.030. Prior: (i) 1890 p 291 § 1; RRS § 10491. (ii) 1890 p 291 § 2; RRS § 10492. (iii) 1890 p 291 § 3; RRS § 10493.]

#### **81.28.040 Tariff schedules to be filed with commission—Public schedules—Commission's powers as to schedules.**

Every common carrier subject to regulation by the commission as to rates and service shall file with the commission and shall print and keep open for public inspection, schedules showing the rates, fares, charges, and classification for the transportation of persons and property within the state between each point upon the carrier's route and all other points thereon; and between each point upon its route and all points upon every route leased, operated, or controlled by it; and between each point on its route or upon any route leased, operated, or controlled by it and all points upon the route of any other common carrier, whenever a through route and joint rate have been established or ordered between any two such points. If no joint rate over a through route has been established, the several carriers participating in the through route shall file, print, and keep open for public inspection, the separately established rates, fares, charges, and classifications that apply to the through transportation. The schedules printed must: Plainly state the places between which property and persons are carried; contain classification of passengers or property in force; and state separately all terminal charges, storage charges, icing charges, all other charges that the commission may require to be stated, all privileges or facilities granted or allowed, and any rules or regulations that may in any way change, affect, or determine any part, or the aggregate of, such rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. The schedule must be plainly printed in large type, and a copy of it shall be kept by every carrier readily accessible to inspection by the public in every station or office of the carrier where passengers or property are respectively received for transportation, when the station or office is in charge of any agent. All of the schedules kept as provided in this section must be immediately produced by the carrier for inspection upon the demand of any person. A notice printed in bold type and stating that the schedules are on file with the agent and open to inspection by any person and that the agent will assist any person to determine from the schedules any transportation rates or fares or rules or regulations that are in force must be kept posted by the carrier in two public and conspicuous places in every such station or office. The form of each schedule must be prescribed by the commission.

The commission may, from time to time, determine and prescribe by order such changes in the form of the schedules as may be found expedient, and modify the requirements of this section in respect to publishing, posting, and filing of schedules either in particular instances or by general rule or order applicable to special or peculiar circumstances or conditions.

The commission may suspend the operation of this section in whole or in part as applied to vessels engaged in jobbing business not operating on regular routes. [2007 c 234 §

25; 1984 c 143 § 4; 1961 c 14 § 81.28.040. Prior: 1911 c 117 § 14; RRS § 10350.]

**81.28.050 Tariff changes—Notice—Exception—Waiver of provisions during state of emergency.** Unless the commission otherwise orders, a change may not be made to any classification, rate, fare, charge, rule, or regulation filed and published by a common carrier subject to regulation by the commission as to rates and service, except after thirty days' notice to the commission and to the public. In the case of a solid waste collection company, a change may not be made except after forty-five days' notice to the commission and to the public. The notice must be published as provided in RCW 81.28.040 and must plainly state the changes proposed to be made in the schedule then in force and the time when the changed rate, classification, fare, or charge will go into effect. All proposed changes must be shown by printing, filing, and publishing new schedules or must be plainly indicated upon the schedules in force at the time and kept open to public inspection. The commission, for good cause shown, may by order allow changes in rates without requiring the notice and the publication time periods specified in this section. When any change is made in any rate, fare, charge, classification, rule, or regulation, attention must be directed to the change by some character on the schedule. The character and its placement must be designated by the commission. The commission may, by order, for good cause shown, allow changes in any rate, fare, charge, classification, rule, or regulation without requiring any character to indicate each and every change to be made.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 406; 2007 c 234 § 26; 1993 c 300 § 2; 1984 c 143 § 5; 1981 c 116 § 1; 1961 c 14 § 81.28.050. Prior: 1957 c 205 § 3; 1911 c 117 § 15; RRS § 10351.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.28.060 Joint rates, contracts, etc.** The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the commission; and where such evidence of concurrence or acceptance is filed, it shall not be necessary for the carriers filing the same also to file copies of the tariffs in which they are named as parties.

Every common carrier shall file with the commission copies of every contract, agreement or arrangement with any other common carrier or common carriers relating in any way to the transportation of persons or property. [1961 c 14 § 81.28.060. Prior: 1911 c 117 § 16; RRS § 10352.]

**81.28.080 Published rates to be charged—Exceptions—Definitions.** (1) A common carrier subject to regulation by the commission as to rates and service shall not

charge, demand, collect, or receive a greater or less or different compensation for transportation of persons or property, or for any service in connection therewith, than the rates, fares, and charges applicable to such transportation as specified in its schedules filed and in effect at the time and shall not refund or remit in any manner or by any device any portion of the rates, fares, or charges so specified excepting upon order of the commission as hereinafter provided, or extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are regularly and uniformly extended to all persons and corporations under like circumstances. Any common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, issue or give any free ticket, free pass, or free or reduced transportation for passengers between points within this state, except to the carrier's employees and their families, surgeons and physicians and their families, the carrier's officers, agents, and attorneys-at-law; to ministers of religion, traveling secretaries of young men's christian associations, inmates of hospitals, charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons; to inmates of the national homes or state homes for volunteer soldiers with disabilities and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge; to necessary caretakers of livestock, poultry, milk, and fruit; to lineworkers of telegraph and telephone companies; to post office inspectors, customs inspectors, and immigration inspectors; to baggage agents and witnesses attending any legal investigation in which the common carrier is interested; to persons injured in accidents or wrecks and physicians and nurses attending such persons; to the national guard of Washington when on official duty; and students going to and returning from state institutions of learning. This section does not prohibit the interchange of passes for the officers, attorneys, agents and employees and their families, of commercial ferries or prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

(2) "Employee," as used in this section, includes furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, the remains of a person killed or dying in the employment of a carrier, those entering or leaving its service, and former employees traveling for the purpose of entering the service of any such common carrier.

(3) "Families," as used in this section, includes the families of those persons named in subsection (2) of this section, the families of persons killed and their surviving spouses prior to remarriage and minor children during minority, and the families of persons who died while in the service of any such common carrier.

(4) Nothing in this section prevents the issuance of mileage, commutation tickets, or excursion passenger tickets or prevents the issuance of free or reduced transportation by any street railroad company for mail carriers, or police officers or members of fire departments, city officers, and employees when engaged in the performance of their duties as city employees.

(5) Common carriers may carry, store, or handle, free or at reduced rates, property for the United States, state, county, or municipal governments, for charitable purposes, or to or from fairs and exhibitions for exhibition, and may carry, store, or handle, free or at reduced rates, the household goods and personal effects of its employees, those entering or leaving its service, and those killed or dying while in its service. [2007 c 234 § 27; 2007 c 218 § 74; 1973 1st ex.s. c 154 § 117; 1961 c 14 § 81.28.080. Prior: 1929 c 96 § 1; 1911 c 117 § 18; RRS § 10354. Formerly RCW 81.28.080 through 81.28.130, 81.28.150 through 81.28.170, and 80.36.130.]

**Reviser's note:** This section was amended by 2007 c 218 § 74 and by 2007 c 234 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Intent—Finding—2007 c 218:** See note following RCW 1.08.130.

**Severability—1973 1st ex.s. c 154:** See note following RCW 2.12.030.

**81.28.180 Rate discrimination prohibited.** A common carrier subject to regulation by the commission as to rates and service shall not, directly or indirectly, by any special rate, rebate, drawback, or other device or method, charge, demand, collect, or receive from any person or corporation a greater or lesser compensation for any service rendered or to be rendered in the transportation of persons or property, except as authorized in this title, than it charges, demands, collects, or receives from any person or corporation for doing a like and contemporaneous service in the transportation of a like kind of traffic under the same or substantially similar circumstances and conditions. [2007 c 234 § 28; 1984 c 143 § 6; 1961 c 14 § 81.28.180. Prior: 1911 c 117 § 20; RRS § 10356.]

**81.28.190 Unreasonable preferences and prejudices prohibited.** A common carrier subject to regulation by the commission as to rates and service shall not make or give any undue or unreasonable preference or advantage to any person, corporation, locality, or particular description of traffic in any respect whatsoever, or subject any particular person, corporation, locality, or particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever. [2007 c 234 § 29; 1984 c 143 § 7; 1961 c 14 § 81.28.190. Prior: 1911 c 117 § 21; RRS § 10357.]

**81.28.200 Long and short haul.** A common carrier, subject to regulation by the commission as to rates and service and this title, shall not charge or receive any greater compensation in the aggregate for the transportation of persons or a like kind of property for a shorter distance than for a longer distance over the same line in the same direction, the shorter distance being included within the longer distance, or to charge any greater compensation as a through rate than the aggregate of the intermediate rates subject to this title. The common carriers may not charge and receive as great a compensation for a shorter as for a longer distance or haul. Upon the application of a common carrier, the commission may by order authorize the common carrier to charge less for a longer distance than for a shorter distance for the transportation of persons or property in special cases after investigation by the commission, but the order must specify and prescribe the extent to which the common carrier making the application is

relieved from the operation of this section. Only to the extent so specified and prescribed is any common carrier relieved from the operation and requirements of this section. [2007 c 234 § 30; 1984 c 143 § 8; 1961 c 14 § 81.28.200. Prior: 1911 c 117 § 22; RRS § 10358.]

**81.28.210 Transportation at less than published rates—Rebating—False representation.** (1) A common carrier subject to regulation by the commission as to rates and service, or any officer or agent thereof, or any person acting for or employed by the common carrier, shall not assist, suffer, or permit any person or corporation to obtain transportation for any person or property between points within this state at less than the rates then established and in force in accordance with the schedules filed and published under this title, by false billing, false classification, false weight or weighing, or false report of weight, or by any other device or means. Any person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation for such property at less than the rates then established and in force, by false billing, false or incorrect classification, false weight or weighing, false representation of the contents or substance of a package, or false report or statement of weight, or by any device or means, whether with or without the consent or connivance of a common carrier or any of its officers, agents, or employees.

(2) A person, corporation, or any officer, agent, or employee of a corporation, shall not knowingly or wilfully, directly or indirectly, by false statement or representation as to the cost, value, nature, or extent of injury, or by the use of any false billing, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to upon any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, rebate, or payment for damage, or otherwise, in connection with or growing out of the transportation of persons or property, or agreement to transport such persons or property, whether with or without the consent or connivance of such common carrier or any of its officers, agents, or employees, when the compensation of such carrier for such transportation is less than the rates then established and in force.

(3) A person, corporation, or any officer, agent, or employee of a corporation, who delivers property for transportation within the state to a common carrier, shall not seek to obtain or obtain such transportation by any false representation or false statement of false paper or token as to the contents or substance thereof, when the transportation of such property is prohibited by law. [2007 c 234 § 31; 1961 c 14 § 81.28.210. Prior: 1911 c 117 § 23; RRS § 10359.]

**81.28.220 Action for treble damages.** The attorney general of the state of Washington shall, whenever he or she has reasonable grounds to believe that any person, firm, or corporation has knowingly accepted or received from any carriers of persons or property subject to the jurisdiction of the commission, either directly or indirectly, any unlawful rebate, discount, deduction, concession, refund, or remittance from the rates or charges filed and open to public inspection

as provided for in the public service laws of this state, prosecute a civil action in the name of the people of the state of Washington in the superior court of Thurston county to collect three times the total sum of such rebates, discounts, deductions, concessions, refunds, or remittances so accepted or received within three years prior to the commencement of such action.

All penalties imposed under the provisions of this section shall be paid to the state treasurer and by him or her deposited in the public service revolving fund. [2007 c 234 § 32; 1961 c 14 § 81.28.220. Prior: 1937 c 169 § 5; RRS § 10447-1.]

**81.28.230 Commission to fix just, reasonable, and compensatory rates.** Whenever the commission finds, after a hearing had upon its own motion or upon complaint, as provided in this chapter, that the rates, fares, or charges demanded, exacted, charged, or collected by any common carrier subject to regulation by the commission as to rates and service for the transportation of persons or property within the state or in connection therewith, or that the regulations or practices of the common carrier affecting those rates are unjust, unreasonable, unjustly discriminatory, or unduly preferential, or in any way are in violation of the provisions of law, or that the rates, fares, or charges are insufficient to yield a reasonable compensation for the service rendered, the commission shall determine and fix by order the just, reasonable, or sufficient rates, fares, or charges, or the regulations or practices to be thereafter observed and enforced. [2007 c 234 § 33; 1984 c 143 § 9; 1961 c 14 § 81.28.230. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

**81.28.240 Commission may order improved facilities and service.** Whenever the commission shall find, after such hearing, that the rules, regulations, practices, equipment, appliances, facilities or service of any such common carrier in respect to the transportation of persons or property are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, adequate, sufficient and proper rules, regulations, practices, equipment, appliances, facilities or service to be observed, furnished, constructed or enforced and be used in the transportation of persons and property by such common carrier, and fix the same by its order or rule. [1961 c 14 § 81.28.240. Prior: 1911 c 117 § 53, part; RRS § 10389, part.]

**81.28.250 Investigation and determination of interstate rates—Application for federal relief.** The commission shall investigate all interstate, rates, fares, charges, classifications, or rules or practices in relation to the transportation of persons or property within this state, and if the commission determines that these rates, fares, charges, classification, or rules or practices are excessive or discriminatory, or are applied in violation of the act of congress entitled "An act to regulate commerce," approved February 4, 1887, as amended or supplemented, or in conflict with the rulings, orders, or regulations of the applicable federal regulatory agency, the commission shall apply, by petition, to the applicable federal regulatory agency for relief, and may present to the agency all facts concerning violations of the rulings,

orders, or regulations of that agency, or violations of the act to regulate commerce as amended or supplemented. [2007 c 234 § 34; 1961 c 14 § 81.28.250. Prior: 1911 c 117 § 58; RRS § 10394.]

**81.28.260 Bicycles as baggage on commercial ferries.** Bicycles must be transported as baggage for passengers by commercial ferries and are subject to the same liabilities as other baggage. A passenger is not required to crate, cover, or otherwise protect any bicycle. A commercial ferry is not required to transport more than one bicycle for one person. [2007 c 234 § 35; 1961 c 14 § 81.28.260. Prior: 1899 c 15 § 1; RRS § 10495.]

**81.28.270 Limitation of action for collection of transportation charges.** All actions at law by railroads, common and contract carriers by motor truck and all other public carriers for recovery of their charges, or any part of them, for any common carrier service performed by said carriers, shall be begun within two years from the time the cause of action accrues, and not after. [1961 c 14 § 81.28.270. Prior: 1945 c 117 § 1; Rem. Supp. 1945 § 167-1.]

**81.28.280 Reports of wrecks, etc.** Every public service company shall give immediate notice to the commission of every accident resulting in death or injury to any person occurring on its lines or system, in such manner as the commission may prescribe.

Such notice shall not be admitted as evidence or used for any purpose against the company giving it in any action for damages growing out of any matter mentioned in the notice. The commission may require reports to be made by any common carrier of all wrecks, collisions, or derailments occurring on its line. [1961 c 14 § 81.28.280. Prior: 1953 c 104 § 3; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

**81.28.290 Investigation of accidents, wrecks.** The commission shall investigate all accidents that may occur upon the lines of any common carrier resulting in loss of life, to any passenger or employee, and may investigate any and all accidents or wrecks occurring on the line of any common carrier. Notice of the investigation shall be given in all cases for a sufficient length of time to enable the company affected to participate in the hearing and may be given orally or in writing, in such manner as the commission may prescribe.

Such witnesses may be examined as the commission deems necessary and proper to thoroughly ascertain the cause of the accident or wreck and fix the responsibility therefor. The examination and investigation may be conducted by an inspector or deputy inspector, and they may administer oaths, issue subpoenas, and compel the attendance of witnesses, and when the examination is conducted by an inspector or deputy inspector, he shall make a full and complete report thereof to the commission. [1961 c 14 § 81.28.290. Prior: 1953 c 104 § 4; prior: 1911 c 117 § 63, part; RRS § 10399, part.]

**Chapter 81.29 RCW**  
**COMMON CARRIERS—**  
**LIMITATIONS ON LIABILITY**

## Sections

81.29.010	Definition.
81.29.020	Carrier's liability for loss—Exceptions—Tariff schedule— Time for filing claims or instituting suits.
81.29.030	Carrier's right of action against other carrier.
81.29.040	Penalty for violations.
81.29.050	Liability for baggage.

**81.29.010 Definition.** "Common carrier," as used in this chapter, means every common carrier subject to regulation by the commission as to rates and service. [2007 c 234 § 36; 1961 c 14 § 81.29.010. Prior: 1945 c 203 § 1; Rem. Supp. 1945 § 3673-0. Formerly RCW 81.32.010, part.]

**81.29.020 Carrier's liability for loss—Exceptions—Tariff schedule—Time for filing claims or instituting suits.** (1) Any common carrier subject to regulation by the commission as to rates and service, receiving property for transportation wholly within the state of Washington from one point in the state of Washington to another point in the state of Washington, shall issue a receipt or bill of lading and is liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it, or by any common carrier to which such property may be delivered, or over whose line or lines such property may pass when transported on a through bill of lading, and a contract, receipt, rule, regulation, or other limitation of any character, does not exempt such common carrier from the liability imposed; and any such common carrier receiving property for transportation wholly within the state of Washington, or any common carrier delivering property received and transported, is liable to the lawful holder of the receipt or bill of lading, or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier to which such property may be delivered, or over whose line or lines such property may pass, when transported on a through bill of lading. Any limitation of liability, limitation of the amount of recovery, or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, or regulation, or in any tariff filed with the commission is unlawful and void.

(2) Liability for full actual loss, damage, or injury, notwithstanding any limitation of liability or recovery or representation, agreement, or release as to value, and declaring any such limitation to be unlawful and void, does not apply: First, to baggage carried on commercial ferries or motor vehicles, or commercial ferries or motor vehicles carrying passengers; second, to property, concerning which the carrier is expressly authorized or required by order of the commission, to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement has no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released; and any tariff schedule that may be filed with the commission pursuant to such order must contain specific reference thereto and may establish rates varying

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with the value so declared and agreed upon; and the commission may make such order in cases where rates dependent upon and varying with declared or agreed values would, in its opinion, be just and reasonable under the circumstances and conditions surrounding the transportation.

(3) This section does not deprive any holder of a receipt or bill of lading of any remedy or right of action which he or she has under the existing law.

(4) It is unlawful for any receiving or delivering common carrier to provide by rule, contract, regulation, or otherwise a shorter period for the filing of claims than nine months, and for the institution of suits than two years, such period for institution of suits to be computed from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice.

(5) The liability imposed by this section applies to property reconsigned or diverted in accordance with the applicable tariffs filed with the commission. [2007 c 234 § 37; 1982 c 83 § 1; 1980 c 132 § 1; 1961 c 14 § 81.29.020. Prior: 1945 c 203 § 2; 1923 c 149 § 1; Rem. Supp. 1945 § 3673-1. Formerly RCW 81.32.290 through 81.32.330.]

**Effective date—1980 c 132:** "This 1980 act shall take effect on July 1, 1980." [1980 c 132 § 4.]

**81.29.030 Carrier's right of action against other carrier.** The common carrier issuing such receipt or bill of lading, or delivering such property so received and transported, shall be entitled to recover from the common carrier on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment or transcript thereof. [1961 c 14 § 81.29.030. Prior: 1945 c 203 § 3; 1923 c 149 § 2; Rem. Supp. 1945 § 3673-2. Formerly RCW 81.32.340.]

**81.29.040 Penalty for violations.** Any common carrier subject to the provisions of this chapter, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone, or with any other corporation, company, person, or party, shall wilfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this chapter required to be done, or shall cause or willingly suffer or permit any act, matter or thing so directed or required by this chapter to be done, or not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof in any court of competent jurisdiction, be subject to a fine of not to exceed five thousand dollars for each offense. [1961 c 14 § 81.29.040. Prior: 1923 c 149 § 3; RRS § 3673-3. Formerly RCW 81.32.350.]

**81.29.050 Liability for baggage.** The liability of any common carrier subject to regulation by the commission for

the loss of or damage to any baggage shall be set by the commission. The commission will review the amounts periodically and adjust the rate accordingly. [1991 c 21 § 1; 1961 c 14 § 81.29.050. Prior: 1945 c 209 § 1; Rem. Supp. 1945 § 10495-1. Formerly RCW 81.32.360.]

### Chapter 81.36 RCW

## RAILROADS—CORPORATE POWERS AND DUTIES

### Sections

81.36.010	Right of eminent domain.
81.36.020	Right of entry.
81.36.030	Intersections and connections with other roads or canals.
81.36.040	Line or canal across or along watercourses.
81.36.050	Change of grade or location of road or canal.
81.36.060	Extensions, branch lines.
81.36.075	Proceedings prior to March 18, 1909, validated.
81.36.090	Requisites to building extension or branch line.
81.36.100	Bridges over navigable streams.
81.36.120	May own securities of irrigation companies.
81.36.130	May construct and operate ditches and canals.

*Assessment of private car companies for property tax purposes: Chapter 84.16 RCW.*

*Consolidation of competing railroads prohibited: State Constitution Art. 12 § 16.*

*Constitutional limitations, generally: State Constitution Art. 12.*

*Express companies: State Constitution Art. 12 § 21.*

*Rights-of-way over public lands, bridges, etc.: Chapter 79.36 RCW.*

*Taxation of rolling stock: State Constitution Art. 12 § 17.*

**81.36.010 Right of eminent domain.** Every corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, is hereby authorized and empowered to appropriate, by condemnation, land and any interest in land or contract right relating thereto, including any leasehold interest therein and any rights-of-way for tunnels beneath the surface of the land, and any elevated rights-of-way above the surface thereof, including lands granted to the state for university, school or other purposes, and also tide and shore lands belonging to the state (but not including harbor areas), which may be necessary for the line of such road, railway or canal, or site of such bridge, not exceeding two hundred feet in width, besides a sufficient quantity thereof for toll houses, workshops, materials for construction, excavations and embankments and a right-of-way over adjacent lands or property, to enable such corporation to construct and prepare its road, railway, canal or bridge, and to make proper drains; and in case of a canal, whenever the court shall deem it necessary, to appropriate a sufficient quantity of land, including lands granted to the state for university, school or other purposes, in addition to that before specified in this section, for the construction and excavation of such canal and of the slopes and bermes thereof, not exceeding one thousand feet in total width; and in case of a railway to appropriate a sufficient quantity of any such land, including lands granted to the state for university, schools and other purposes and also tide and shore lands belonging to the state (but not including harbor areas) in addition to that before specified in this section, for the necessary side tracks, depots and water stations, and the right to conduct water thereto by aqueduct, and for yards, terminal, transfer and switching grounds, docks and warehouses required for receiving, delivering, storage and handling of freight, and

such land, or any interest therein, as may be necessary for the security and safety of the public in the construction, maintenance and operation of its railways; compensation therefor to be made to the owner thereof irrespective of any benefit from any improvement proposed by such corporation, in the manner provided by law: AND PROVIDED FURTHER, That if such corporation locate the bed of such railway or canal upon any part of the track now occupied by any established state or county road, said corporation shall be responsible to the state or county in which such state or county road so appropriated is located, for all expenses incurred by the state or county in relocating and opening the part of such road so appropriated. The term land as herein used includes tide and shore lands but not harbor areas; it also includes any interest in land or contract right relating thereto, including any leasehold interest therein. [1961 c 14 § 81.36.010. Prior: 1907 c 244 § 1; 1903 c 180 § 1; 1895 c 80 § 2; 1888 p 63 § 2; Code 1881 § 2456; 1869 p 343 § 2; RRS § 10539.]

**81.36.020 Right of entry.** A corporation organized for the construction of any railway, macadamized road, plank road, clay road, canal or bridge, shall have a right to enter upon any land, real estate or premises, or any of the lands granted to the state of Washington for school, university or other purposes, between the termini thereof, for the purpose of examining, locating and surveying the line of such road or canal, or the site of such bridge, doing no unnecessary damage thereby. [1961 c 14 § 81.36.020. Prior: 1895 c 80 § 1; 1888 p 63 § 1; Code 1881 § 2455; 1869 p 34 § 1; RRS § 10538.]

**81.36.030 Intersections and connections with other roads or canals.** Every corporation formed under the laws of this state for the construction of a railroad shall have the power to cross, intersect, join and unite its railway with any other railway before constructed, at any point in its route, and upon the grounds of such other railway company, with the necessary turn-outs, sidings, switches and other conveniences in furtherance of the objects of its connections, and every corporation whose railway is or shall be hereafter intersected by any new railway shall unite with the corporation owning such new railway in forming such intersections and connections and grant the facilities aforesaid; and if the two corporations cannot agree upon the amount of compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of lands and other property which shall be necessary for the construction of its road, and every corporation formed under the laws of this state for the construction of a canal shall have the power to cross and intersect any railway before constructed at any point in its road and upon the grounds of such other railway company, and every corporation whose railway is or shall hereafter be crossed or intersected by any canal shall unite with the corporation owning such canal in forming such crossings and intersections and grant the facilities therefor; and if the two corporations cannot agree upon the compensation to be made therefor, or the points and manner of such crossings and connections, the same shall be ascertained and determined in the manner provided by law for the taking of

lands and other property which shall be necessary for the construction of said canal. [1961 c 14 § 81.36.030. Prior: 1895 c 80 § 3; 1888 p 64 § 3; Code 1881 § 2456 1/2; RRS § 10535.]

**81.36.040 Line or canal across or along water-courses.** Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, water-courses, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction: PROVIDED, That the construction of any railway or canal by such corporation along, across or upon any of the navigable rivers or waters of this state shall be in such manner as to not interfere with, impede or obstruct the navigation thereof; and all rights, privileges and powers of every description by law conferred upon road or railroad companies are hereby given and granted to canal companies so far as the same may be applicable, and all power and authority possessed by the public or municipal corporations of the state or their local authorities, with reference to road or railroad companies, may be exercised by them with reference to canal companies. [1961 c 14 § 81.36.040. Prior: 1895 c 80 § 4; 1888 p 64 § 3; RRS § 10536.]

**81.36.050 Change of grade or location of road or canal.** Any corporation may change the grade or location of its road, or canal, not departing from the general route specified in the articles of incorporation, for the purpose of avoiding annoyances to public travel or dangerous or deficient curves or grades, or unsafe or unsubstantial grounds or foundation, or for other like reasonable causes, and for the accomplishment of such change, shall have the same right to enter upon, examine, survey and appropriate the necessary lands and materials, as in the original location and construction of such road or canal. [1961 c 14 § 81.36.050. Prior: Code 1881 § 2457; 1869 p 343 § 3; RRS § 10537.]

**81.36.060 Extensions, branch lines.** Any railroad corporation chartered by, or organized under, the laws of the state, or of any state or territory, or under the laws of the United States, and authorized to do business in this state, may extend its railroads from any point named in its charter or articles of incorporation, or may build branch roads either from any point on its line of road or from any point on the line of any other railroad connecting, or to be connected, with its road, the use of which other road between such points and the connection with its own road such corporation shall have secured by lease or agreement for a term of not less than ten years from its date. Before making any such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which said railroad is to be constructed, and the estimated length of such railroad, and the name of each county in this state through or into which it is constructed or intended to be con-

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structed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall endorse thereon the date of the filing thereof and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive aid thereto which it would have had if it had been authorized in its charter or articles of incorporation. [1961 c 14 § 81.36.060. Prior: 1890 p 526 § 1; RRS § 10460.]

**81.36.075 Proceedings prior to March 18, 1909, validated.** Any sale or purchase of, and any consolidation by sale, or otherwise, or any lease, or agreement to sell, consolidate with or lease, the whole or any part of any railroad, or the branch lines of any company, whether organized or located within or without this state, with the franchises appertaining thereto, to, from or with any railroad company organized under the laws of the United States or of this state or any other state or territory, or any consolidation between such companies, executed prior to March 18, 1909 by the proper officers of the respective companies, parties to such sale, lease or consolidation or contract, is hereby legalized and made in all respects valid and binding from the date of its execution: PROVIDED, That the provisions of this section shall not apply when the railroads or transportation corporations involved are competing lines. [1961 c 14 § 81.36.075. Prior: 1909 c 196 § 2; RRS § 10464.]

**81.36.090 Requisites to building extension or branch line.** Any railroad corporation chartered by or organized under the laws of the United States, or of any state or territory, whose constructed railroad shall reach or intersect the boundary line of this state at any point, may extend its railroad into this state from any such point or points to any place or places within the state, and may build branches from any point on such extension. Before making such extension or building any such branch road, such corporation shall, by resolution of its directors or trustees, to be entered in the record of its proceedings, designate the route of such proposed extension or branch by indicating the place from and to which such extension or branch is to be constructed, and the estimated length of such extension or branch, and the name of each county in this state through or into which it is constructed or intended to be constructed, and file a copy of such record, certified by the president and secretary, in the office of the secretary of state, who shall endorse thereon the date of filing thereof, and record the same. Thereupon such corporation shall have all the rights and privileges to make such extension or build such branch and receive such aid thereto as it would have had had it been authorized so to do by articles of incorporation duly filed in accordance with the laws of this state. [1961 c 14 § 81.36.090. Prior: 1890 p 527 § 3; RRS § 10466.]

**81.36.100 Bridges over navigable streams.** Any railroad corporation heretofore duly incorporated and organized under the laws of this state or of the territory of Washington, or which may hereafter be duly incorporated and organized under the laws of this state, or heretofore or hereafter incorporated and organized under the laws of any other state or ter-

ritory of the United States, and authorized to do business in this state and to construct and operate railroads therein, shall have and hereby is given the right to construct bridges across the navigable streams within this state over which the projected line or lines of railway of said railroad corporations will run: PROVIDED, That said bridges are constructed in good faith for the purpose of being made a part of the constructed line of said railroad: AND PROVIDED, That they shall be constructed in the course of the construction of said railroad or thereafter for the more convenient operation thereof: AND PROVIDED FURTHER, That such bridges shall be so constructed as not to interfere with, impede or obstruct the navigation of such streams. [1961 c 14 § 81.36.100. Prior: 1890 p 53 § 1; RRS § 10468.]

*Bridges and trestles across state waterways: RCW 79.110.130, 79.110.140.*

*Railroad bridges across navigable streams: RCW 79.110.110.*

**81.36.120 May own securities of irrigation companies.** It shall be lawful for any corporation, whether such corporation is organized under the laws of the territory or state of Washington, the laws of any other state or territory, or the laws of the United States owning, leasing or operating any line or lines of railway within the state of Washington, or which may own, lease or operate in the future any such line or lines of railway within this state, to take, acquire, own, negotiate, sell and guarantee bonds and stocks of companies or corporations which are or may hereafter be organized for the purpose of irrigating and reclaiming lands within this state. [1961 c 14 § 81.36.120. Prior: 1890 p 529 § 1; RRS § 10461.]

**81.36.130 May construct and operate ditches and canals.** It shall be lawful for any such corporation to build, own and operate irrigating ditches and canals in this state for the purpose of irrigating and reclaiming arid lands contiguous to or tributary to such line or lines of railway. [1961 c 14 § 81.36.130. Prior: 1890 p 529 § 2; RRS § 10462.]

## Chapter 81.40 RCW

### RAILROADS—EMPLOYEE REQUIREMENTS AND REGULATIONS

#### Sections

81.40.010	Full train crews—Passenger—Safety review—Penalty—Enforcement.
81.40.035	Freight train crews.
81.40.060	Purchase of apparel by employees—Penalty.
81.40.080	Employee shelters—Penalty.
81.40.095	Rules and regulations—Railroad employees—Sanitation, shelter.
81.40.110	Flagman must read, write, and speak English.
81.40.130	Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions.

*Industrial insurance, employments covered: Chapter 51.12 RCW.*

*Intoxication of railway employees: RCW 9.91.020.*

**81.40.010 Full train crews—Passenger—Safety review—Penalty—Enforcement.** (1) No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from staffing its passenger trains in accordance with collective bargaining agreements or any national or other applicable settlement of train crew size. In the

absence of a collective bargaining agreement or any national or other applicable settlement of train crew size, any common carrier railroad operating a passenger train with a crew of less than two members shall be subject to a safety review by the Washington utilities and transportation commission, which, as to staffing, may issue an order requiring as many as two crew members.

(2) Each train or engine run in violation of this section is a separate offense: PROVIDED, That nothing in this section shall be construed as applying in the case of disability of one or more of any train crew while out on the road between division terminals, wrecking trains, or to any line, or part of line, where not more than two trains are run in each twenty-four hours.

(3) Any person, corporation, company, or officer of court operating any railroad or railway, or part of any railroad or railway in the state of Washington, and engaged as a common carrier, in the transportation of freight or passengers, who violates this section is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars for each offense.

(4) It is the duty of the commission to enforce this section. [2003 c 53 § 386; 1992 c 102 § 1; 1961 c 14 § 81.40.010. Prior: 1911 c 134 § 1; RRS § 10486.]

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

**81.40.035 Freight train crews.** No law or order of any regulatory agency of this state shall prevent a common carrier by railroad from manning its freight trains in accordance with collective bargaining agreements or any national or other settlement of train crew size. The size of passenger train crews shall not be affected by \*this act. [1967 c 2 § 2 (Initiative Measure No. 233, approved November 8, 1966).]

**\*Reviser's note:** This act [chapter 2, Laws of 1967], consisting of this section and the repeal of RCW 81.40.020, was Initiative Measure No. 233 adopted by the people November 8, 1966, and declared effective law by proclamation signed by the governor December 8, 1966.

**Repeal of conflicting acts:** "All acts or parts of acts in conflict with or in derogation of this act are hereby repealed insofar as the same are in conflict with, or in derogation of, this act or any part thereof." [1967 c 2 § 3 (Initiative Measure No. 233, approved November 8, 1966).]

**81.40.060 Purchase of apparel by employees—Penalty.** (1) It shall be unlawful for any railroad or other transportation company doing business in the state of Washington, or of any officer, agent or servant of such railroad or other transportation company, to require any conductor, engineer, brakeman, fireman, purser, or other employee, as a condition of his or her continued employment, or otherwise to require or compel, or attempt to require or compel, any such employees to purchase of any such railroad or other transportation company or of any particular person, firm or corporation or at any particular place or places, any uniform or other clothing or apparel, required by any such railroad or other transportation company to be used by any such employee in the performance of his or her duties as such; and any such railroad or transportation company or any officer, agent or servant thereof, who shall order or require any conductor, engineer, brakeman, fireman, purser, or other person in its employ, to purchase any uniform or other clothing or apparel as afore-

said, shall be deemed to have required such purchase as a condition of such employee's continued employment.

(2) Any railroad or other transportation company doing business in the state of Washington, or any officer, agent, or servant thereof, violating this section is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine in any sum not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail of the county where the misdemeanor is committed, not exceeding six months. [2003 c 53 § 388; 1961 c 14 § 81.40.060. Prior: 1907 c 224 § 1; RRS § 10504.]

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

**81.40.080 Employee shelters—Penalty.** (1) It shall be unlawful for any railroad company, corporation, association or other person owning, controlling or operating any line of railroad in the state of Washington, to build, construct, reconstruct, or repair railroad car equipment or motive power in this state without first erecting and maintaining at every point where five employees or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all men regularly employed in such work shall be sheltered and protected from rain and other inclement weather: PROVIDED, That the provisions of this section shall not apply at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment, nor to equipment on tracks where trains arrive or depart or are assembled or made up for departure. The term "light repairs," as herein used, shall not include repairs usually made in roundhouse, shop or shed upon well equipped railroads.

(2) Any railroad company or officer or agent thereof, or any other person, who violates this section by failing or refusing to comply with its provisions is guilty of a misdemeanor, and each day's failure or refusal to comply shall be considered a separate offense. [2003 c 53 § 389; 1961 c 14 § 81.40.080. Prior: 1941 c 238 § 1; Rem. Supp. 1941 § 7666-40.]

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

**81.40.095 Rules and regulations—Railroad employees—Sanitation, shelter.** The utilities and transportation commission shall adopt and enforce rules and regulations relating to sanitation and adequate shelter as it affects the health of all railroad employees, including but not limited to railroad workers, maintenance of way employees, highway crossing watchpersons, clerical, platform, freight house and express employees. [2007 c 218 § 82; 1961 c 14 § 81.40.095. Prior: 1957 c 71 § 1. Formerly RCW 81.04.162.]

**Intent—Finding—2007 c 218:** See note following RCW 1.08.130.

**81.40.110 Flagman must read, write, and speak English.** Any railroad operating within this state, shall not employ or use as flagman any person or persons who cannot read, write and speak the English language. [1961 c 14 § 81.40.110. Prior: 1907 c 138 § 1, part; 1899 c 35 § 1, part; RRS § 10480, part.]

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**81.40.130 Cost of records or medical examinations—Unlawful to require employee or applicant to pay—Penalty—Definitions.** (1) It is unlawful for any employer to require any employee or applicant for employment to pay the cost of a medical examination or the cost of furnishing any records required by the employer as a condition of employment.

(2) Any employer who violates this section is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one hundred dollars. Each violation shall constitute a separate offense.

(3) As used in this section:

(a) "Employer" means any common carrier by rail, doing business in or operating within the state, and any subsidiary thereof.

(b) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to engage in any employment. [2003 c 53 § 390; 1961 c 14 § 81.40.130. Prior: 1955 c 228 § 2.]

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

## Chapter 81.44 RCW COMMON CARRIERS—EQUIPMENT

### Sections

81.44.010	Order for improved equipment and facilities.
81.44.020	Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when.
81.44.040	Streetcars.
81.44.070	Duties of inspector of safety appliances.
81.44.085	First aid kits and drinking water—Penalty.
81.44.130	Safeguarding frogs, switches, and guard rails.

*Excessive steam in boilers, penalty:* RCW 70.54.080.

*Safety and health, tunnels and underground construction:* Chapter 49.24 RCW.

*Steam boilers, pressure vessels, construction, inspection, etc.:* Chapter 70.79 RCW.

*Tampering with signals, lights, etc.:* RCW 88.08.020.

**81.44.010 Order for improved equipment and facilities.** Whenever the commission, after a hearing had upon its own motion or upon complaint, finds that any equipment or facility for use by any common carrier in, or in connection with the transportation of persons or property, ought reasonably to be provided, or any repairs or improvements to, or changes in, any theretofore in use ought reasonably to be made, or any additions or changes in construction should reasonably be made thereto, in order to promote the security or convenience of the public or employees, or in order to secure adequate service or facilities for the transportation of passengers or property, the commission may, after a hearing, either on its own motion or after complaint, serve an order directing such repairs, improvements, changes, or additions to be made. [2007 c 234 § 38; 1961 c 14 § 81.44.010. Prior: 1911 c 117 § 64; RRS § 10400.]

**81.44.020 Correction of unsafe or defective conditions—Walkways and handrails as unsafe or defective condition, when.** If upon investigation the commission finds that the equipment, facilities, tracks, bridges, or other struc-

tures of any common carrier are defective, and that the operation thereof is dangerous to the employees of the common carrier or to the public, it shall immediately give notice to the superintendent or other officer of the common carrier of the repairs or reconstruction necessary to place the same in a safe condition. The commission may also prescribe the rate of speed for trains or cars passing over the dangerous or defective track, bridge, or other structure until the repairs or reconstruction required are made, and may also prescribe the time when the repairs or reconstruction must be made; or if, in the commission's opinion, it is needful or proper, the commission may forbid trains or cars to run over any defective track, bridge, or structure until the track, bridge, or structure is repaired and placed in a safe condition. Railroad bridges or trestles without walkways and handrails may be identified as an unsafe or defective condition under this section after a hearing by the commission upon complaint or on its own motion. The commission, in making the determination, shall balance considerations of employee and public safety with the potential for increased danger to the public resulting from adding walkways or handrails to railway bridges. A railroad company and its employees are not liable for injury to or death of any person occurring on or about any railway bridge or trestle if the person was not a railway employee but was a trespasser or was otherwise not authorized to be in the location where the injury or death occurred.

Appeal from or action to review any order of the commission made under this section is not available if the commission finds that immediate compliance is necessary for the protection of employees or the public. [2007 c 234 § 39; 1982 c 141 § 1; 1977 ex.s. c 46 § 1; 1961 c 14 § 81.44.020. Prior: 1911 c 117 § 65; RRS § 10401.]

**81.44.040 Streetcars.** Every streetcar must be equipped with proper and efficient brakes, steps, grab irons or hand rails, fenders or aprons or pilots, and with such other appliances, apparatus, and machinery necessary for the safe operation of the streetcar as the commission may prescribe. [2007 c 234 § 40; 1961 c 14 § 81.44.040. Prior: 1911 c 117 § 66, part; RRS § 10402, part. Formerly RCW 81.44.040 and 81.64.120, part.]

**81.44.070 Duties of inspector of safety appliances.** It shall be the duty of the inspector of tracks, bridges, structures, and equipment, and such deputies as may be appointed, to inspect all equipment, and appliances connected therewith, and all apparatus, tracks, bridges and structures, depots and facilities and accommodations connected therewith, and facilities and accommodations furnished for the use of employees, and make such reports of his inspection to the commission as may be required. He shall, on discovering any defective equipment or appliances connected therewith, rendering the use of such equipment dangerous, immediately report the same to the superintendent of the road on which it is found, and to the proper official at the nearest point where such defect is discovered, describing the defect. Such inspector may, on the discovery of any defect rendering the use of any car, motor or locomotive dangerous, condemn such car, motor or locomotive, and order the same out of service until repaired and put in good working order. He shall, on discov-

ering any track, bridge or structure defective or unsafe in any particular, report such condition to the commission, and, in addition thereto, report the same to the official in charge of the division of such railroad upon which such defect is found. In case any track, bridge or structure is found so defective as to be dangerous to the employees or public for a train or trains to be operated over the same, the inspector is hereby authorized to condemn such track, bridge or structure and notify the commission and the office in charge of the division of such railroad where such defect is found of his action concerning the same, reporting in detail the defect complained of, and the work or improvements necessary to repair such defect. He shall also report to the commission the violation of any law governing, controlling or affecting the conduct of public service companies in this state, as such companies are defined in this title or in Title 80 RCW.

The inspector, or such deputies as may be appointed, shall have the right and privilege of riding on any locomotive, either on freight or passenger trains, or on the caboose of any freight train, for the purpose of inspecting the track on any railroad in this state: PROVIDED, That the engineer or conductor in charge of any such locomotive or caboose may require such inspector to produce his authority, under the seal of the commission, showing that he is such inspector or deputy inspector.

The inspector, or such deputy inspector or inspectors as may be appointed, shall, when required by the commission, inspect any street railroad, gas plant, electrical plant, water system, telephone line or telegraph line, and upon discovering any defective or dangerous track, bridge, structure, equipment, apparatus, machinery, appliance, facility, instrumentality or building, rendering the use of the same dangerous to the public or to the employees of the company owning or operating the same, report the same to the commission, and to the official in charge of such road, plant, system or line. [1961 c 14 § 81.44.070. Prior: 1911 c 117 § 67; RRS § 10403. Formerly RCW 81.44.070 and 81.44.080.]

**81.44.085 First aid kits and drinking water—Penalty.** (1) Every person operating a common carrier railroad in this state shall equip each locomotive and caboose used in train or yard switching service, and every car used in passenger service with a first aid kit of a type to be approved by the commission, which kit shall be plainly marked and be readily visible and accessible and be maintained in a fully quipped condition: PROVIDED, That such kits shall not be required on equipment used exclusively in yard or switching service where such kits are maintained in the yard or terminal.

(2) Each locomotive and caboose shall also be furnished with sanitary cups and sanitary ice-cooled drinking water.

(3) For the purpose of this section a "locomotive" shall include all railroad engines propelled by any form of energy and used in rail line haul or yard switching service.

(4) Any person violating this section is guilty of a misdemeanor. [2003 c 53 § 391; 1969 ex.s. c 210 § 7; 1961 c 14 § 81.44.085. Prior: 1951 c 66 §§ 1, 2, 3.]

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

**81.44.130 Safeguarding frogs, switches, and guard rails.** Every railroad and street railroad operating in this state

shall so adjust, fill, block and securely guard all frogs, switches and guard rails so as to protect and prevent the feet of persons being caught therein. [1961 c 14 § 81.44.130. Prior: 1911 c 117 § 68; RRS § 10404.]

### Chapter 81.48 RCW

## RAILROADS—OPERATING REQUIREMENTS AND REGULATIONS

### Sections

81.48.020	Obstructing or delaying train—Penalty.
81.48.030	Regulating speed within cities and towns and at grade crossings—Exception.
81.48.040	Procedure to fix or change speed limits.
81.48.050	Trains to stop at railroad crossings.
81.48.060	Penalty for violation of duty endangering safety.
81.48.070	Cruelty to stock in transit—Penalty.

*Excessive steam in boilers, penalty: RCW 70.54.080.*

*Steam boilers, pressure vessels, construction, inspection, etc.: Chapter 70.79 RCW.*

### 81.48.020 Obstructing or delaying train—Penalty.

Every person who shall wilfully obstruct, hinder or delay the passage of any car lawfully operated upon any railway, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.020. Prior: 1909 c 249 § 278; RRS § 2530.]

**81.48.030 Regulating speed within cities and towns and at grade crossings—Exception.** Except to the extent preempted by federal law, the right to fix and regulate the speed of railway trains within the limits of any city or town other than a first-class city, and at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns, is vested exclusively in the commission: PROVIDED, That RCW 81.48.030 and 81.48.040 shall not apply to street railways which may be operating or hereafter operated within the limits of said cities and towns. [2006 c 70 § 1; 1994 c 81 § 83; 1973 c 115 § 3; 1971 ex.s. c 143 § 1; 1961 c 14 § 81.48.030. Prior: 1943 c 228 § 1; Rem. Supp. 1943 § 10547-1.]

### 81.48.040 Procedure to fix or change speed limits. (1)

After due investigation, the commission shall make and issue an order fixing and regulating the speed of railway trains within the limits of cities and towns other than first-class cities. Except to the extent preempted by federal law, the speed limit to be fixed by the commission shall be discretionary, and it may fix different rates of speed for different cities and towns, which rates of speed shall be commensurate with the hazard presented and the practical operation of the trains. Except to the extent preempted by federal law, the commission shall also fix and regulate the speed of railway trains at grade crossings as defined in RCW 81.53.010 where such grade crossings are outside the limits of cities and towns when in the judgment of the commission the public safety so requires; such speed limit to be fixed shall be discretionary with the commission and may be different for different grade crossings and shall be commensurate with the hazard presented and the practical operation of trains. The commission shall have the right from time to time, as conditions change, to either increase or decrease speed limits established under RCW 81.48.030 and 81.48.040.

(2) Any speed limit that the commission fixed by order prior to June 7, 2006, but without making a finding permitted under P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106), has no force or effect.

(3) Before increasing operating speeds, the railroad company, government agency, or jurisdiction that owns or operates the railroad must provide a sixty-day written notice to the commission and to either the governing body of the city or town within which the limit applies or the road authority that has control over the grade crossing at which the limit applies. In the notice, the railroad company, government agency, or jurisdiction must provide the existing timetable speed limits and new passenger and freight speed limits, the milepost limits where the speed increase is to occur, and the federal track class standard to which the track will be maintained. At the end of sixty days, the railroad company, government agency, or jurisdiction may raise the speed limit unless the commission staff, after investigation, finds that a lower limit is necessary to address local conditions consistent with P.L. 91-458, Sec. 205 (49 U.S.C. Sec. 20106). In the event of such a finding by the staff that is not agreed to by the railroad company, government agency, or jurisdiction, the matter shall be scheduled for a hearing before the commission. A railroad company, government agency, or jurisdiction may provide no more than five notices in any sixty-day period without the consent of the commission. The railroad company, government agency, or jurisdiction and the commission may extend the sixty-day period by mutual consent. [2006 c 70 § 2; 1994 c 81 § 84; 1971 ex.s. c 143 § 2; 1961 c 14 § 81.48.040. Prior: 1943 c 228 § 2; Rem. Supp. 1943 § 10547-2.]

**81.48.050 Trains to stop at railroad crossings.** All railroads and street railroads, operating in this state shall cause their trains and cars to come to a full stop at a distance not greater than five hundred feet before crossing the tracks of another railroad crossing at grade, excepting at crossings where there are established signal towers, and signal men, interlocking plants or gates. [1961 c 14 § 81.48.050. Prior: 1911 c 117 § 69; RRS § 10405.]

**81.48.060 Penalty for violation of duty endangering safety.** Every engineer, motorman, gripman, conductor, brakeman, switch tender, train dispatcher or other officer, agent or servant of any railway company, who shall be guilty of any wilful violation or omission of his duty as such officer, agent or servant, by which human life or safety shall be endangered, for which no punishment is specially prescribed, shall be guilty of a misdemeanor. [1961 c 14 § 81.48.060. Prior: 1909 c 249 § 277; RRS § 2529.]

**81.48.070 Cruelty to stock in transit—Penalty.** Railroad companies in carrying or transporting animals shall not permit them to be confined in cars for a longer period than forty-eight consecutive hours without unloading them for rest, water and feeding for a period of at least two consecutive hours, unless prevented from so unloading them by unavoidable accident. In estimating such confinement, the time during which the animals have been confined without such rest on connecting roads from which they are received shall be included. Animals so unloaded shall, during such rest, be

properly fed, watered by the owner or person having the custody of them, or in case of his default in so doing, then by the railroad company transporting them, at the expense of said owner or person in custody thereof, and said company shall in such case have a lien upon such animals for food, care and custody furnished, and shall not be liable for such detention of such animals. If animals are transported where they can and do have proper food, water, space and opportunity for rest, the foregoing provision in regard to their being unloaded shall not apply. Violators of this section shall be punished by fine not exceeding one thousand dollars per animal. [1994 c 261 § 19; 1961 c 14 § 81.56.120. Prior: 1893 c 27 § 4; RRS § 10494. Formerly RCW 81.56.120.]

**Finding—Intent—1994 c 261:** See note following RCW 16.52.011.

### Chapter 81.52 RCW RAILROADS—RIGHTS-OF-WAY— SPURS—FENCES

#### Sections

81.52.050 Fences—Crossings—Cattle guards.  
81.52.060 Fences—Liability for injury to stock.  
81.52.070 Fences—Negligence—Evidence.

*Eminent domain by corporations: Chapter 8.20 RCW.*

*Forest protection: Chapter 76.04 RCW.*

*Public lands, rights-of-way, easements, etc.: Chapter 79.36 RCW.*

**81.52.050 Fences—Crossings—Cattle guards.** Every person, company or corporation having the control or management of any railroad shall, outside of any corporate city or town, and outside the limits of any sidetrack or switch, cause to be constructed and maintained in good repair on each side of said railroad, along the line of said right-of-way of such person, company or corporation operating the same, a substantial fence, and at every point where any roadway or other public highway shall cross said railroad, a safe and sufficient crossing must be built and maintained, and on each side of such crossing and at each end of such sidetrack or switch, outside of any incorporated city or town, a sufficient cattle guard: PROVIDED, That any person holding land on both sides of said right-of-way shall have the right to put in gates for his own use at such places as may be convenient. [1961 c 14 § 81.52.050. Prior: 1907 c 88 § 1; RRS § 10507.]

**81.52.060 Fences—Liability for injury to stock.** Every such person, company or corporation owning or operating such railroad shall be liable for all damages sustained in the injury or killing of stock in any manner by reason of the failure of such person, company or corporation, to construct and maintain such fence or such crossing or cattle guard; but when such fences, crossings and guards have been duly made, and shall be kept in good repair, such person, company or corporation shall not be liable for any such damages, unless negligently or unlawfully done. [1961 c 14 § 81.52.060. Prior: 1907 c 88 § 2; RRS § 10508.]

**81.52.070 Fences—Negligence—Evidence.** In all actions against persons, companies or corporations, operating steam or electric railroads in the state of Washington, for injury to stock by collision with moving trains, it is prima

facie evidence of negligence on the part of such person, company or corporation, to show that the railroad track was not fenced with a substantial fence or protected by a sufficient cattle guard at the place where the stock was injured or killed. [1961 c 14 § 81.52.070. Prior: 1907 c 88 § 3; RRS § 10509.]

### Chapter 81.53 RCW RAILROADS—CROSSINGS

#### Sections

81.53.010 Definitions.  
81.53.020 Grade separation required where practicable.  
81.53.030 Petition for crossing—Hearing—Order.  
81.53.040 Supplemental hearing—Change of route.  
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81.53.060 Petition for alteration of crossing—Closure of grade crossing without hearing.  
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81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings.  
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81.53.100 Cost when railroad crosses highway.  
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81.53.130 Apportionment of cost.  
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81.53.150 Practice and procedure.  
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81.53.240 Scope of chapter.  
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81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal.  
81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs.  
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81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Created—Transfer of funds—Allocation of costs—Procedure—Federal funding.  
81.53.291 Crossing signals, warning devices—Operational scope—Election by first-class cities—Procedure.  
81.53.295 Crossing signals, warning devices, etc.—Federal funds used to pay installation costs—Grade crossing protective fund—State and local authorities to pay remaining installation costs—Railroad to pay maintenance costs.  
81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required.  
81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions.  
81.53.420 Traffic control devices during construction, repair, etc. of crossing or overpass—Rules.  
81.53.900 Effective date—1975 1st ex.s. c 189.

*Counties, signs, signals, etc.: RCW 36.86.040.*

*Railroad intersections, crossings, etc.: State Constitution Art. 12 § 13.*

*Traffic devices required by utilities and transportation commission: RCW 47.36.050.*

**81.53.010 Definitions.** The term "commission," when used in this chapter, means the utilities and transportation commission of Washington.

The term "highway," when used in this chapter, includes all state and county roads, streets, alleys, avenues, boulevards, parkways and other public places actually open and in use, or to be opened and used, for travel by the public.

The term "railroad," when used in this chapter, means every railroad, including interurban and suburban electric railroads, by whatsoever power operated, for the public use in the conveyance of persons or property for hire, with all bridges, ferries, tunnels, equipment, switches, spurs, sidings, tracks, stations and terminal facilities of every kind, used, operated, controlled, managed, or owned by or in connection therewith. The said term shall also include every logging and other industrial railway owned or operated primarily for the purpose of carrying the property of its owners or operators or of a limited class of persons, with all tracks, spurs and sidings used in connection therewith. The said term shall not include street railways operating within the limits of any incorporated city or town.

The term "railroad company," when used in this chapter, includes every corporation, company, association, joint stock association, partnership or person, its, their or his lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any railroad, as that term is defined in this section.

The term "over-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing," when used in this chapter, means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing," shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "grade crossing," when used in this chapter, means any point or place where a railroad crosses a highway or a highway crosses a railroad or one railroad crosses another, at a common grade. [1961 c 14 § 81.53.010. Prior: 1959 c 283 § 2; prior: (i) 1913 c 30 § 1; RRS § 10511. (ii) 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

**81.53.020 Grade separation required where practicable.** All railroads and extensions of railroads hereafter constructed shall cross existing railroads and highways by passing either over or under the same, when practicable, and shall in no instance cross any railroad or highway at grade without authority first being obtained from the commission to do so. All highways and extensions of highways hereafter laid out and constructed shall cross existing railroads by passing either over or under the same, when practicable, and shall in no instance cross any railroad at grade without authority first being obtained from the commission to do so: PROVIDED, That this section shall not be construed to prohibit a railroad company from constructing tracks at grade across other tracks owned or operated by it within established yard limits. In determining whether a separation of grades is practicable, the commission shall take into consideration the amount and character of travel on the railroad and on the highway; the grade and alignment of the railroad and the highway; the cost of separating grades; the topography of the country, and all other circumstances and conditions naturally involved in such an inquiry. [1961 c 14 § 81.53.020. Prior: 1913 c 30 § 2; RRS § 10512. Formerly RCW 81.52.090.]

(2008 Ed.)

### 81.53.030 Petition for crossing—Hearing—Order.

Whenever a railroad company desires to cross a highway or railroad at grade, it shall file a written petition with the commission setting forth the reasons why the crossing cannot be made either above or below grade. Whenever the legislative authority of a county, or the municipal authorities of a city, or the state officers authorized to lay out and construct state roads, or the state parks and recreation commission, desire to extend a highway across a railroad at grade, they shall file a written petition with the commission, setting forth the reasons why the crossing cannot be made either above or below grade. Upon receiving the petition the commission shall immediately investigate it, giving at least ten days' notice to the railroad company and the county or city affected thereby, of the time and place of the investigation, to the end that all parties interested may be present and heard. If the highway involved is a state road or parkway, the secretary of transportation or the state parks and recreation commission shall be notified of the time and place of hearing. The evidence introduced shall be reduced to writing and be filed by the commission. If it finds that it is not practicable to cross the railroad or highway either above or below grade, the commission shall enter a written order in the cause, either granting or denying the right to construct a grade crossing at the point in question. The commission may provide in the order authorizing a grade crossing, or at any subsequent time, that the railroad company shall install and maintain proper signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and its employees. In respect to existing railroad grade crossings over highways the construction of which grade crossings was accomplished other than under a commission order authorizing it, the commission may in any event require the railroad company to install and maintain, at or near each crossing, on both sides of it, a sign known as the sawbuck crossing sign with the lettering "Railroad Crossing" inscribed thereon with a suitable inscription indicating the number of tracks. The sign shall be of standard design conforming to specifications furnished by the Washington state department of transportation. [1984 c 7 § 373; 1961 c 14 § 81.53.030. Prior: 1959 c 283 § 1; 1955 c 310 § 3; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.100.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

### 81.53.040 Supplemental hearing—Change of route.

If the commission finds that it is impracticable to construct an over-crossing or under-crossing on the established or proposed highway, and shall find that by deflecting the established or proposed highway a practicable and feasible over-crossing or under-crossing or a safer grade crossing can be provided, it shall continue the hearing and hold a supplemental hearing thereon. At least ten days' notice of the time and place of the supplemental hearing shall be given to all landowners that may be affected by the proposed change in location of the highways. At the supplemental hearing the commission shall inquire into the propriety and necessity of changing and deflecting the highway as proposed. If the proposed change in route of the highway involves the abandonment and vacation of a portion of an established highway, the owners of land contiguous to the portion of the highway to be vacated shall, in like manner, be notified of the time and

place of the supplemental hearing. At the conclusion of the hearing, the commission shall enter its findings in writing, and shall determine the location of the crossing which may be constructed, and whether it shall be an under-crossing, over-crossing or grade crossing, and shall determine whether or not any proposed change in the route of an existing highway, or the abandonment of a portion thereof is advisable or necessary to secure an over-crossing, under-crossing, or safer grade crossing. [1961 c 14 § 81.53.040. Prior: 1955 c 310 § 4; prior: 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.110.]

**81.53.050 Requirements of order on change of route.**

If the commission finds and determines that a change in route of an existing highway, or vacation of a portion thereof, is necessary or advisable, it shall further find and determine what private property or property rights it is necessary to take, damage, or injuriously affect for the purpose of constructing the highway along a new route, and what private property or property rights, will be affected by the proposed vacation of a portion of an existing highway. The property and property rights found necessary to be taken, damaged, or affected shall be described in the findings with reasonable accuracy. In any action brought to acquire the right to take or damage any such property or property rights, the findings of the commission shall be conclusive as to the necessity therefor. A copy of the findings shall be served upon all parties to the cause. [1961 c 14 § 81.53.050. Prior: 1955 c 310 § 5; 1937 c 22 § 1, part; 1913 c 30 § 3, part; RRS § 10513, part. Formerly RCW 81.52.120.]

**81.53.060 Petition for alteration of crossing—Closure of grade crossing without hearing.** The mayor and city council, or other governing body of any city or town, or the legislative authority of any county within which there exists any under-crossing, over-crossing, or grade crossing, or where any street or highway is proposed to be located or established across any railroad, or any railroad company whose road is crossed by any highway, may file with the commission their or its petition in writing, alleging that the public safety requires the establishment of an under-crossing or over-crossing, or an alteration in the method and manner of an existing crossing and its approaches, or in the style and nature of construction of an existing over-crossing, under-crossing, or grade crossing, or a change in the location of an existing highway crossing, the closing or discontinuance of an existing highway crossing, and the diversion of travel thereon to another highway or crossing, or if not practicable, to change the crossing from grade or to close and discontinue the crossing, the opening of an additional crossing for the partial diversion of travel, and praying that this relief may be ordered. If the existing or proposed crossing is on a state road, highway, or parkway, the petition may be filed by the secretary of transportation or the state parks and recreation commission. Upon the petition being filed, the commission shall fix a time and place for hearing the petition and shall give not less than twenty days' notice to the petitioner, the railroad company, and the municipality or county in which the crossing is situated. If the highway involved is a state highway or parkway, like notice shall be given to the secre-

tary of transportation or the state parks and recreation commission. If the change petitioned for requires that private lands, property, or property rights be taken, damaged, or injuriously affected to open up a new route for the highway, or requires that any portion of any existing highway be vacated and abandoned, twenty days' notice of the hearing shall be given to the owner or owners of the private lands, property, and property rights which it is necessary to take, damage, or injuriously affect, and to the owner or owners of the private lands, property, or property rights that will be affected by the proposed vacation and abandonment of the existing highway. The commission shall also cause notice of the hearing to be published once in a newspaper of general circulation in the community where the crossing is situated, which publication shall appear at least two days before the date of hearing. At the time and place fixed in the notice, all persons and parties interested are entitled to be heard and introduce evidence. In the case of a petition for closure of a grade crossing the commission may order the grade crossing closed without hearing where: (1) Notice of the filing of the petition is posted at, or as near as practical to, the crossing; (2) notice of the filing of the petition is published once in a newspaper of general circulation in the community or area where the crossing is situated, which publication shall appear within the same week that the notice referred to in subsection (1) of this section is posted; and (3) no objections are received by the commission within twenty days from the date of the publication of the notice. [1984 c 7 § 374; 1969 ex.s. c 210 § 8; 1961 c 14 § 81.53.060. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.130.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**81.53.070 Hearing.** At the conclusion of the hearing the commission shall make and file its written findings of fact concerning the matters inquired into in like manner as provided for findings of fact upon petition for new crossings. The commission shall also enter its order based upon said findings of fact, which shall specify whether the highway shall continue at grade or whether it shall be changed to cross over or under the railroad in its existing location or at some other point, and whether an over-crossing or under-crossing shall be established at the proposed location of any street or highway or at some other point, or whether the style and nature of construction of an existing crossing shall be changed, or whether said highway shall be closed and travel thereon diverted to another channel, or any other change that the commission may find advisable or necessary: **PROVIDED,** That in an emergency where a highway is relocated to avoid a grade crossing, or a new crossing is constructed in the vicinity of an existing crossing in the interest of public safety, the commission may order such existing crossing closed without notice or hearing as specified herein. In case the order made requires that private lands, property, or property rights be taken, damaged or injuriously affected, the right to take, damage or injuriously affect the same shall be acquired as hereinafter provided.

Any petition herein authorized may be filed by the commission on its own motion, and proceedings thereon shall be the same as herein provided for the hearing and determina-

tion of a petition filed by a railroad company. [1961 c 14 § 81.53.070. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.140.]

**81.53.080 Restrictions on structures, railway equipment, in proximity of crossings—Minimum clearance for under-crossings.** After February 24, 1937, no building, loading platform, or other structure which will tend to obstruct the vision of travelers on a highway or parkway, of approaching railway traffic, shall be erected or placed on railroad or public highway rights-of-way within a distance of one hundred feet of any grade crossing located outside the corporate limits of any city or town unless authorized by the commission, and no trains, railway cars or equipment shall be spotted less than one hundred feet from any grade crossing within or without the corporate limits of any city or town except to serve station facilities and existing facilities of industries.

The commission shall have the power to specify the minimum vertical and horizontal clearance of under-crossings constructed, repaired or reconstructed after February 24, 1937, except as to primary state highways. [1969 ex.s. c 210 § 9; 1961 c 14 § 81.53.080. Prior: 1937 c 22 § 2, part; 1921 c 138 § 1, part; 1913 c 30 § 4, part; RRS § 10514, part. Formerly RCW 81.52.150.]

**81.53.090 Duty to maintain crossings.** When a highway crosses a railroad by an over-crossing or under-crossing, the framework and abutments of the over-crossing or under-crossing, as the case may be, shall be maintained and kept in repair by the railroad company, and the roadway thereover or thereunder and approaches thereto shall be maintained and kept in repair by the county or municipality in which the same are situated, or if the highway is a state road or parkway, the roadway over or under the railroad shall be maintained and kept in repair as provided by law for the maintenance and repair of state roads and parkways.

The railings of over-crossings shall be considered a part of the roadway. Whenever a highway intersects a railroad at common grade, the roadway approaches within one foot of the outside of either rail shall be maintained and kept in repair by highway authority, and the planking or other materials between the rails and for one foot on the outside thereof shall be installed and maintained by the railroad company. At crossings involving more than one track, maintenance by the railroad company shall include that portion of the crossing between and for one foot on the outside of each outside rail. The minimum length of such planking or other materials shall be twenty feet on installation or repairs made after February 24, 1937. [1961 c 14 § 81.53.090. Prior: 1937 c 22 § 3; 1913 c 30 § 5; RRS § 10515. Formerly RCW 81.52.160.]

**81.53.091 Underpasses, overpasses constructed with aid of federal funds—Apportionment of maintenance cost between railroad and state.** See RCW 47.28.150.

**81.53.100 Cost when railroad crosses highway.** Whenever, under the provisions of this chapter, new railroads are constructed across existing highways, or highway

changes are made either for the purpose of avoiding grade crossings on such new railroads, or for the purpose of crossing at a safer and more accessible point than otherwise available, the entire expense of crossing above or below the grade of the existing highway, or changing the route thereof, for the purpose mentioned in this section, shall be paid by the railroad company. [1961 c 14 § 81.53.100. Prior: 1937 c 22 § 4A; 1925 ex.s. c 73 § 1A; 1921 c 138 § 2A; 1913 c 30 § 6A; RRS § 10516A. Formerly RCW 81.52.170.]

**81.53.110 Cost when highway crosses railroad.** Whenever, under the provisions of this chapter, a new highway is constructed across a railroad, or an existing grade crossing is eliminated or changed (or the style or nature of construction of an existing crossing is changed), the entire expense of constructing a new grade crossing, an overcrossing, under-crossing, or safer grade crossing, or changing the nature and style of construction of an existing crossing, including the expense of constructing approaches to such crossing and the expense of securing rights-of-way for such approaches, as the case may be, shall be apportioned by the commission between the railroad, municipality or county affected, or if the highway is a state road or parkway, between the railroad and the state, in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement. If the highway involved is a state road or parkway, the amount not apportioned to the railroad company shall be paid as provided by law for constructing such state road or parkway. [1961 c 14 § 81.53.110. Prior: 1937 c 22 § 4B; 1925 ex.s. c 73 § 1B; 1921 c 138 § 2B; 1913 c 30 § 6B; RRS § 10516B. Formerly RCW 81.52.180.]

**81.53.120 Cost when railroad crosses railroad.** Whenever two or more lines of railroad owned or operated by different companies cross a highway, or each other, by an over-crossing, under-crossing, or grade crossing required or permitted by this chapter or by an order of the commission, the portion of the expense of making such crossing not chargeable to any municipality, county or to the state, and the expense of constructing and maintaining such signals, warnings, flagmen, interlocking devices, or other devices or means to secure the safety of the public and the employees of the railroad company, as the commission may require to be constructed and maintained, shall be apportioned between said railroad companies by the commission in such manner as justice may require, regard being had for all facts relating to the establishment, reason for, and construction of said improvement, unless said companies shall mutually agree upon an apportionment. If it becomes necessary for the commission to make an apportionment between the railroad companies, a hearing for that purpose shall be held, at least ten days' notice of which shall be given. [1961 c 14 § 81.53.120. Prior: 1937 c 22 § 4C; 1925 ex.s. c 73 § 1C; 1921 c 138 § 2C; 1913 c 30 § 6C; RRS § 10516C. Formerly RCW 81.52.190.]

**81.53.130 Apportionment of cost.** In the construction of new railroads across existing highways, the railroads shall do or cause to be done all the work of constructing the crossings and road changes that may be required, and shall acquire

and furnish whatever property or easements may be necessary, and shall pay, as provided in RCW 81.53.100 through 81.53.120, the entire expense of such work including all compensation or damages for property or property rights taken, damaged or injuriously affected. In all other cases the construction work may be apportioned by the commission between the parties who may be required to contribute to the cost thereof as the parties may agree, or as the commission may consider advisable. All work within the limits of railroad rights-of-way shall in every case be done by the railroad company owning or operating the same. The cost of acquiring additional lands, rights or easements to provide for the change of existing crossings shall, unless the parties otherwise agree, in the first instance be paid by the municipality or county within which the crossing is located; or in the case of a state road or parkway, shall be paid in the manner provided by law for paying the cost of acquiring lands, rights or easements for the construction of state roads or parkways. The expense accruing on account of property taken or damaged shall be divided and paid in the manner provided for dividing and paying other costs of construction. Upon the completion of the work and its approval by the commission, an accounting shall be had, and if it shall appear that any party has expended more than its proportion of the total cost, a settlement shall be forthwith made. If the parties shall be unable to agree upon a settlement, the commission shall arbitrate, adjust and settle the account after notice to the parties. In the event of failure and refusal of any party to pay its proportion of the expense, the sum with interest from the date of the settlement may be recovered in a civil action by the party entitled thereto. In cases where the commission has settled the account, the finding of the commission as to the amount due shall be conclusive in any civil action brought to recover the same if such finding has not been reviewed or appealed from as herein provided, and the time for review or appeal has expired. If any party shall seek review of any finding or order of the commission apportioning the cost between the parties liable therefor, the superior court, the court of appeals, or the supreme court, as the case may be, shall cause judgment to be entered in such review proceedings for such sum or sums as may be found lawfully or justly due by one party to another. [1988 c 202 § 65; 1971 c 81 § 144; 1961 c 14 § 81.53.130. Prior: 1937 c 22 § 5; 1913 c 30 § 7; RRS § 10517. Formerly RCW 81.52.200.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**81.53.140 Time for performance.** The commission, in any order requiring work to be done, shall have power to fix the time within which the same shall be performed and completed: PROVIDED, That if any party having a duty to perform within a fixed time under any order of the commission shall make it appear to the commission that the order cannot reasonably be complied with within the time fixed by reason either of facts arising after the entry of the order or of facts existing prior to the entry thereof that were not presented, and with reasonable diligence could not have been sooner presented to the commission, such party shall be entitled to a reasonable extension of time within which to perform the work. An order of the commission refusing to grant an extension of time may be reviewed as provided for the review of other

orders of the commission. [1961 c 14 § 81.53.140. Prior: 1913 c 30 § 10; RRS § 10520. Formerly RCW 81.52.210.]

**81.53.150 Practice and procedure.** Modes of procedure under this chapter, unless otherwise provided in this chapter, shall be as provided in other provisions of this title. The commission is hereby given power to adopt rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings under this chapter. [1961 c 14 § 81.53.150. Prior: 1913 c 30 § 11; RRS § 10521. Formerly RCW 81.52.220.]

**81.53.160 Service of process.** All notices required to be served by this chapter shall be in writing, and shall briefly state the nature of the matter to be inquired into and investigated. Notices may be served in the manner provided by law for the service of summons in civil cases, or by registered United States mail. When service is made by registered mail, the receipt of the receiving post office shall be sufficient proof of service. When, under the provisions of this chapter, it is necessary to serve notice of hearings before the commission on owners of private lands, property, or property rights, and such owners cannot be found, service may be made by publication in the manner provided by law for the publication of summons in civil actions, except that publication need be made but once each week for three consecutive weeks, and the hearing may be held at any time after the expiration of thirty days from the date of the first publication of the notice. [1961 c 14 § 81.53.160. Prior: 1913 c 30 § 12; RRS § 10522. Formerly RCW 81.52.230.]

**81.53.170 Judicial review.** Upon the petition of any party to a proceeding before the commission, any finding or findings, or order or orders of the commission, made under color of authority of this chapter, except as otherwise provided, may be reviewed in the superior court of the county wherein the crossing is situated, and the reasonableness and lawfulness of such finding or findings, order or orders inquired into and determined, as provided in this title for the review of the commission's orders generally. Appellate review of the judgment of the superior court may be sought in like manner as provided in said utilities and transportation commission law for review by the supreme court or the court of appeals. [1988 c 202 § 66; 1971 c 81 § 145; 1961 c 14 § 81.53.170. Prior: 1937 c 22 § 6; 1913 c 30 § 13; RRS § 10523. Formerly RCW 81.52.240.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**81.53.180 Eminent domain.** Whenever to carry out any work undertaken under this chapter it is necessary to take, damage, or injuriously affect any private lands, property, or property rights, the right so to take, damage, or injuriously affect the same may be acquired by condemnation as hereinafter provided:

(1) In cases where new railroads are constructed and laid out by railroad company authorized to exercise the power of eminent domain, the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by the railroad company by a condemnation proceedings brought in its own name and prosecuted as provided

by law for the exercise of the power of eminent domain by railroad companies, and the right of eminent domain is hereby conferred on railroad companies for the purpose of carrying out the requirements of this chapter or the requirements of any order of the commission.

(2) In cases where it is necessary to take, damage, or injuriously affect private lands, property, or property rights to permit the opening of a new highway or highway crossing across a railroad, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired by the municipality or county petitioning for such new crossing by a condemnation proceeding brought in the name of such municipality or county as provided by law for the exercise of the power of eminent domain by such municipality or county. If the highway involved be a state highway, then the right to take, damage, or injuriously affect private lands, property, or property rights shall be acquired by a condemnation proceeding prosecuted under the laws relative to the exercise of the power of eminent domain in aid of such state road.

(3) In cases where the commission orders changes in existing crossings to secure an under-crossing, over-crossing, or safer grade crossing, and it is necessary to take, damage, or injuriously affect private lands, property, or property rights to execute the work, the right to take, damage, or injuriously affect such lands, property, or property rights shall be acquired in a condemnation proceeding prosecuted in the name of the state of Washington by the attorney general under the laws relating to the exercise of the power of eminent domain by cities of the first class for street and highway purposes: PROVIDED, That in the cases mentioned in this subdivision the full value of any lands taken shall be awarded, together with damages, if any accruing to the remainder of the land not taken by reason of the severance of the part taken, but in computing the damages to the remainder, if any, the jury shall offset against such damages, if any, the special benefits, if any, accruing to such remainder by reason of the proposed improvement. The right of eminent domain for the purposes mentioned in this subdivision is hereby granted. [1961 c 14 § 81.53.180. Prior: 1913 c 30 § 15; RRS § 10525. Formerly RCW 81.52.250.]

**81.53.190 Abatement of illegal crossings.** If an under-crossing, over-crossing, or grade crossing is constructed, maintained, or operated, or is about to be constructed, operated, or maintained, in violation of the provisions of this chapter, or in violation of any order of the commission, such construction, operation, or maintenance may be enjoined, or may be abated, as provided by law for the abatement of nuisances. Suits to enjoin or abate may be brought by the attorney general, or by the prosecuting attorney of the county in which the unauthorized crossing is located. [1961 c 14 § 81.53.190. Prior: 1913 c 30 § 16; RRS § 10526. Formerly RCW 81.52.260.]

**81.53.200 Mandamus to compel performance.** If any railroad company, county, municipality, or officers thereof, or other person, shall fail, neglect, or refuse to perform or discharge any duty required of it or them under this chapter or any order of the commission, the performance of such duty

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may be compelled by mandamus, or other appropriate proceeding, prosecuted by the attorney general upon request of the commission. [1961 c 14 § 81.53.200. Prior: 1913 c 30 § 17; RRS § 10527. Formerly RCW 81.52.270.]

**81.53.210 Penalty.** If any railroad company shall fail or neglect to obey, comply with, or carry out the requirements of this chapter, or any order of the commission made under it, such company shall be liable to a penalty not to exceed five thousand dollars, such penalty to be recovered in a civil action brought in the name of the state of Washington by the attorney general. All penalties recovered shall be paid into the state treasury. [1961 c 14 § 81.53.210. Prior: 1913 c 30 § 18; RRS § 10528. Formerly RCW 81.52.280.]

**81.53.220 Obstructions in highways.** Whenever, to carry out any work ordered under RCW 81.53.010 through 81.53.281 and 81.54.010, it is necessary to erect and maintain posts, piers, or abutments in a highway, the right and authority to erect and maintain the same is hereby granted: PROVIDED, That, in case of a state highway the same shall be placed only at such points on such state highway as may be approved by the state secretary of transportation and fixed after such approval by order of the commission. [1983 c 3 § 210; 1961 c 14 § 81.53.220. Prior: 1925 ex.s. c 179 § 2; 1913 c 30 § 19; RRS § 10529. Formerly RCW 81.52.290.]

**81.53.230 No new right of action conferred.** Nothing contained in this chapter shall be construed as conferring a right of action for the abandonment or vacation of any existing highway or portion thereof in cases where no right of action exists independent of this chapter. [1961 c 14 § 81.53.230. Prior: 1913 c 30 § 20; RRS § 10530.]

**81.53.240 Scope of chapter.** Except to the extent necessary to permit participation by first-class cities in the grade crossing protective fund, when an election to participate is made as provided in RCW 81.53.261 through 81.53.291, chapter 81.53 RCW is not operative within the limits of first-class cities, and does not apply to street railway lines operating on or across any street, alley, or other public place within the limits of any city, except that a streetcar line outside of cities of the first class shall not cross a railroad at grade without express authority from the commission. The commission may not change the location of a state highway without the approval of the secretary of transportation, or the location of any crossing thereon adopted or approved by the department of transportation, or grant a railroad authority to cross a state highway at grade without the consent of the secretary of transportation. [1984 c 7 § 375; 1969 c 134 § 8; 1961 c 14 § 81.53.240. Prior: (i) 1953 c 95 § 15; 1925 ex.s. c 179 § 3; 1913 c 30 § 21; RRS § 10531. (ii) 1959 c 283 § 7. Formerly RCW 81.52.300 and 81.52.380.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**81.53.250 Employment of experts.** The commission may employ temporarily such experts, engineers, and inspectors as may be necessary to supervise changes in existing crossings undertaken under this chapter; the expense thereof shall be paid by the railroad upon the request and certificate

of the commission, said expense to be included in the cost of the particular change of grade on account of which it is incurred, and apportioned as provided in this chapter.

The commission may also employ such engineers and other persons as permanent employees as may be necessary to properly administer this chapter. [1961 c 14 § 81.53.250. Prior: 1937 c 22 § 7; 1913 c 30 § 14; RRS § 10524. Formerly RCW 81.52.330.]

**81.53.261 Crossing signals, warning devices—Petition—Hearing—Order—Costs apportionment—Records not evidence for actions—Appeal.** Whenever the secretary of transportation or the governing body of any city, town, or county, or any railroad company whose road is crossed by any highway, shall deem that the public safety requires signals or other warning devices, other than sawbuck signs, at any crossing of a railroad at common grade by any state, city, town, or county highway, road, street, alley, avenue, boulevard, parkway, or other public place actually open and in use or to be opened and used for travel by the public, he or it shall file with the utilities and transportation commission a petition in writing, alleging that the public safety requires the installation of specified signals or other warning devices at such crossing or specified changes in the method and manner of existing crossing warning devices. Upon receiving such petition, the commission shall promptly set the matter for hearing, giving at least twenty days notice to the railroad company or companies and the county or municipality affected thereby, or the secretary of transportation in the case of a state highway, of the time and place of such hearing. At the time and place fixed in the notice, all persons and parties interested shall be entitled to be heard and introduce evidence, which shall be reduced to writing and filed by the commission. If the commission shall determine from the evidence that public safety does not require the installation of the signal, other warning device or change in the existing warning device specified in the petition, it shall make determinations to that effect and enter an order denying said petition in toto. If the commission shall determine from the evidence that public safety requires the installation of such signals or other warning devices at such crossing or such change in the existing warning devices at said crossing, it shall make determinations to that effect and enter an order directing the installation of such signals or other warning devices or directing that such changes shall be made in existing warning devices. The commission shall also at said hearing apportion the entire cost of installation and maintenance of such signals or other warning devices, other than sawbuck signs, as provided in RCW 81.53.271: PROVIDED, That upon agreement by all parties to waive hearing, the commission shall forthwith enter its order.

No railroad shall be required to install any such signal or other warning device until the public body involved has either paid or executed its promise to pay to the railroad its portion of the estimated cost thereof.

Nothing in this section shall be deemed to foreclose the right of the interested parties to enter into an agreement, franchise, or permit arrangement providing for the installation of signals or other warning devices at any such crossing or for the apportionment of the cost of installation and maintenance

thereof, or compliance with an existing agreement, franchise, or permit arrangement providing for the same.

The hearing and determinations authorized by this section may be instituted by the commission on its own motion, and the proceedings, hearing, and consequences thereof shall be the same as for the hearing and determination of any petition authorized by this section.

No part of the record, or a copy thereof, of the hearing and determination provided for in this section and no finding, conclusion, or order made pursuant thereto shall be used as evidence in any trial, civil or criminal, arising out of an accident at or in the vicinity of any crossing prior to installation of signals or other warning devices pursuant to an order of the commission as a result of any such investigation.

Any order entered by the utilities and transportation commission under this section shall be subject to review, supersedeas and appeal as provided in chapter 34.05 RCW.

Nothing in this section shall be deemed to relieve any railroad from liability on account of failure to provide adequate protective devices at any such crossing. [2007 c 234 § 99; 1982 c 94 § 1; 1969 c 134 § 1.]

**Application—1982 c 94:** "The provisions of this act shall not apply to those petitions acted upon by the commission prior to July 10, 1982." [1982 c 94 § 5.]

**81.53.271 Crossing signals, warning devices—Petition contents—Apportionment of installation and maintenance costs.** The petition shall set forth by description the location of the crossing or crossings, the type of signal or other warning device to be installed, the necessity from the standpoint of public safety for such installation, the approximate cost of installation and related work, and the approximate annual cost of maintenance. If the commission directs the installation of a grade crossing protective device, and a federal-aid funding program is available to participate in the costs of such installation, installation and maintenance costs of the device shall be apportioned in accordance with the provisions of RCW 81.53.295. Otherwise if installation is directed by the commission, it shall apportion the cost of installation and maintenance as provided in this section:

(1) Installation: (a) The first twenty thousand dollars shall be apportioned to the grade crossing protective fund created by RCW 81.53.281; and

(b) The remainder of the cost shall be apportioned as follows:

(i) Sixty percent to the grade crossing protective fund, created by RCW 81.53.281;

(ii) Thirty percent to the city, town, county, or state; and

(iii) Ten percent to the railroad:

PROVIDED, That, if the proposed installation is located at a new crossing requested by a city, town, county, or state, forty percent of the cost shall be apportioned to the city, town, county, or state, and none to the railroad. If the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. In the event the city, town, county, or state should concurrently petition the commission and secure an order authorizing the closure of an existing crossing or crossings in proximity to the crossing for which installation of signals or other warning devices shall have been directed, the apportionment to the petitioning city, town, county, or state shall be reduced

by ten percent of the total cost for each crossing ordered closed and the apportionment from the grade crossing protective fund increased accordingly. This exception shall not be construed to permit a charge to the grade crossing protective fund in an amount greater than the total cost otherwise apportionable to the city, town, county, or state. No reduction shall be applied where one crossing is closed and another opened in lieu thereof, nor to crossings of a private nature.

(2) Maintenance: (a) Twenty-five percent to the grade crossing protective fund, created by RCW 81.53.281; and

(b) Seventy-five percent to the railroad:

PROVIDED, That if the proposed installation is located at a new crossing requested by a railroad, then the entire cost shall be apportioned to the railroad. [2003 c 190 § 2; 1982 c 94 § 2; 1975 1st ex.s. c 189 § 1; 1973 1st ex.s. c 77 § 1; 1969 c 134 § 2.]

**Findings—2003 c 190:** "The legislature finds that grade crossing, rail trespass, and other safety issues continue to present a public safety problem.

The legislature further finds that with the increased importance of rail to freight and commuter mobility, there is a direct public benefit in assisting local communities and railroads to work together to address rail-related public safety concerns." [2003 c 190 § 1.]

**Application—1982 c 94:** See note following RCW 81.53.261.

**81.53.275 Crossing signals, warning devices—Apportionment when funds not available from grade crossing protective fund.** In the event funds are not available from the grade crossing protective fund, the commission shall apportion to the parties on the basis of the benefits to be derived by the public and the railroad, respectively, that part of the cost which would otherwise be assigned to the fund: PROVIDED, That in such instances the city, town, county or state shall not be assessed more than sixty percent of the total cost of installation on other than federal aid designated highway projects: AND PROVIDED FURTHER, That in such instances the entire cost of maintenance shall be apportioned to the railroad. [1969 ex.s. c 281 § 18; 1969 c 134 § 7.]

**81.53.281 Crossing signals, warning devices—Grade crossing protective fund—Created—Transfer of funds—Allocation of costs—Procedure—Federal funding.** There is hereby created in the state treasury a "grade crossing protective fund" to carry out the provisions of RCW 81.53.261, 81.53.271, 81.53.281, 81.53.291, and 81.53.295; for grants and/or subsidies to public, private, and nonprofit entities for rail safety projects authorized or ordered by the commission; and for personnel and associated costs related to supervising and administering rail safety grants and/or subsidies. The commission shall transfer from the public service revolving fund's miscellaneous fees and penalties accounts moneys appropriated for these purposes as needed. At the time the commission makes each allocation of cost to said grade crossing protective fund, it shall certify that such cost shall be payable out of said fund. When federal-aid highway funds are involved, the department of transportation shall, upon entry of an order by the commission requiring the installation or upgrading of a grade crossing protective device, submit to the commission an estimate for the cost of the proposed installation and related work. Upon receipt of the estimate the commission shall pay to the department of transportation the percentage of the estimate specified in RCW 81.53.295,

as now or hereafter amended, to be used as the grade crossing protective fund portion of the cost of the installation and related work.

The commission may adopt rules for the allocation of money from the grade crossing protective fund. [2003 c 190 § 3; 1998 c 245 § 166; 1987 c 257 § 1; 1985 c 405 § 509; 1982 c 94 § 3; 1975 1st ex.s. c 189 § 2; 1973 c 115 § 4; 1969 c 134 § 3.]

**Findings—2003 c 190:** See note following RCW 81.53.271.

**Severability—1985 c 405:** See note following RCW 9.46.100.

**Application—1982 c 94:** See note following RCW 81.53.261.

**81.53.291 Crossing signals, warning devices—Operational scope—Election by first-class cities—Procedure.** RCW 81.53.261 through 81.53.291 shall be operative within the limits of all cities, towns and counties, except cities of the first class. Cities of the first class may elect as to each particular crossing whether RCW 81.53.261 through 81.53.291 shall apply. Such election shall be made by the filing by such city of a petition as provided for in RCW 81.53.261 with the utilities and transportation commission, or by a statement filed with the commission accepting jurisdiction, when such petition is filed by others. [1969 c 134 § 4.]

**81.53.295 Crossing signals, warning devices, etc.—Federal funds used to pay installation costs—Grade crossing protective fund—State and local authorities to pay remaining installation costs—Railroad to pay maintenance costs.** Whenever federal-aid highway funds are available and are used to pay a portion of the cost of installing a grade crossing protective device, and related work, at a railroad crossing of any state highway, city or town street, or county road at the then prevailing federal-aid matching rate, the grade crossing protective fund shall pay ten percent of the remaining cost of such installation and related work. The state or local authority having jurisdiction of such highway, street, or road shall pay the balance of the remaining cost of such installation and related work. The railroad whose road is crossed by the highway, street, or road shall thereafter pay the entire cost of maintaining the device. [1982 c 94 § 4; 1975 1st ex.s. c 189 § 3.]

**Application—1982 c 94:** See note following RCW 81.53.261.

**81.53.400 Traffic control devices during construction, repair, etc. of crossing or overpass—Required.** Whenever any railroad company engages in the construction, maintenance, or repair of a crossing or overpass, the company shall install and maintain traffic control devices adequate to protect the public and railroad employees, subject to the requirements of RCW 81.53.410 and 81.53.420. [1977 ex.s. c 168 § 1.]

**81.53.410 Traffic control devices during construction, repair, etc. of crossing or overpass—Standards and conditions.** All traffic control devices used under RCW 81.53.400 shall be subject to the following conditions:

(1) Any traffic control devices shall be used at a repair or construction site only so long as the devices are needed or applicable. Any devices that are no longer needed or applica-

ble shall be removed or inactivated so as to prevent confusion;

(2) All barricades, signs, and similar devices shall be constructed and installed in a workmanlike manner;

(3) Bushes, weeds, or any other material or object shall not be allowed to obscure any traffic control devices;

(4) All signs, barricades, and other control devices intended for use during hours of darkness shall be adequately illuminated or reflectorized, with precautions taken to protect motorists from glare; and

(5) Flagpersons shall be provided where necessary to adequately protect the public and railroad employees. The flagpersons shall be responsible and competent and possess at least average intelligence, vision, and hearing. They shall be neat in appearance and courteous to the public. [1977 ex.s. c 168 § 2.]

**81.53.420 Traffic control devices during construction, repair, etc. of crossing or overpass—Rules.** The utilities and transportation commission shall adopt rules to implement the provisions of RCW 81.53.400 and 81.53.410 pursuant to chapter 34.05 RCW. The commission shall invite the participation of all interested parties in any hearings or proceedings taken under this section, including any parties who request notice of any proceedings.

Any rules adopted under this section and any devices employed under RCW 81.53.410 shall conform to the national standards established by the current manual, including any future revisions, on the Uniform Traffic Control Devices as approved by the American National Standards Institute as adopted by the federal highway administrator of the United States department of transportation.

Rules adopted by the commission shall specifically prescribe the duties, procedures, and equipment to be used by the flagpersons required by RCW 81.53.410.

RCW 81.53.400 through 81.53.420 and rules adopted thereunder shall be enforced by the commission under the provisions of chapter 81.04 RCW: PROVIDED, That rules adopted by the commission shall recognize that cities with a population in excess of four hundred thousand are responsible for specific public thoroughfares and have the specific responsibility and authority for determining the practices relating to safeguarding the public during construction, repair, and maintenance activities. [1977 ex.s. c 168 § 3.]

**81.53.900 Effective date—1975 1st ex.s. c 189.** This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 189 § 4.]

## Chapter 81.54 RCW

### RAILROADS—INSPECTION OF INDUSTRIAL CROSSINGS

#### Sections

81.54.010	Definitions.
81.54.020	Annual inspection of industrial crossings.
81.54.030	Reimbursement of inspection cost.
81.54.040	Chapter not operative within first-class cities.

**81.54.010 Definitions.** The term "grade crossing" when used in this chapter means any point or place where a logging or industrial railroad crosses a highway or a highway crosses such railroad or such railroad crosses any other railroad, at a common grade.

The term "over-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing above the same.

The term "under-crossing" when used in this chapter means any point or place where a highway crosses a railroad by passing under the same.

The term "over-crossing" or "under-crossing" shall also mean any point or place where one railroad crosses another railroad not at grade.

The term "logging" or "industrial" railroad when used in this chapter shall include every railway owned or operated primarily for the purpose of carrying the property of its owners or operators or a limited class of persons, with all tracks, spurs and sidings used in connection therewith. [1961 c 14 § 81.54.010. Prior: 1941 c 161 § 1; Rem. Supp. 1941 § 10511-1. Formerly RCW 81.52.080, part.]

**81.54.020 Annual inspection of industrial crossings.** All grade crossings, under-crossings and over-crossings on the line of every logging and other industrial railway as herein defined shall be inspected annually by the commission as to condition, also maintenance, and safety in the interest of the public, for the purpose that the commission may, if it shall deem it necessary, require such improvements, changes and repairs as in its judgment are proper to the end that adequate safety shall be provided for the public. [1961 c 14 § 81.54.020. Prior: 1941 c 161 § 2; Rem. Supp. 1941 § 10511-2. Formerly RCW 81.52.310.]

**81.54.030 Reimbursement of inspection cost.** (1) Every person operating any logging railroad or industrial railway shall, prior to July 1st of each year, file with the commission a statement showing the number of, and location, by name of highway, quarter section, section, township, and range of all crossings on his or her line and pay with the filing a fee for each crossing so reported. The commission shall, by order, fix the exact fee based on the cost of rendering such inspection service. All fees collected shall be deposited in the state treasury to the credit of the public service revolving fund. Intersections having one or more tracks shall be treated as a single crossing. Tracks separated a distance in excess of one hundred feet from the nearest track or group of tracks shall constitute an additional crossing. Where two or more independently operated railroads cross each other or the same highway intersection, each independent track shall constitute a separate crossing.

(2) Every person failing to make the report and pay the fees as required by this section is guilty of a misdemeanor and in addition subject to a penalty of twenty-five dollars for each day that the fee remains unpaid after it becomes due. [2003 c 53 § 392; 1991 c 46 § 1; 1961 c 14 § 81.54.030. Prior: 1951 c 111 § 1; 1941 c 161 § 3; Rem. Supp. 1941 § 10511-3. Formerly RCW 81.52.320.]

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

**81.54.040 Chapter not operative within first-class cities.** This chapter shall not be operative within the limits of cities of the first class. [1961 c 14 § 81.54.040. Prior: 1953 c 95 § 16; 1951 c 111 § 2. Formerly RCW 81.52.325.]

### Chapter 81.60 RCW

## RAILROADS—RAILROAD POLICE AND REGULATIONS

(Formerly: Railroads—Special police and police regulations)

### Sections

81.60.010	Criminal justice training commission may appoint railroad police officers.
81.60.020	Application for appointment.
81.60.030	Oath.
81.60.040	Duties.
81.60.050	Badge.
81.60.060	Liability for unlawful acts.
81.60.070	Malicious injury to railroad property.
81.60.080	Sabotaging rolling stock—Receiving stolen railroad property.

*Intoxication of railway employee:* RCW 9.91.020.

*Tampering with lights, signals, etc.:* RCW 88.08.020.

**81.60.010 Criminal justice training commission may appoint railroad police officers.** The criminal justice training commission shall have the power to and may in its discretion appoint and commission railroad police officers at the request of any railroad corporation and may revoke any appointment at its pleasure. [2001 c 72 § 1; 1961 c 14 § 81.60.010. Prior: 1915 c 118 § 1; RRS § 10542.]

**81.60.020 Application for appointment.** Any railroad corporation desiring the appointment of any of its officers, agents, or servants not exceeding twenty-five in number for any one division of any railroad operating in this state as railroad police officers shall file a request with the criminal justice training commission on an approved application form. The application shall be signed by the president or some managing officer of the railroad corporation and shall be accompanied by an affidavit stating that the officer is acquainted with the person whose appointment is sought, that the officer believes the person to be of good moral character, and that the person is of such character and experience that he or she can be safely entrusted with the powers of a police officer.

For the purposes of this section, "division" means the part of any railroad or railroads under the jurisdiction of any one division superintendent. [2001 c 72 § 2; 1961 c 14 § 81.60.020. Prior: 1955 c 99 § 1; 1915 c 118 § 2; RRS § 10543.]

**81.60.030 Oath.** Before receiving a commission each person appointed under the provisions of RCW 81.60.010 through 81.60.060 shall successfully complete a course of training prescribed or approved by the criminal justice training commission, and shall take, subscribe, and file with the commission an oath to support the Constitution of the United States and the Constitution and laws of the state of Washington, and to faithfully perform the duties of the office. The corporation requesting appointment of a railroad police officer shall bear the full cost of training.

Railroad police officers appointed and commissioned under RCW 81.60.010 through 81.60.060 are subject to rules

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and regulations adopted by the commission. [2001 c 72 § 3; 1961 c 14 § 81.60.030. Prior: 1915 c 118 § 3; RRS § 10544.]

**81.60.040 Duties.** Every police officer appointed and commissioned under the provisions of RCW 81.60.010 through 81.60.060 shall when on duty have the power and authority conferred by law on peace officers, but shall exercise such power only in the protection of the property belonging to or under the control of the corporation at whose instance the officer is appointed and in preventing, and making arrest for, violations of law upon or in connection with such property. [2001 c 72 § 4; 1961 c 14 § 81.60.040. Prior: 1915 c 118 § 4; RRS § 10545.]

**81.60.050 Badge.** Every railroad police officer shall, when on duty, wear in plain view a badge bearing the words "railroad police" and the name of the corporation by which the officer is employed, or carry, and present upon request, official credentials identifying the railroad police officer and corporation. [2001 c 72 § 5; 1961 c 14 § 81.60.050. Prior: 1915 c 118 § 5; RRS § 10546.]

**81.60.060 Liability for unlawful acts.** The corporation procuring the appointment of any railroad police shall be solely responsible for the compensation for the officer's services and shall be liable civilly for any unlawful act of the officer resulting in damage to any person or corporation. [2001 c 72 § 6; 1961 c 14 § 81.60.060. Prior: 1915 c 118 § 6; RRS § 10547.]

**81.60.070 Malicious injury to railroad property.** Every person who, in such manner as might, if not discovered, endanger the safety of any engine, motor, car or train, or any person thereon, shall in any manner interfere or tamper with or obstruct any switch, frog, rail, roadbed, sleeper, viaduct, bridge, trestle, culvert, embankment, structure, or appliance pertaining to or connected with any railway, or any train, engine, motor, or car on such railway, and every person who shall discharge any firearm or throw any dangerous missile at any train, engine, motor, or car on any railway, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not more than ten years. [2003 c 53 § 394; 1999 c 352 § 4; 1992 c 7 § 60; 1961 c 14 § 81.60.070. Prior: 1909 c 249 § 398; RRS § 2650.]

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

**Application—1999 c 352 §§ 3-5:** See note following RCW 9.94A.515.

**81.60.080 Sabotaging rolling stock—Receiving stolen railroad property.** (1) Any person or persons who shall willfully or maliciously, with intent to injure or deprive the owner thereof, take, steal, remove, change, add to, alter, or in any manner interfere with any journal bearing, brass, waste, packing, triple valve, pressure cock, brake, air hose, or any other part of the operating mechanism of any locomotive, engine, tender, coach, car, caboose, or motor car used or capable of being used by any railroad or railway company in this state, is guilty of a class C felony, and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine not

exceeding one thousand dollars, or by both such fine and imprisonment.

(2) Every person who buys or receives any of the property described in subsection (1) of this section, knowing the same to have been stolen, is guilty of a class C felony, and upon conviction thereof shall be punished as provided in subsection (1) of this section. [2003 c 53 § 395; 1992 c 7 § 61; 1961 c 14 § 81.60.080. Prior: 1941 c 212 § 1; Rem. Supp. 1941 § 2650-1.]

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

### Chapter 81.61 RCW

#### RAILROADS—PASSENGER-CARRYING VEHICLES FOR EMPLOYEES

##### Sections

- 81.61.010 "Passenger-carrying vehicle" defined.
- 81.61.020 Minimum standards for safe maintenance and operation—Rules and orders—Scope.
- 81.61.030 Rules and orders—Adoption and enforceability—Hearings—Notice.
- 81.61.040 Inspection authorized in enforcing rules and orders.

#### **81.61.010 "Passenger-carrying vehicle" defined.**

Unless the context clearly requires otherwise, the term "passenger-carrying vehicle" as used in this chapter means those buses and trucks owned, operated and maintained by a railroad company which transports railroad employees in other than the cab of such vehicle and designed primarily for operation on roads which may or may not be equipped with retractable flanged wheels for operation on railroad tracks. [1977 ex.s. c 2 § 1.]

**81.61.020 Minimum standards for safe maintenance and operation—Rules and orders—Scope.** The utilities and transportation commission shall adopt rules and orders necessary to ensure that every passenger-carrying vehicle provided by a railroad company to transport employees in the course of their employment is maintained and operated in a safe manner when it is used on a public or private road. The rules and orders must establish minimum standards for:

(1) The construction and mechanical equipment of the passenger-carrying vehicles, including lighting devices and reflectors, exhaust system, rear vision mirrors, service and parking brakes, steering mechanisms, tires, warning and signaling devices, windshield wipers, and heating equipment capable of maintaining a reasonable temperature in passenger areas;

(2) The operation of passenger-carrying vehicles, including driving rules, the loading and carrying of passengers, maximum daily hours of service by drivers, minimum age and skill of drivers, physical condition of drivers, refueling, road warning devices, and the transportation of gasoline and explosives;

(3) The safety of passengers in a passenger-carrying vehicle, including emergency exits, fire extinguishers, first aid kits, facilities for communication between cab and rear compartments, means of ingress and egress, side walls, canopy, tail gates, or other means of retaining passengers within the passenger-carrying vehicle. [2007 c 234 § 41; 1977 ex.s. c 2 § 2.]

**81.61.030 Rules and orders—Adoption and enforceability—Hearings—Notice.** Any rules or orders adopted under this chapter shall be subject to the requirements of, and enforceable by the penalties imposed by chapter 81.04 RCW. Any interested person or group may request notice of, and participate in any hearings or proceedings held pursuant to this chapter. The commission shall conduct a hearing prior to the adoption of any rule or order under this chapter. [1977 ex.s. c 2 § 3.]

**81.61.040 Inspection authorized in enforcing rules and orders.** The commission may, in enforcing rules and orders under this chapter, inspect any passenger-carrying vehicle provided by a railroad company to transport employees in the course of their employment. Upon request, the chief of the state patrol may assist the commission in these inspections. [1977 ex.s. c 2 § 4.]

### Chapter 81.64 RCW

#### STREET RAILWAYS

##### Sections

- 81.64.010 Grant of franchise.
- 81.64.020 Application to county legislative authority—Notice—Hearing—Order.
- 81.64.030 May cross public road.
- 81.64.040 Eminent domain.
- 81.64.050 Right of entry.
- 81.64.060 Purchase or lease of street railway property.
- 81.64.070 Consolidation of companies.
- 81.64.080 Fares and transfers.
- 81.64.090 Competent employees required—"Competent" defined—Penalty.
- 81.64.120 Car equipment specified.
- 81.64.130 Penalty.
- 81.64.140 Weather guards.
- 81.64.150 Penalty.
- 81.64.160 Hours of labor—Penalty.

*Bridges across navigable waters: RCW 79.110.110 through 79.110.140.*

*Municipal transportation systems: Title 35 RCW.*

**81.64.010 Grant of franchise.** The legislative authority of the city or town having control of any public street or road, or where such street or road is not within the limits of any incorporated city or town, then the board of county commissioners wherein such road or street is situated, may grant authority for the construction, maintenance and operation of electric railroads or railways, motor railroads or railways and railroads and railways of which the motive power is any power other than steam, together with such poles, wires and other appurtenances upon, over, along and across any such public street or road and in granting such authority the legislative authority of such city or town or the board of county commissioners, as the case may be, may prescribe the terms and conditions on which such railroads or railways and their appurtenances shall be constructed, maintained and operated upon, over, along and across such road or street, and the grade or elevation at which the same shall be maintained and operated. [1961 c 14 § 81.64.010. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

**81.64.020 Application to county legislative authority—Notice—Hearing—Order.** On application being made to the county legislative authority for such authority, the

county legislative authority shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting written or printed notices in three public places in the county seat of the county, and in at least one conspicuous place on the road or street or part thereof, for which application is made, at least thirty days before the day fixed for the hearing, and by publishing a like notice once a week for two consecutive weeks in the official county newspaper, the last publication to be at least five days before the day fixed for the hearing, which notice shall state the name or names of the applicant or applicants, a description of the roads or streets or parts thereof for which the application is made, and the time and place fixed for the hearing. The hearing may be adjourned from time to time by order of the county legislative authority. If, after the hearing, the county legislative authority shall deem it to be for the public interest to grant the authority in whole or in part, it may make and enter the proper order granting the authority applied for or such part thereof as it deems to be for the public interest, and shall require such railroad or railway and its appurtenances to be placed in such location on or along the road or street as it finds will cause the least interference with other uses of the road or street. [1985 c 469 § 63; 1961 c 14 § 81.64.020. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

**81.64.030 May cross public road.** In case any such railroad or railway, is or shall be located in part on private right-of-way, the owner thereof shall have the right to construct and operate the same across any county road or county street which intersects such private right-of-way, if such crossing is so constructed and maintained as to do no unnecessary damage: PROVIDED, That any person or corporation constructing such crossing or operating such railroad or railway on or along such county road or public street shall be liable to the county for all necessary expense incurred in restoring such county road or public street to a suitable condition for travel. [1961 c 14 § 81.64.030. Prior: 1907 c 99 § 1, part; 1903 c 175 § 1, part; RRS § 11082, part.]

**81.64.040 Eminent domain.** Every corporation incorporated or that may hereafter be incorporated under the laws of this state, or of any other state or territory of the United States and doing business in this state for the purpose of operating railroads or railways by electric power, shall have the right to appropriate real estate and other property for right-of-way or for any corporate purpose, in the same manner and under the same procedure as now is or may hereafter be provided by law in the case of ordinary railroad corporations authorized by the laws of this state to exercise the right of eminent domain: PROVIDED, That such right of eminent domain shall not be exercised with respect to any public road or street until the location of the electric railroad or railway thereon has been authorized in accordance with RCW 81.64.010 through 81.64.030. [1961 c 14 § 81.64.040. Prior: 1903 c 175 § 2; RRS § 11083.]

**81.64.050 Right of entry.** Every such corporation shall have the right to enter upon any land between the termini of the proposed lines for the purpose of examining, locating and

surveying such lines, doing no unnecessary damage thereby. [1961 c 14 § 81.64.050. Prior: 1899 c 94 § 2; RRS § 11085.]

**81.64.060 Purchase or lease of street railway property.** Any corporation incorporated or that may hereafter be incorporated under the laws of this state or any state or territory of the United States, for the purpose of constructing, owning or operating railroads or railways by electric power, may lease or purchase and operate (except in cases where such lease or purchase is prohibited by the Constitution of this state) the whole or any part of the electric railroad or electric railway, of any other corporation heretofore or hereafter constructed, together with the franchises, powers, immunities and all other property or appurtenances appertaining thereto: PROVIDED, That such lease or purchase has been or shall be consented to by stockholders of record holding at least two-thirds in amount of the capital stock of the lessor or grantor corporation; and all such leases and purchases made or entered into prior to the effective date of chapter 175, Laws of 1903, by consent of stockholders as aforesaid are for all intents and purposes hereby ratified and confirmed, saving, however, any vested rights of private parties. [1961 c 14 § 81.64.060. Prior: 1903 c 175 § 3; RRS § 11084.]

**81.64.070 Consolidation of companies.** With the consent of the majority in interest of their shareholders, two or more corporations operating street railway lines within or in the suburbs of the same municipality, may amalgamate their businesses and properties by consolidation, sale, lease, or other appropriate means, and either by conveyance to a third corporation or one to the other. [1961 c 14 § 81.64.070. Prior: 1917 c 170 § 1; RRS § 11086.]

**81.64.080 Fares and transfers.** No street railroad company shall charge, demand or collect more than five cents for one continuous ride within the corporate limits of any city or town: PROVIDED, That such rate may be exceeded or lowered as to any municipally owned street railroad when the corporate authorities of the municipality owning such railroad shall, by an ordinance duly passed, authorize the collection of a higher or lower rate of fare, to be specified in such ordinance, and as to any other street railroad company, such rate may be exceeded or lowered with the permission or upon the order of the commission after the filing of a tariff or a complaint by such street railroad company and a hearing thereon as provided in this title. Every street railroad company shall, upon such terms as shall be just and reasonable, furnish to its passengers transfers entitling such passenger to one continuous trip over and upon portions of its lines within the said city or town not reached by the originating car. [1961 c 14 § 81.64.080. Prior: 1919 c 33 § 1; 1911 c 117 § 25; RRS § 10361.]

**81.64.090 Competent employees required—"Competent" defined—Penalty.** (1) Street railway or streetcar companies, or streetcar corporations, shall employ none but competent men to operate or assist as conductors, motormen or gripmen upon any street railway, or streetcar line in this state.

(2) A person shall be deemed competent to operate or assist in operating cars or (dummies) usually used by street railway or streetcar companies, or corporations, only after first having served at least three days under personal instruction of a regularly employed conductor, motorman, or gripman on a car or dummy in actual service on the particular street railway or streetcar line for which the service of an additional person or additional persons may be required: PROVIDED, That during a strike on the streetcar lines the railway companies may employ competent persons who have not worked three days on the particular streetcar line.

(3) Any violation of this section by the president, secretary, manager, superintendent, assistant superintendent, stockholder, or other officer or employee of any company or corporation owning or operating any street railway or streetcar line or any receiver of street railway or streetcar company, or street railway or streetcar corporations appointed by any court within this state to operate such car line is a misdemeanor punishable by a fine in any amount not less than fifty dollars nor more than two hundred dollars, or imprisonment in the county jail for a term of thirty days, or both such fine and imprisonment at the discretion of the court. [2003 c 53 § 396; 1961 c 14 § 81.64.090. Prior: 1901 c 103 § 1; RRS § 11073.]

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

**81.64.120 Car equipment specified.** Every streetcar run or used on any streetcar line in the state of Washington shall be provided with good and substantial aprons, pilots or fenders, and which shall be so constructed as to prevent any person from being thrown down and run over or caught beneath or under such car. [1961 c 14 § 81.64.120. Prior: 1897 c 94 § 1; RRS § 11076. FORMER PART OF SECTION: 1911 c 117 § 66, part now codified in RCW 81.44.040.]

**81.64.130 Penalty.** The owners or managers operating any streetcar line failing to comply with the provisions of RCW 81.64.120 shall forfeit and pay to the state of Washington a penalty of not less than twenty-five dollars for each and every violation of RCW 81.64.120 and each car run shall be considered a separate violation of RCW 81.64.120 and every period of five days shall be deemed a separate violation of RCW 81.64.120. [1961 c 14 § 81.64.130. Prior: 1897 c 94 § 2; RRS § 11077.]

**81.64.140 Weather guards.** All corporations, companies or individuals owning, managing or operating any street railway or line in the state of Washington, shall provide, during the rain or winter season, all cars run or used on its or their respective roads with good, substantial and sufficient vestibules, or weather guards, for the protection of the employees of such corporation, company or individual.

The vestibules or weather guards shall be so constructed as to protect the employees of such company, corporation or individual from the wind, rain or snow. [1961 c 14 § 81.64.140. Prior: (i) 1895 c 144 § 1; RRS § 11078. (ii) 1895 c 144 § 2; RRS § 11079.]

**81.64.150 Penalty.** Any such street railway company, corporation or individual, as mentioned in RCW 81.64.140, failing to comply with the provisions of RCW 81.64.140, shall forfeit and pay to the state of Washington a penalty of not less than fifty dollars nor more than two hundred and fifty dollars for each and every violation of RCW 81.64.140, and each period of ten days that any such company, corporation or individual shall fail to comply with the provisions of RCW 81.64.140, or for each car used by such corporation, company, or individual not in conformity with RCW 81.64.140, shall be taken and deemed to be a separate violation of RCW 81.64.140. [1961 c 14 § 81.64.150. Prior: 1895 c 144 § 3; RRS § 11080.]

**81.64.160 Hours of labor—Penalty.** (1) No person, agent, officer, manager, or superintendent or receiver of any corporation or owner of streetcars shall require his, her, or its gripmen, motormen, drivers, or conductors to work more than ten hours in any twenty-four hours.

(2) Any person, agent, officer, manager, superintendent, or receiver of any corporation, or owner of streetcar or cars, violating this section is guilty of a misdemeanor, and shall be fined in any sum not less than twenty-five dollars nor more than one hundred dollars for each day in which such gripman, motorman, driver, or conductor in the employ of such person, agent, officer, manager, superintendent, or receiver of such corporation or owner is required to work more than ten hours during each twenty-four hours, as provided in this section.

(3) It is the duty of the prosecuting attorney of each county of this state to institute the necessary proceedings to enforce the provisions of this section. [2003 c 53 § 397; 1961 c 14 § 81.64.160. Prior: 1895 c 100 § 1; RRS § 7648.]

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

## Chapter 81.66 RCW

### TRANSPORTATION FOR PERSONS WITH SPECIAL NEEDS

(Formerly: Transportation for the elderly and the handicapped)

#### Sections

81.66.005	Scope—Federal authority and registration for compensatory services.
81.66.010	Definitions.
81.66.020	Private, nonprofit transportation provider required to operate in accordance with this chapter.
81.66.030	Authority of commission.
81.66.040	Certificate required—Transferability—Application—Carried in vehicle.
81.66.050	Insurance or bond required.
81.66.060	Suspension, revocation, or alteration of certificate.

**81.66.005 Scope—Federal authority and registration for compensatory services.** This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a

federally authorized uniform registration program. [2007 c 234 § 42.]

**81.66.010 Definitions.** The definitions set forth in this section shall apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartner-ship.

(3) "Private, nonprofit transportation provider" means any private, nonprofit corporation providing transportation services for compensation solely to persons with special transportation needs.

(4) "Persons with special transportation needs" means those persons, including their personal attendants, who because of physical or mental disability, income status, or age are unable to transport themselves or to purchase appropriate transportation. [1996 c 244 § 1; 1979 c 111 § 4.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.66.020 Private, nonprofit transportation provider required to operate in accordance with this chapter.** No person or corporation, their lessees, trustees, receivers, or trustees appointed by any court, may operate as a private, nonprofit transportation provider except in accordance with this chapter. [1979 c 111 § 5.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.66.030 Authority of commission.** The commission shall regulate every private, nonprofit transportation provider in this state but has authority only as follows: To issue certificates to such providers; to set forth insurance requirements; to adopt reasonable rules to insure that any vehicles used by such providers will be adequate for the proposed service; and to inspect the vehicles and otherwise regulate the safety of operations of each provider. The commission may charge fees to private, nonprofit transportation providers, which shall be approximately the same as the reasonable cost of regulating such providers. [1998 c 173 § 4; 1979 c 111 § 6.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.66.040 Certificate required—Transferability—Application—Carried in vehicle.** A private, nonprofit transportation provider may not operate in this state without first having obtained from the commission under this chapter a certificate. Any right, privilege, or certificate held, owned, or obtained by a private, nonprofit transportation provider may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. The commission shall issue a certificate to any person or corporation who files an application, in a form to be determined by the commission, which sets forth:

(1) Satisfactory proof of its status as a private, nonprofit corporation;

(2) The kind of service to be provided;

(3) The number and type of vehicles to be operated, together with satisfactory proof that the vehicles are adequate for the proposed service and that drivers of such vehicles will be adequately trained and qualified;

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(4) Satisfactory proof of insurance or surety bond, in accordance with RCW 81.66.050.

The commission may deny a certificate to a provider who does not meet the requirements of this section. Each vehicle of a private, nonprofit transportation provider must carry a copy of the provider's certificate. [2007 c 234 § 43; 1979 c 111 § 7.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.66.050 Insurance or bond required.** The commission shall, in the granting of certificates to operate any private, nonprofit transportation provider, require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each vehicle used or to be used in transporting persons for compensation. The commission shall fix the amount of the insurance policy or policies or surety bond, giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. Such liability and property damage insurance or surety bond shall be maintained in force on each vehicle while so used. Each policy for liability of property damage insurance or surety bond required herein, shall be filed with the commission and kept in full force and effect, and failure to do so shall be cause for the revocation of the certificate. [1979 c 111 § 8.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.66.060 Suspension, revocation, or alteration of certificate.** The commission may, at any time, by its order duly entered after notice to the holder of any certificate issued under this chapter, and an opportunity for a hearing, at which it is proven that the holder has willfully violated or refused to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under this chapter, but the holder of the certificate shall have all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 44; 2005 c 121 § 1; 1979 c 111 § 9.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

## Chapter 81.68 RCW

### AUTO TRANSPORTATION COMPANIES

#### Sections

81.68.010	Definitions.
81.68.015	Application of chapter restricted.
81.68.020	Compliance with chapter required.
81.68.030	Regulation by commission.
81.68.040	Certificate of convenience and necessity.
81.68.046	Temporary certificates—Waiver of provisions during state of emergency.
81.68.050	Filing fees.
81.68.060	Liability and property damage insurance—Surety bond.
81.68.065	Self-insurers exempt as to insurance or bond.
81.68.080	Penalty.
81.68.090	Scope of chapter.
81.68.100	Federal authority and registration for compensatory services.

*Auto stages, licensing, etc.: Title 46 RCW.*

*Highway user tax structure: Chapter 46.85 RCW.*

*Mileage fees: RCW 46.16.125.*

*Penalty for carrying passengers without license: RCW 46.16.180.*

*Seating capacity fees: RCW 46.16.121.*

**81.68.010 Definitions.** The definitions set forth in this section apply throughout this chapter, unless the context clearly indicates otherwise.

(1) "Corporation" means a corporation, company, association, or joint stock association.

(2) "Person" means an individual, firm, or a copartnership.

(3) "Auto transportation company" means every corporation or person, their lessees, trustees, receivers, or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any motor-propelled vehicle used in the business of transporting persons and their baggage on the vehicles of auto transportation companies carrying passengers, for compensation over any public highway in this state between fixed termini or over a regular route, and not operating exclusively within the incorporated limits of any city or town.

(4) "Public highway" means every street, road, or highway in this state.

(5) The words "between fixed termini or over a regular route" mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor-propelled vehicle, even though there may be departure from the termini or route, whether the departures are periodic or irregular. Whether or not any motor-propelled vehicle is operated by any auto transportation company "between fixed termini or over a regular route" within the meaning of this section is a question of fact, and the finding of the commission thereon is final and is not subject to review. [2007 c 234 § 46; 1989 c 163 § 1; 1984 c 166 § 1; 1979 c 111 § 16; 1975-'76 2nd ex.s. c 121 § 1; 1969 ex.s. c 210 § 10; 1961 c 14 § 81.68.010. Prior: 1935 c 120 § 1; 1921 c 111 § 1; RRS § 6387.]

**Severability—1979 c 111:** See note following RCW 46.74.010.

**81.68.015 Application of chapter restricted.** This chapter does not apply to corporations or persons, their lessees, trustees, receivers, or trustees appointed by any court whatsoever insofar as they own, control, operate, or manage taxicabs, hotel buses, school buses, or any other carrier that does not come within the term "auto transportation company" as defined in RCW 81.68.010.

This chapter does not apply to persons operating motor vehicles when operated wholly within the limits of incorporated cities or towns, and for a distance not exceeding three road miles beyond the corporate limits of the city or town in Washington in which the original starting point of the vehicle is located, and which operation either alone or in conjunction with another vehicle or vehicles is not a part of any journey beyond the three-mile limit.

This chapter does not apply to commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010, so long as the ride-sharing operation does not compete with or infringe upon comparable service actually being provided before the initiation of the ride-sharing operation by an existing auto transportation

company certificated under this chapter. [2007 c 234 § 47; 1989 c 163 § 2; 1984 c 166 § 2.]

**81.68.020 Compliance with chapter required.** A corporation or person, their lessees, trustees, or receivers or trustees appointed by any court whatsoever, may not engage in the business of operating as a common carrier any motor-propelled vehicle for the transportation of persons and their baggage on the vehicles of auto transportation companies carrying passengers, between fixed termini or over a regular route for compensation on any public highway in this state, except in accordance with this chapter. [2007 c 234 § 48; 1989 c 163 § 3; 1984 c 166 § 3; 1961 c 14 § 81.68.020. Prior: 1927 c 166 § 1; 1921 c 111 § 2; RRS § 6388.]

**81.68.030 Regulation by commission.** The commission is vested with power and authority, and it is its duty to supervise and regulate every auto transportation company in this state as provided in this section. Under this authority, it shall for each auto transportation company:

(1) Fix, alter, and amend just, fair, reasonable, and sufficient rates, fares, charges, classifications, rules, and regulations;

(2) Regulate the accounts, service, and safety of operations;

(3) Require the filing of annual and other reports and of other data;

(4) Supervise and regulate the companies in all other matters affecting the relationship between such companies and the traveling and shipping public;

(5) By general order or otherwise, prescribe rules and regulations in conformity with this chapter, applicable to any and all such companies, and within such limits make orders.

The commission may, at any time, by its order duly entered after notice to the holder of any certificate under this chapter, and an opportunity for a hearing, at which it shall be proven that the holder willfully violates or refuses to observe any of the commission's proper orders, rules, or regulations, suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter, but the holder of the certificate has all the rights of rehearing, review, and appeal as to the order of the commission as is provided for in chapter 34.05 RCW. [2007 c 234 § 96; 2005 c 121 § 2; 1989 c 163 § 4; 1984 c 166 § 4; 1961 c 14 § 81.68.030. Prior: 1921 c 111 § 3; RRS § 6389.]

**81.68.040 Certificate of convenience and necessity.** An auto transportation company shall not operate for the transportation of persons and their baggage for compensation between fixed termini or over a regular route in this state, without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require such operation. Any right, privilege, certificate held, owned, or obtained by an auto transportation company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission. The commission may, after notice and an opportunity for a hearing, when the applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, only when the existing auto transportation company

or companies serving such territory will not provide the same to the satisfaction of the commission, or when the existing auto transportation company does not object, and in all other cases with or without hearing, issue the certificate as prayed for; or for good cause shown, may refuse to issue same, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate to such terms and conditions as, in its judgment, the public convenience and necessity may require. [2007 c 234 § 49; 2005 c 121 § 3; 1961 c 14 § 81.68.040. Prior: 1921 c 111 § 4; RRS § 6390.]

**81.68.046 Temporary certificates—Waiver of provisions during state of emergency.** The commission may, with or without a hearing, issue temporary certificates to engage in the business of operating an auto transportation company, but only after it finds that the issuance of the temporary certificate is consistent with the public interest. The temporary certificate may be issued for a period up to one hundred eighty days. The commission may prescribe rules and impose terms and conditions as in its judgment are reasonable and necessary in carrying out this chapter. The commission may by rule, prescribe a fee for an application for the temporary certificate. The commission shall not issue a temporary certificate to operate in a territory: (1) For which a certificate has been issued, unless the existing certificate holder, upon twenty days' notice, does not object to the issuance of the certificate or is not providing service; or (2) for which an application is pending unless the filing for a temporary certificate is made by the applicant or the applicant does not object to the issuance of the certificate.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 415; 2005 c 121 § 8.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.68.050 Filing fees.** Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fees as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1973 c 115 § 5; 1961 c 14 § 81.68.050. Prior: 1955 c 125 § 9; prior: 1937 c 158 § 2, part; RRS § 10417-1, part.]

**81.68.060 Liability and property damage insurance—Surety bond.** In granting certificates to operate any auto transportation company, for transporting for compensation persons and their baggage on the vehicles of auto transportation companies carrying passengers, the commission shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state

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of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in an amount of no less than one hundred thousand dollars for any recovery for personal injury by one person, no less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less, no less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all persons receiving personal injury by reason of at least one act of negligence, and no less than fifty thousand dollars for damage to property of any person other than the insured. The commission shall fix the amount of the insurance policy or policies or security deposit by giving due consideration to the character and amount of traffic, the number of persons affected, and the degree of danger that the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on the motor-propelled vehicle while in use, and each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect. Failure to file and maintain the required insurance is cause for the revocation of the certificate. [2007 c 234 § 50; 1989 c 163 § 5; 1984 c 166 § 6; 1977 ex.s. c 298 § 1; 1961 c 14 § 81.68.060. Prior: 1921 c 111 § 5; RRS § 6391.]

**81.68.065 Self-insurers exempt as to insurance or bond.** Any auto transportation company authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation under the United States interstate commerce act applicable to self insurance by motor carriers, is exempt, so long as such qualification remains effective, from all provisions of law relating to the carrying or filing of insurance policies or bonds in connection with such operations.

The commission may require auto transportation companies to prove the existence and continuation of such qualification with the federal motor carrier safety administration by affidavit in any form the commission prescribes. [2007 c 234 § 51; 1961 c 14 § 81.68.065. Prior: (i) 1949 c 127 § 1; Rem. Supp. 1949 § 6386-5a. (ii) 1949 c 127 § 2; Rem. Supp. 1949 § 6386-5b.]

**81.68.080 Penalty.** Every officer, agent, or employee of any corporation, and every other person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, observe, or comply with any order, decision, rule or regulation, direction, demand, or requirement, or any part of provision thereof, is guilty of a gross misdemeanor. [2007 c 234 § 52; 2003 c 53 § 398; 1979 ex.s. c 136 § 106; 1961 c 14 § 81.68.080. Prior: 1921 c 111 § 7; RRS § 6393.]

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

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**81.68.090 Scope of chapter.** This chapter applies to persons and motor vehicles engaged in interstate or foreign

commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 53; 1961 c 14 § 81.68.090. Prior: 1921 c 111 § 8; RRS § 6394.]

**81.68.100 Federal authority and registration for compensatory services.** It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 45.]

### Chapter 81.70 RCW

#### PASSENGER CHARTER CARRIERS

##### Sections

81.70.010	Business affected with the public interest—Declaration of purpose.
81.70.020	Definitions.
81.70.030	Exclusions.
81.70.220	Certificate or registration required.
81.70.230	Certificates—Application, issuance.
81.70.240	Certificates—Transfer restricted.
81.70.250	Certificates—Grounds for cancellation.
81.70.260	Unlawful operation after certificate or registration canceled, etc.
81.70.270	Scope of regulation.
81.70.280	Insurance or bond for liability and property damage.
81.70.290	Self-insurers exempt as to insurance or bond.
81.70.310	Application of Title 81 RCW.
81.70.320	Fees—Amounts, deposit.
81.70.330	Vehicle identification.
81.70.340	Application to interstate or foreign carriers.
81.70.350	Annual regulatory fee—Delinquent fee payments.
81.70.360	Excursion service companies—Certificate.
81.70.370	Federal authority and registration for compensatory services.

**81.70.010 Business affected with the public interest—Declaration of purpose.** The use of the public highways for the transportation of passengers for compensation is a business affected with the public interest. It is the purpose of this chapter to preserve for the public full benefit in use of public highways consistent with the needs of commerce, without unnecessary congestion or wear and tear upon such highways; to secure to the people safe, adequate and dependable transportation by carriers operating upon such highways; and to secure full and unrestricted flow of traffic by motor carriers over such highways which will adequately meet reasonable public demands by providing for the regulation of all transportation agencies with respect to safety of operations and accident indemnity so that safe, adequate and dependable service by all necessary transportation agencies shall be maintained, and the full use of the highway reserved to the public. [1965 c 150 § 2.]

**81.70.020 Definitions.** Unless the context otherwise requires, the definitions and general provisions in this section govern the construction of this chapter:

(1) "Commission" means the Washington utilities and transportation commission;

(2) "Person or persons" means an individual, a corporation, association, joint stock association, and partnership, their lessees, trustees, or receivers;

(3) "Public highway" includes every public street, road, or highway in this state;

(4) "Motor vehicle" means every self-propelled vehicle with seating capacity for seven or more persons, excluding the driver;

(5) Subject to the exclusions of RCW 81.70.030, "charter party carrier" means every person engaged in the transportation over any public highways in this state of a group of persons, who, pursuant to a common purpose and under a single contract, acquire the use of a motor vehicle to travel together as a group to a specified destination or for a particular itinerary, either agreed upon in advance or modified by the chartered group after leaving the place of origin;

(6) Subject to the exclusion of RCW 81.70.030, "excursion service carrier" means every person engaged in the transportation of persons for compensation over any public highway in this state from points of origin within the incorporated limits of any city or town or area, to any other location within the state of Washington and returning to that origin. The service must not pick up or drop off passengers after leaving and before returning to the area of origin. The excursions may be regularly scheduled. Compensation for the transportation offered or afforded must be computed, charged, or assessed by the excursion service company on an individual fare basis. [2007 c 234 § 55; 1989 c 163 § 6; 1988 c 30 § 1; 1969 c 132 § 1; 1965 c 150 § 3.]

**81.70.030 Exclusions.** This chapter does not apply to:

(1) Persons operating motor vehicles wholly within the limits of incorporated cities;

(2) Persons or their lessees, receivers, or trustees insofar as they own, control, operate, or manage taxicabs, hotel buses, or school buses, when operated as such;

(3) Passenger vehicles carrying passengers on a noncommercial enterprise basis; or

(4) Limousine charter party carriers of passengers under chapter 46.72A RCW. [2007 c 234 § 56; 1989 c 283 § 17; 1965 c 150 § 4.]

**81.70.220 Certificate or registration required.** No person may engage in the business of a charter party carrier or excursion service carrier of persons over any public highway without first having obtained a certificate from the commission to do so or having registered as an interstate carrier. [1989 c 163 § 7; 1988 c 30 § 2.]

**81.70.230 Certificates—Application, issuance.** (1) Applications for certificates must be made to the commission in writing, verified under oath, and shall be in a form and contain information as the commission by regulation may require. Every application must be accompanied by a fee as the commission may prescribe by rule.

(2) A certificate must be issued to any applicant who establishes proof of safety fitness and insurance coverage under this chapter. [2007 c 234 § 57; 1988 c 30 § 3.]

**81.70.240 Certificates—Transfer restricted.** No certificate issued under this chapter or rights to conduct services under it may be leased, assigned, or otherwise transferred or

encumbered, unless authorized by the commission. [1988 c 30 § 4.]

**81.70.250 Certificates—Grounds for cancellation.**

The commission may cancel, revoke, or suspend any certificate issued under this chapter on any of the following grounds:

- (1) The violation of any of the provisions of this chapter;
- (2) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;
- (3) Failure of a charter party carrier or excursion service carrier of passengers to pay a fee, under this chapter, imposed on the carrier within the time required by law; or
- (4) Failure of a charter party carrier or excursion service carrier to maintain required insurance coverage in full force and effect. [2007 c 234 § 58; 1989 c 163 § 8; 1988 c 30 § 5.]

**81.70.260 Unlawful operation after certificate or registration canceled, etc.** After the cancellation or revocation of a certificate or interstate registration or during the period of its suspension, it is unlawful for a charter party carrier or excursion service carrier of passengers to conduct any operations as such a carrier. [1989 c 163 § 9; 1988 c 30 § 6.]

**81.70.270 Scope of regulation.** It is the duty of the commission to regulate charter party carriers and excursion service carriers with respect to safety of equipment, driver qualifications, and safety of operations. The commission shall establish such rules and regulations and require such reports as are necessary to carry out the provisions of this chapter. [1989 c 163 § 10; 1988 c 30 § 7.]

**81.70.280 Insurance or bond for liability and property damage.** (1) In issuing certificates under this chapter, the commission shall require charter party carriers and excursion service carriers to procure and continue in effect during the life of the certificate, liability and property damage insurance from a company licensed to make liability insurance in the state of Washington or a surety bond of a company licensed to write surety bonds in the state of Washington on each motor-propelled vehicle used or to be used in transporting persons for compensation, in the following amounts:

- (a) Not less than one hundred thousand dollars for any recovery for personal injury by one person; and
- (b) Not less than three hundred thousand dollars for any vehicle having a capacity of sixteen passengers or less; and
- (c) Not less than five hundred thousand dollars for any vehicle having a capacity of seventeen passengers or more for all receiving personal injury by at least one act of negligence; and
- (d) Not less than fifty thousand dollars for damage to property of any person other than the insured.

(2) The commission shall fix the amount of the insurance policy or policies or security deposit by giving consideration to the character and amount of traffic, the number of persons affected, and the degree of danger which the proposed operation involves. The liability and property damage insurance or surety bond must be maintained in force on each motor-propelled vehicle while in use. Each policy for liability or prop-

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erty damage insurance or surety bond required by this section must be filed with the commission and kept in effect. Failure to file and maintain the required insurance is cause for the revocation of the certificate. [2007 c 234 § 59; 1989 c 163 § 11; 1988 c 30 § 8.]

**81.70.290 Self-insurers exempt as to insurance or bond.** A charter party carrier or excursion service carrier of passengers, authorized to transport persons for compensation on the highways and engaging in interstate, or interstate and intrastate, operations within the state of Washington which is or becomes qualified as a self-insurer with the federal motor carrier safety administration of the United States department of transportation in accordance with the United States interstate commerce act applicable to self-insurance by motor carriers, is exempt from RCW 81.70.280 relating to the carrying or filing of insurance policies or bonds in connection with carrier operations as long as the qualification remains effective.

The commission may require the charter party carrier or excursion service carrier to prove the existence and continuation of qualification with the federal motor carrier safety administration by affidavit in a form the commission may prescribe. [2007 c 234 § 60; 1989 c 163 § 12; 1988 c 30 § 9.]

**81.70.310 Application of Title 81 RCW.** All applicable provisions of this title relating to procedure, powers of the commission, and penalties shall apply to the operation and regulation of persons under this chapter, except as those provisions may conflict with the provisions of this chapter and rules and regulations issued thereunder by the commission. [1988 c 30 § 11.]

**81.70.320 Fees—Amounts, deposit.** (1) An application for a certificate, amendment of a certificate, or transfer of a certificate must be accompanied by a filing fee the commission may prescribe by rule. The fee must not exceed two hundred dollars.

(2) All fees paid to the commission under this chapter must be deposited in the state treasury to the credit of the public service revolving fund.

(3) It is the intent of the legislature that all fees collected under this chapter must reasonably approximate the cost of supervising and regulating charter party carriers and excursion service carriers subject thereto, and to that end the commission may decrease the schedule of fees provided for in RCW 81.70.350 by general order entered before November 1st of any year in which the commission determines that the moneys, then in the charter party carrier and excursion service carrier account of the public service revolving fund, and the fees currently owed will exceed the reasonable cost of supervising and regulating such carriers during the succeeding calendar year. Whenever the cost accounting records of the commission indicate that the schedule of fees previously reduced should be increased, the increase, not to exceed the schedule set forth in this chapter, may be effected by a similar general order entered before November 1st of any calendar year. [2007 c 234 § 61; 1989 c 163 § 13; 1988 c 30 § 12.]

**81.70.330 Vehicle identification.** (1) It is unlawful for a charter party carrier or excursion service carrier to operate a motor vehicle upon the highways of this state unless there is firmly affixed to both sides of the vehicle, the name of the carrier and the certificate or permit number of the carrier. The characters composing the identification must be of sufficient size to be clearly distinguishable at a distance of at least fifty feet from the vehicle.

(2) A charter party carrier or excursion service carrier holding both intrastate and interstate authority may identify its vehicles with either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers. [2007 c 234 § 62; 1989 c 163 § 14; 1988 c 30 § 13.]

**81.70.340 Application to interstate or foreign carriers.** This chapter applies to persons and motor carriers engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 63; 1989 c 163 § 15; 1988 c 30 § 14.]

**81.70.350 Annual regulatory fee—Delinquent fee payments.** (1) The commission shall collect from each charter party carrier and excursion service carrier holding a certificate issued pursuant to this chapter and from each interstate or foreign carrier subject to this chapter an annual regulatory fee, to be established by the commission but which in total shall not exceed the cost of supervising and regulating such carriers, for each bus used by such carrier.

(2) All fees prescribed by this section shall be due and payable on or before December 31 of each year, to cover the ensuing year beginning February 1.

(3) Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 3; 1989 c 163 § 16; 1988 c 30 § 15.]

**81.70.360 Excursion service companies—Certificate.** No excursion service company may operate for the transportation of persons for compensation without first having obtained from the commission under the provisions of this chapter a certificate to do so.

A certificate shall be issued to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able to properly perform the services proposed and conform to the provisions of this chapter and the rules of the commission adopted under this chapter, and that such operations will be consistent with the public interest. However, a certificate shall be granted when it appears to the satisfaction of the commission that the person, firm, or corporation was actually operating in good faith that type of service for which the certificate was sought on January 15, 1983. Any right, privilege, or certificate held, owned, or obtained by an excursion service company may be sold, assigned, leased, transferred, or inherited as other property only upon authorization by the commission. For good cause shown the commission may refuse to issue the certificate, or issue it for the partial exercise only of the privilege sought, and may

attach to the exercise of the rights granted by the certificate such terms and conditions as, in its judgment, the public interest may require. [1984 c 166 § 5. Formerly RCW 81.68.045.]

**81.70.370 Federal authority and registration for compensatory services.** It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 54.]

## Chapter 81.72 RCW TAXICAB COMPANIES

### Sections

- 81.72.200 Legislative intent.
- 81.72.210 Local regulatory powers listed.
- 81.72.220 Cooperative agreements—Joint regulation.

*Transportation of passengers in for hire vehicles: Chapter 46.72 RCW.*

**81.72.200 Legislative intent.** The legislature finds and declares that privately operated taxicab transportation service is a vital part of the transportation system within the state and provides demand-responsive services to state residents, tourists, and out-of-state business people. Consequently, the safety, reliability, and economic viability and stability of privately operated taxicab transportation service are matters of statewide importance. The regulation of privately operated taxicab transportation services is thus an essential governmental function. Therefore, it is the intent of the legislature to permit political subdivisions of the state to regulate taxicab transportation services without liability under federal anti-trust laws. [1984 c 126 § 1.]

**81.72.210 Local regulatory powers listed.** To protect the public health, safety, and welfare, cities, towns, counties, and port districts of the state may license, control, and regulate privately operated taxicab transportation services operating within their respective jurisdictions. The power to regulate includes:

- (1) Regulating entry into the business of providing taxicab transportation services;
- (2) Requiring a license to be purchased as a condition of operating a taxicab and the right to revoke, cancel, or refuse to reissue a license for failure to comply with regulatory requirements;
- (3) Controlling the rates charged for providing taxicab transportation service and the manner in which rates are calculated and collected, including the establishment of zones as the basis for rates;
- (4) Regulating the routes of taxicabs, including restricting access to airports;
- (5) Establishing safety, equipment, and insurance requirements; and
- (6) Any other requirements adopted to ensure safe and reliable taxicab service. [1984 c 126 § 2.]

**81.72.220 Cooperative agreements—Joint regulation.** A city, town, county, or port district may enter into cooperative agreements with any other city, town, county, or port district for the joint regulation of taxicabs. Cooperative agreements may provide for, but are not limited to, the granting, revocation, and suspension of joint taxicab licenses. [1984 c 126 § 3.]

### Chapter 81.75 RCW

#### TRANSPORTATION CENTERS

##### Sections

81.75.010	Authorization to own and operate—Purpose.
81.75.020	Method of acquisition and operation prescribed—Grants—Consolidation of activities.
81.75.030	Services available—Terms of usage.
81.75.900	Severability—1977 ex.s. c 217.

**81.75.010 Authorization to own and operate—Purpose.** It is desirable to a transportation system that convenient and comfortable terminals be established and maintained with the services of all modes of public transportation available to the public at such a center to the extent feasible. It is proper that cities, towns, counties, public transportation benefit area authorities, and municipal corporations of this state be authorized to own and operate transportation centers. [1977 ex.s. c 217 § 1.]

**81.75.020 Method of acquisition and operation prescribed—Grants—Consolidation of activities.** Through its council or other legislative body, any city, town, county, public transportation benefit area authority, or other municipal corporation, authorized to operate public transportation services, may construct or otherwise acquire intermodal transportation centers by donation, lease, or purchase and may operate or let for purposes of leasing space at fair market value for the services set forth in RCW 81.75.030, and to perform other functions permitted by law, the centers or portions of the centers, for public or private purposes or for compensation or rental upon such conditions as its council or other legislative body shall from time to time prescribe. The city, town, county, public transportation benefit area authority, or municipal corporation, may apply for and receive grants from the federal government for purposes of funding a transportation center and may consolidate a transportation center with other lawful city or town activities. [1977 ex.s. c 217 § 2.]

**81.75.030 Services available—Terms of usage.** To the extent feasible, the services available to the public at any transportation center may include taxi, auto rental, passenger trains, motor buses, travel agents, restrooms, food, telegraph, baggage handling, transfer and delivery of light freight and packages, commercial airlines, air charter, place of temporary rest for citizens and travelers (but not overnight), mail, private auto parking for users of public transportation through the transportation center, local transit, limousine, and any other use necessary to the foregoing.

Any city, town, county, public transportation benefit area authority, or municipal corporation, which elects to operate a transportation center shall operate the center for the general public good. The operator may establish the terms of

usage for the various modes of transportation and for others that utilize its facilities, may make reasonable rules concerning public and private use, and may exclude all persons therefrom who refuse to comply with the terms or rules of use. The operator may own, operate, maintain, and manage a transportation center, but shall not engage in providing a transportation or other related service at the center unless otherwise authorized by law. [1977 ex.s. c 217 § 3.]

**81.75.900 Severability—1977 ex.s. c 217.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 217 § 5.]

### Chapter 81.77 RCW

#### SOLID WASTE COLLECTION COMPANIES

(Formerly: Garbage and refuse collection companies)

##### Sections

81.77.010	Definitions.
81.77.020	Compliance with chapter required—Exemption for cities.
81.77.0201	Jurisdiction of commission upon discontinuation of jurisdiction by municipality.
81.77.030	Supervision and regulation by commission.
81.77.040	Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories.
81.77.050	Filing fees.
81.77.060	Liability and property damage insurance—Surety bond.
81.77.080	Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue.
81.77.090	Penalty.
81.77.100	Application to foreign or interstate commerce—Regulation of solid waste collection companies.
81.77.110	Temporary certificates.
81.77.120	Service to unincorporated areas of counties.
81.77.130	Application of chapter to collection or transportation of source separated recyclable materials.
81.77.140	Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
81.77.160	Pass-through rates—Rules.
81.77.170	Fees, charges, or taxes—Normal operating expense.
81.77.180	Recyclable materials collection—Processing and marketing.
81.77.185	Recyclable materials collection—Revenue sharing.
81.77.190	Curbside recycling—Reduced rate.
81.77.200	Federal authority and registration for compensatory services.
81.77.900	Severability—1989 c 431.

*Unlawful diversion of recyclable material: RCW 70.95.235.*

**81.77.010 Definitions.** As used in this chapter:

(1) "Motor vehicle" means any truck, trailer, semitrailer, tractor, or any self-propelled or motor driven vehicle used upon any public highway of this state for the purpose of transporting solid waste, for the collection or disposal, or both, of solid waste;

(2) "Public highway" means every street, road, or highway in this state;

(3) "Common carrier" means any person who collects and transports solid waste for disposal by motor vehicle for compensation, whether over regular or irregular routes, or by regular or irregular schedules;

(4) "Contract carrier" means all solid waste transporters not included under the terms "common carrier" and "private carrier," as defined in this section, and further, includes any person who under special and individual contracts or agreements transports solid waste by motor vehicle for compensation;

(5) "Private carrier" means a person who, in his or her own vehicle, transports solid waste purely as an incidental adjunct to some other established private business owned or operated by the person in good faith. A person who transports solid waste from residential sources in a vehicle designed or used primarily for the transport of solid waste is not a private carrier;

(6) "Vehicle" means every device capable of being moved upon a public highway and in, upon, or by which any solid waste is or may be transported or drawn upon a public highway, except devices moved by human or animal power or used exclusively upon stationary rail or tracks;

(7) "Solid waste collection company" means every person or his or her lessees, receivers, or trustees, owning, controlling, operating, or managing vehicles used in the business of transporting solid waste for collection or disposal, or both, for compensation, except septic tank pumpers, over any public highway in this state as a "common carrier" or as a "contract carrier";

(8) "Solid waste collection" does not include collecting or transporting recyclable materials from a drop-box or recycling buy-back center, or collecting or transporting recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation. Transportation of these materials is regulated under chapter 81.80 RCW;

(9) "Solid waste" means the same as defined under RCW 70.95.030, except for the purposes of this chapter solid waste does not include recyclable materials except for source separated recyclable materials collected from residences; and

(10) When the phrase "garbage and refuse" is used as a qualifying phrase or otherwise, it means "solid waste." [2007 c 234 § 65; 1989 c 431 § 17; 1961 c 295 § 2.]

**81.77.020 Compliance with chapter required—Exemption for cities.** No person, his lessees, receivers, or trustees, shall engage in the business of operating as a solid waste collection company in this state, except in accordance with the provisions of this chapter: PROVIDED, That the provisions of this chapter shall not apply to the operations of any solid waste collection company under a contract of solid waste disposal with any city or town, nor to any city or town which itself undertakes the disposal of solid waste. [1989 c 431 § 18; 1961 c 295 § 3.]

**81.77.0201 Jurisdiction of commission upon discontinuation of jurisdiction by municipality.** A city, town, or combined city-county may at any time reverse its decision to exercise its authority under RCW 81.77.020. In such an event, the commission shall issue a certificate to the last holder of a valid commission certificate of public convenience and necessity, or its successors or assigns, for the area reverting to commission jurisdiction. If there was no certificate existing for the area, or the previous holder was compensated for its certificate property right, the commission shall consider applications for authority under RCW 81.77.040. [1997 c 171 § 4.]

**Severability—1997 c 171:** See note following RCW 35.02.160.

**81.77.030 Supervision and regulation by commission.** The commission shall supervise and regulate every solid waste collection company in this state,

(1) By fixing and altering its rates, charges, classifications, rules and regulations;

(2) By regulating the accounts, service, and safety of operations;

(3) By requiring the filing of annual and other reports and data;

(4) By supervising and regulating such persons or companies in all other matters affecting the relationship between them and the public which they serve;

(5) By requiring compliance with local solid waste management plans and related implementation ordinances;

(6) By requiring certificate holders under chapter 81.77 RCW to use rate structures and billing systems consistent with the solid waste management priorities set forth under RCW 70.95.010 and the minimum levels of solid waste collection and recycling services pursuant to local comprehensive solid waste management plans. The commission may order consolidated billing and provide for reasonable and necessary expenses to be paid to the administering company if more than one certificate is granted in an area.

The commission, on complaint made on its own motion or by an aggrieved party, at any time, after providing the holder of any certificate with notice and an opportunity for a hearing at which it shall be proven that the holder has willfully violated or refused to observe any of the commission's orders, rules, or regulations, or has failed to operate as a solid waste collection company for a period of at least one year preceding the filing of the complaint, may suspend, revoke, alter, or amend any certificate issued under the provisions of this chapter. [2005 c 121 § 5; 1989 c 431 § 20; 1987 c 239 § 1; 1965 ex.s. c 105 § 1; 1961 c 295 § 4.]

**81.77.040 Certificate of convenience and necessity required—Issuance—Transferability—Solid waste categories.** A solid waste collection company shall not operate for the hauling of solid waste for compensation without first having obtained from the commission a certificate declaring that public convenience and necessity require such operation. To operate a solid waste collection company in the unincorporated areas of a county, the company must comply with the solid waste management plan prepared under chapter 70.95 RCW in the company's franchise area.

Issuance of the certificate of necessity must be determined on, but not limited to, the following factors: The present service and the cost thereof for the contemplated area to be served; an estimate of the cost of the facilities to be utilized in the plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of the assets on hand of the person, firm, association, or corporation that will be expended on the purported plant for solid waste collection and disposal, set out in an affidavit or declaration; a statement of prior experience, if any, in such field by the petitioner, set out in an affidavit or declaration; and sentiment in the community contemplated to be served as to the necessity for such a service.

When an applicant requests a certificate to operate in a territory already served by a certificate holder under this chapter, the commission may, after notice and an opportunity

for a hearing, issue the certificate only if the existing solid waste collection company or companies serving the territory will not provide service to the satisfaction of the commission or if the existing solid waste collection company does not object.

In all other cases, the commission may, with or without hearing, issue certificates, or for good cause shown refuse to issue them, or issue them for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted such terms and conditions as, in its judgment, the public convenience and necessity may require.

Any right, privilege, certificate held, owned, or obtained by a solid waste collection company may be sold, assigned, leased, transferred, or inherited as other property, only if authorized by the commission.

For purposes of issuing certificates under this chapter, the commission may adopt categories of solid wastes as follows: Garbage, refuse, recyclable materials, and demolition debris. A certificate may be issued for one or more categories of solid waste. Certificates issued on or before July 23, 1989, shall not be expanded or restricted by operation of this chapter. [2007 c 234 § 66; 2005 c 121 § 6; 1989 c 431 § 21; 1987 c 239 § 2; 1961 c 295 § 5.]

**81.77.050 Filing fees.** Any application for a certificate issued under this chapter or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate issued under this chapter or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1989 c 431 § 22; 1973 c 115 § 9; 1961 c 295 § 6.]

**81.77.060 Liability and property damage insurance—Surety bond.** The commission, in granting certificates to operate a solid waste collection company, shall require the owner or operator to first procure liability and property damage insurance from a company licensed to make liability insurance in the state or a surety bond of a company licensed to write surety bonds in the state, on each motor propelled vehicle used or to be used in transporting solid waste for compensation in the amount of not less than twenty-five thousand dollars for any recovery for personal injury by one person, and not less than ten thousand dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury by reason of one act of negligence, and not less than ten thousand dollars for damage to property of any person other than the assured, and to maintain such liability and property damage insurance or surety bond in force on each motor propelled vehicle while so used. Each policy for liability or property damage insurance or surety bond required herein shall be filed with the commission and kept in full force and effect and failure so to do shall be cause for revocation of the delinquent's certificate. [1989 c 431 § 23; 1961 c 295 § 7.]

**81.77.080 Companies to file reports of gross operating revenue and pay fees—Legislative intent—Disposition of revenue.** Every solid waste collection company shall, on or before the date specified by the commission for filing

annual reports under RCW 81.04.080, file with the commission a statement on oath showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of gross operating revenue: PROVIDED, That the commission may, by rule, set minimum fees that do not exceed the cost of collecting the fees. The commission may by rule waive any or all of the minimum fee established pursuant to this section.

It is the intent of the legislature that the fees collected under the provisions of this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject thereto, and to that end the utilities and transportation commission is authorized to decrease the schedule of fees provided in this section by general order entered before March 1st of any year in which it determines that the moneys then in the solid waste collection companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating such carriers.

All fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be by it transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund. [2003 c 296 § 5; 1989 c 431 § 24; 1971 ex.s. c 143 § 3; 1969 ex.s. c 210 § 11; 1963 c 59 § 12; 1961 c 295 § 9.]

**81.77.090 Penalty.** Every person who violates or fails to comply with, or who procures, aids, or abets in the violation of any provisions of this chapter, or who fails to obey, or comply with any order, decision, rule, regulation, direction, demand, or requirement of the commission, or any part or provision thereof, is guilty of a gross misdemeanor. [1961 c 295 § 10.]

**81.77.100 Application to foreign or interstate commerce—Regulation of solid waste collection companies.** This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States.

To protect public health and safety and to ensure solid waste collection services are provided to all areas of the state, the commission, in accordance with this chapter, shall regulate all solid waste collection companies conducting business in the state. [2007 c 234 § 67; 1989 c 431 § 25; 1985 c 436 § 2; 1961 c 295 § 11.]

**81.77.110 Temporary certificates.** The commission may with or without a hearing issue temporary certificates to engage in the business of operating a solid waste collection company, but only after it finds that the issuance of such temporary certificate is consistent with the public interest. Such temporary certificate may be issued for a period up to one hundred eighty days where the area or territory covered thereby is not contained in the certificate of any other solid waste collection company. In all other cases such temporary certificate may be issued for a period not to exceed one hundred twenty days. The commission may prescribe such special rules and regulations and impose such special terms and conditions with reference thereto as in its judgment are rea-

sonable and necessary in carrying out the provisions of this chapter. The commission shall collect a fee of twenty-five dollars for an application for such temporary certificate. [1989 c 431 § 26; 1965 ex.s. c 105 § 2.]

**81.77.120 Service to unincorporated areas of counties.** A county legislative authority shall periodically comment to the commission in writing concerning the authority's perception of the adequacy of service being provided by regulated franchisees serving the unincorporated areas of the county. The county legislative authority shall also receive and forward to the commission all letters of comment on services provided by regulated franchise holder(s) serving unincorporated areas of the county. Any such written comments or letters shall become part of the record of any rate, compliance, or any other hearing held by the commission on the issuance, revocation, or reissuance of a certificate provided for in RCW 81.77.040. [1987 c 239 § 3.]

**81.77.130 Application of chapter to collection or transportation of source separated recyclable materials.** The provisions of chapter 81.77 RCW shall not apply to the collection or transportation of source separated recyclable materials from residences under a contract with any county, city, or town, nor to any city or town which itself undertakes the collection and transportation of source separated recyclable materials from residences. [1989 c 431 § 19.]

**81.77.140 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.** Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 31.]

**81.77.160 Pass-through rates—Rules.** (1) The commission, in fixing and altering collection rates charged by every solid waste collection company under this section, shall include in the base for the collection rates:

(a) All charges for the disposal of solid waste at the facility or facilities designated by a local jurisdiction under a local comprehensive solid waste management plan or ordinance; and

(b) All known and measurable costs related to implementation of the approved county or city comprehensive solid waste management plan.

(2) If a solid waste collection company files a tariff to recover the costs specified under this section, and the commission suspends the tariff, the portion of the tariff covering costs specified in this section shall be placed in effect by the commission at the request of the company on an interim basis as of the originally filed effective date, subject to refund,

pending the commission's final order. The commission may adopt rules to implement this section.

(3) This section applies to a solid waste collection company that has an affiliated interest under chapter 81.16 RCW with a facility, if the total cost of disposal, including waste transfer, transport, and disposal charges, at the facility is equal to or lower than any other reasonable and currently available option. [1997 c 434 § 1; 1989 c 431 § 30.]

**Section captions not law—1989 c 431:** See RCW 70.95.902.

**81.77.170 Fees, charges, or taxes—Normal operating expense.** For rate-making purposes, a fee, charge, or tax on the disposal of solid waste shall be considered a normal operating expense of the solid waste collection company. [1989 c 431 § 36.]

**Section captions not law—1989 c 431:** See RCW 70.95.902.

**81.77.180 Recyclable materials collection—Processing and marketing.** (1) A solid waste collection company collecting recyclable materials from residences shall utilize one or more private recycling businesses when arranging for the processing and marketing of such materials, if the following conditions are met:

(a) A recycling business is located within the county at the time the collection program commences or at any time that the solid waste collection company changes its existing processor;

(b) A local private recycling business is capable and competent to provide the processing and marketing service; and

(c) A local private recycling business offers to pay a price for the recyclable materials which is equal to or greater than the price offered by out-of-county private recyclers, or proposes a charge for the processing and marketing service which is equal to or less than the charge for the service available from an out-of-county private recycler.

(2) This section shall not apply to:

(a) Cities or towns who exercise their authority under RCW 81.77.130 to provide residential curbside collection of recyclable materials;

(b) A solid waste collection company that is directed by a city, town, or county to utilize a publicly owned recyclable processing facility located within such city, town, or county; or

(c) Counties which exercise their authority under RCW 36.58.040 to contract for the residential curbside collection of source separated recyclables.

This section shall not apply to programs for the collection of source separated recyclable materials where rates to implement the programs have been filed with the commission prior to May 21, 1991.

(3) For the purposes of this section, "private recycling business" means any private for-profit or private not-for-profit firm that engages in the processing and marketing of recyclable materials.

(4) This section is not enforceable by complaint filed with the commission. [1991 c 319 § 403.]

**Severability—Part headings not law—1991 c 319:** See RCW 70.95F.900 and 70.95F.901.

**81.77.185 Recyclable materials collection—Revenue sharing.** (1) The commission shall allow solid waste collection companies collecting recyclable materials to retain up to thirty percent of the revenue paid to the companies for the material if the companies submit a plan to the commission that is certified by the appropriate local government authority as being consistent with the local government solid waste plan and that demonstrates how the revenues will be used to increase recycling. The remaining revenue shall be passed to residential customers.

(2) By December 2, 2005, the commission shall provide a report to the legislature that evaluates:

(a) The effectiveness of revenue sharing as an incentive to increase recycling in the state; and

(b) The effect of revenue sharing on costs to customers. [2002 c 299 § 6.]

**81.77.190 Curbside recycling—Reduced rate.** (1) If the commission authorizes a surcharge or reduced rate incentive based on a customer's participation in a company's curbside residential recycling program, customers participating in any other noncurbside recycling program approved by the jurisdiction shall be eligible for such incentives.

(2) For the purpose of this section, "reduced rate" means a residential solid waste collection rate incorporating a rebate, refund, or discount. It does not include any residential solid waste collection rate based on the volume or weight of solid waste set out for collection. [1991 c 319 § 406.]

**Severability—Part headings not law—1991 c 319:** See RCW 70.95F.900 and 70.95F.901.

**81.77.200 Federal authority and registration for compensatory services.** It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if such authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 64.]

**81.77.900 Severability—1989 c 431.** See RCW 70.95.901.

**Chapter 81.80 RCW  
MOTOR FREIGHT CARRIERS**

Sections

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*Reciprocal or proportional registration of vehicles: Chapter 46.85 RCW.*  
*Taxation of motor carriers of freight for hire—Allocation of gross receipts: RCW 35.21.840.*

**81.80.010 Definitions.** The definitions set forth in this section apply throughout this chapter.

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

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

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

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

(5) "Contract carrier" includes all motor vehicle operators not included under the terms "common carrier" and "private carrier" as defined in this section, and further includes any person who under special and individual contracts or agreements transports property by motor vehicle for compensation.

(6) A "private carrier" is a person who transports by his or her own motor vehicle, with or without compensation, property which is owned or is being bought or sold by the person, or property where the person is the seller, purchaser, lessee, or bailee and the transportation is incidental to and in furtherance of some other primary business conducted by the person in good faith.

(7) "Motor carrier" includes "common carrier," "contract carrier," "private carrier," and "exempt carrier" as defined in this section.

(8) "Exempt carrier" means any person operating a vehicle exempted under RCW 81.80.040.

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

(10) "Common carrier" and "contract carrier" includes persons engaged in the business of providing, contracting for, or undertaking to provide transportation of property for compensation over the public highways of the state of Washington as brokers or forwarders.

(11) "Household goods carrier" means a person engaged in the business of transporting household goods as defined by the commission. [2007 c 234 § 68; 1989 c 60 § 1; 1988 c 31 § 1; 1982 c 71 § 1; 1967 c 69 § 1; 1961 c 14 § 81.80.010. Prior: 1937 c 166 § 2; 1935 c 184 § 2; RRS § 6382-2.]

**Severability—1982 c 71:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 71 § 5.]

**Severability—1967 c 69:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 69 § 4.]

**81.80.020 Declaration of policy.** The business of operating as a motor carrier of freight for compensation along the highways of this state is declared to be a business affected with a public interest. The rapid increase of motor carrier freight traffic and the fact that under the existing law many motor trucks are not effectively regulated have increased the dangers and hazards on public highways and make it imperative that regulation to the fullest extent allowed under 49 U.S.C. Sec. 14501 should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that congestion on highways may be minimized; that the shippers of the state may be provided with a stabilized service and rate structure; that sound economic conditions in such transportation and among such carriers may be fostered in the public interest; that adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discrimination, undue preferences or advantages, or unfair or destructive competitive practices may be promoted; that the common carriage of commodities by motor carrier may be preserved in the public interest; that the relations between, and transportation by and regulation of, motor carriers and other carriers may be improved and coordinated so that the highways of the state of Washington may be properly developed and preserved, and the public may be assured adequate, complete, dependable, and stable transportation service in all its phases. [2007 c 234 § 69; 1961 c 14 § 81.80.020. Prior: 1937 c 166 § 1; 1935 c 184 § 1; RRS § 6382-1.]

**81.80.040 Exempt vehicles.** The provisions of this chapter, except where specifically otherwise provided, and

except the provisions providing for licenses, shall not apply to:

(1) Motor vehicles when operated in transportation exclusively within the corporate limits of any city or town of less than ten thousand population unless contiguous to a city or town of ten thousand population or over, nor between contiguous cities or towns both or all of which are less than ten thousand population;

(2) Motor vehicles when operated in transportation wholly within the corporate limits of cities or towns of ten thousand or more but less than thirty thousand population, or between such cities or towns when contiguous, as to which the commission, after investigation and the issuance of an order thereon, has determined that no substantial public interest exists which requires that such transportation be subject to regulation under this chapter;

(3) Motor vehicles when transporting exclusively the United States mail or in the transportation of newspapers or periodicals;

(4) Motor vehicles owned and operated by the United States, the state of Washington, or any county, city, town, or municipality therein, or by any department of them, or either of them;

(5) Motor vehicles specially constructed for towing not more than two disabled, unauthorized, or repossessed motor vehicles, wrecking, or exchanging an operable vehicle for a disabled vehicle and not otherwise used in transporting goods for compensation. For the purposes of this subsection, a vehicle is considered to be repossessed only from the time of its actual repossession through the end of its initial tow;

(6) Motor vehicles normally owned and operated by farmers in the transportation of their own farm, orchard, or dairy products, including livestock and plant or animal wastes, from point of production to market, or in the infrequent or seasonal transportation by one farmer for another farmer, if their farms are located within twenty miles of each other, of products of the farm, orchard, or dairy, including livestock and plant or animal wastes, or of supplies or commodities to be used on the farm, orchard, or dairy;

(7) Motor vehicles when transporting exclusively water in connection with construction projects only;

(8) Motor vehicles of less than 8,000 pounds gross vehicle weight when transporting exclusively legal documents, pleadings, process, correspondence, depositions, briefs, medical records, photographs, books or papers, cash or checks, when moving shipments of the documents described at the direction of an attorney as part of providing legal services. [1993 c 121 § 4; 1984 c 171 § 1; 1979 ex.s. c 6 § 1; 1963 c 59 § 7; 1961 c 14 § 81.80.040. Prior: 1957 c 205 § 4; 1949 c 133 § 1; 1947 c 263 § 1; 1937 c 166 § 4; 1935 c 184 § 3; Rem. Supp. 1949 § 6382-3.]

**81.80.045 Exemption—Freight consolidators.** This chapter does not apply to the operations of a shipper or a group or association of shippers in consolidating or distributing freight for themselves or for their members on a nonprofit basis for the purpose of securing the benefits of carload, truckload, or other volume rates, when the services of a common carrier are used for the transportation of such shipments. [2007 c 234 § 70; 1979 ex.s. c 138 § 1.]

**81.80.050 Compliance required.** It shall be unlawful for any person to operate as a "motor carrier" on any public highway of this state except in accordance with the provisions of this chapter. [1961 c 14 § 81.80.050. Prior: 1935 c 184 § 4; RRS § 6382-4.]

**81.80.060 Combination of services.** Every person who engages for compensation to perform a combination of services, a substantial portion of which includes transportation of property of others upon the public highways, is subject to the jurisdiction of the commission as to such transportation and shall not engage in such transportation without first having obtained a common carrier or contract carrier permit to do so. A combination of services includes, but is not limited to, the delivery of household appliances for others where the delivering carrier also unpacks or uncrates the appliances and makes the initial installation. Any person engaged in extracting or processing, or both, and, in connection therewith, hauling materials exclusively for the maintenance, construction, or improvement of a public highway is not engaged in performing a combination of services. [2007 c 234 § 71; 1969 ex.s. c 210 § 17; 1969 c 33 § 1. Prior: 1967 ex.s. c 145 § 77; 1967 c 69 § 2; 1965 ex.s. c 170 § 40; 1961 c 14 § 81.80.060; prior: 1937 c 166 § 5; RRS § 6382-4a.]

**Severability—1967 c 69:** See note following RCW 81.80.010.

**81.80.070 Permit required—Penalty—Cease and desist orders.** (1) A common carrier, contract carrier, or temporary carrier shall not operate for the transportation of property for compensation in this state without first obtaining from the commission a permit for such operation.

(a) For household goods:

(i) Permits issued to any carrier must be exercised by the carrier to the fullest extent to render reasonable service to the public. Applications for household goods carrier permits or permit extensions must be on file for a period of at least thirty days before issuance unless the commission finds that special conditions require earlier issuance.

(ii) A permit or permit extension must be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that: The applicant is fit, willing, and able to perform the services proposed and conform to this chapter and the requirements, rules, and regulations of the commission; the operations are consistent with the public interest; and, in the case of common carriers, they are required by the present or future public convenience and necessity; otherwise the application must be denied.

(b) For general commodities other than household goods:

(i) The commission shall issue a common carrier permit to any qualified applicant if it is found the applicant is fit, willing, and able to perform the service and conform to the provisions of this chapter and the rules and regulations of the commission.

(ii) Before a permit is issued, the commission shall require the applicant to establish safety fitness and proof of minimum financial responsibility as provided in this chapter.

(2) This chapter does not confer on any person or persons the exclusive right or privilege of transporting property for compensation over the public highways of the state.

(3) A common carrier, contract carrier, or temporary carrier operating without the permit required in subsection (1) of this section, or who violates a cease and desist order of the commission issued under RCW 81.04.510, is subject to a penalty, under the process set forth in RCW 81.04.405, of one thousand five hundred dollars.

(4) Notwithstanding RCW 81.04.510, the commission may, in conjunction with issuing the penalty set forth in subsection (3) of this section, issue cease and desist orders to carriers operating without the permit required in subsection (1) of this section, and to all persons involved in the carriers' operations. [2007 c 234 § 72; 1999 c 79 § 1; 1963 c 242 § 1; 1961 c 14 § 81.80.070. Prior: 1953 c 95 § 17; 1947 c 264 § 2; 1941 c 163 § 1; 1937 c 166 § 6; 1935 c 184 § 5; Rem. Supp. 1947 § 6382-5.]

**81.80.080 Application for permit.** Application for permits must be made to the commission in writing and must state the ownership, financial condition, equipment to be used and physical property of the applicant, the territory or route or routes in or over which the applicant proposes to operate, the nature of the transportation to be engaged in, and other information as the commission may require. [2007 c 234 § 73; 1991 c 41 § 1; 1961 c 14 § 81.80.080. Prior: 1935 c 184 § 6; RRS § 6382-6.]

**81.80.090 Form of application—Filing fees.** The commission shall prescribe forms of application for permits and for extensions thereof for the use of prospective applicants, and for transfer of permits and for acquisition of control of carriers holding permits, and shall make regulations for the filing thereof. Any such application shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed five hundred fifty dollars. [1993 c 97 § 5; 1973 c 115 § 10; 1961 c 14 § 81.80.090. Prior: 1941 c 163 § 2; 1937 c 166 § 7; 1935 c 184 § 7; RRS § 6382-7.]

**81.80.100 Form and contents of permit.** Permits granted by the commission shall be in such form as the commission shall prescribe and shall set forth the name and address of the person to whom the permit is granted, the nature of the transportation service to be engaged in and the principal place of operation, termini or route to be used or territory to be served by the operation. No permit holder shall operate except in accordance with the permit issued to him. [1961 c 14 § 81.80.100. Prior: 1935 c 194 § 8; RRS § 6382-8.]

**81.80.110 Limitation on renewal of application.** No person whose application for a permit has been denied after hearing under any of the provisions of this chapter shall be eligible to renew the application for a period of six months from the date of the order denying such application. [1961 c 14 § 81.80.110. Prior: 1947 c 264 § 3; 1935 c 184 § 9; Rem. Supp. 1947 § 6382-9.]

**81.80.115 Fees imposed under this chapter—Procedure for contesting—Rules.** If a person seeks to contest the imposition of a fee imposed under this chapter, the person

shall pay the fee and request a refund within six months of the due date for the payment by filing a petition for a refund with the commission. The commission shall establish by rule procedures for handling refund petitions and may delegate the decisions on refund petitions to the secretary of the commission. [1993 c 97 § 6.]

**81.80.120 Classification of carriers.** The commission may from time to time establish such just and reasonable classifications of the groups of carriers included in the terms "common carriers" and "contract carriers" as the special nature of the services performed by such carriers shall require, and such just and reasonable rules, regulations and requirements, consistent with the provisions of this chapter, to be observed by the carriers so classified or grouped, as the commission deems necessary or advisable in the public interest. [1961 c 14 § 81.80.120. Prior: 1937 c 166 § 8; 1935 c 184 § 10; RRS § 6382-10.]

**81.80.130 Regulatory power over common carriers.** To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every common carrier in this state; make, fix, alter, and amend, just, fair, reasonable, minimum, maximum, or minimum and maximum, rates, charges, classifications, rules, and regulations for all common carriers; regulate the accounts, service, and safety of operations thereof; require the filing of reports and other data thereby; and supervise and regulate all common carriers in all other matters affecting their relationship with competing carriers of every kind and the shipping and general public. The commission may by order approve rates filed by common carriers in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, or prescribe rates covering the commodities and services. [2007 c 234 § 74; 1961 c 14 § 81.80.130. Prior: 1957 c 205 § 5; 1937 c 166 § 9; 1935 c 184 § 11; RRS § 6382-11.]

**81.80.132 Common carriers—Estimate of charges for household goods—Penalty.** When a common carrier gives an estimate of charges for services in carrying household goods, the carrier will endeavor to accurately reflect the actual charges. The carrier is subject to a monetary penalty not to exceed one thousand dollars per violation when the actual charges exceed the percentages allowed by the commission. [1993 c 392 § 1.]

**81.80.140 Regulatory power over contract carriers.** To the extent allowed under 49 U.S.C. Sec. 14501, the commission shall: Supervise and regulate every contract carrier in this state; fix, alter, and amend, just, fair, and reasonable classifications, rules, and regulations and minimum rates and charges of each contract carrier; regulate the account, service, and safety of contract carriers' operations; require the filing of reports and of other data thereby; and supervise and regulate contract carriers in all other matters affecting their relationship with both the shipping and the general public. [2007 c 234 § 75; 1961 c 14 § 81.80.140. Prior: 1937 c 166 § 11; 1935 c 184 § 12; RRS § 6382-12.]

**81.80.150 Tariffs to be compiled and sold.** The commission shall make, fix, construct, compile, promulgate, publish, and distribute tariffs containing compilations of rates, charges, classifications, rules, and regulations to be used by all household goods carriers. In compiling these tariffs, the commission shall include within any given tariff compilation the carriers, groups of carriers, commodities, or geographical areas it determines are in the public interest. The compilations and publications may be made by the commission by compiling the rates, charges, classifications, rules, and regulations now in effect, and as they may be amended and altered from time to time after notice and hearing, by issuing and distributing revised pages or supplements to the tariffs or reissues of tariffs in accordance with the orders of the commission. The commission, upon good cause shown, may establish temporary rates, charges, or classification changes which may be made permanent only after publication in an applicable tariff for not less than sixty days and a determination by the commission that the rates, charges, or classifications are just, fair, and reasonable. If a shipper or common carrier, or representative of either, files a protest with the commission, within sixty days from the date of publication, stating that the temporary rates are unjust, unfair, or unreasonable, the commission must hold a hearing to consider the protest. Publication of these temporary rates in the tariff is adequate public notice. The commission may, upon notice and hearing, fix and determine just, fair, and reasonable rates, charges, and classifications. Each common carrier shall purchase from the commission and post tariffs applicable to its authority. The commission shall set fees for the sale, supplements, and corrections of the tariffs at rates to cover all costs of making, fixing, constructing, compiling, promulgating, publishing, and distributing the tariffs. The proper tariff, or tariffs, applicable to a carrier's operations must be available to the public at each agency and office of all common carriers operating within this state. The compilations and publications must be sold by the commission for the established fee. However, copies may be furnished for free to other regulatory bodies and departments of government and to colleges, schools, and libraries. All copies of the compilations, whether sold or given for free, must be issued and distributed under rules fixed by the commission. The commission may by order authorize common carriers to publish and file tariffs with the commission and be governed by the tariffs in respect to certain designated commodities and services when, in the opinion of the commission, it is impractical for the commission to make, fix, construct, compile, publish, and distribute tariffs covering such commodities and services. [2007 c 234 § 76; 1993 c 97 § 4; 1981 c 116 § 2; 1973 c 115 § 11; 1961 c 14 § 81.80.150. Prior: 1959 c 248 § 5; 1957 c 205 § 6; 1947 c 264 § 4; 1941 c 163 § 3; 1937 c 166 § 10; Rem. Supp. 1947 § 6382-11a.]

**81.80.170 Temporary permits.** The commission may issue temporary permits to temporary household goods carriers for no more than one hundred eighty days, but only after the commission finds that the issuance of the temporary permits is consistent with the public interest. The commission may prescribe special rules and regulations and impose special terms and conditions as in its judgment are reasonable and necessary in carrying out the provisions of this chapter.

The commission may also issue temporary permits pending the determination of an application filed with the commission for approval of a consolidation or merger of the properties of two or more household goods carriers or of a purchase or lease of one or more household goods carriers. [2007 c 234 § 77; 1963 c 242 § 2; 1961 c 14 § 81.80.170. Prior: 1953 c 95 § 18; 1947 c 264 § 5; 1937 c 166 § 12; 1935 c 184 § 14; Rem. Supp. 1947 § 6382-14.]

**81.80.190 Insurance or deposit of security required.**

The commission shall, in issuing permits to common carriers and contract carriers under this chapter, require the carriers to either procure and file liability and property damage insurance from a company licensed to write such insurance in the state of Washington, or deposit security, for the limits of liability and on terms and conditions that the commission determines are necessary for the reasonable protection of the public against damage and injury for which the carrier may be liable by reason of the operation of any motor vehicle.

In fixing the amount of the insurance policy or policies, or deposit of security, the commission shall consider the character and amount of traffic and the number of persons affected and the degree of danger that the proposed operation involves. [2007 c 234 § 78; 1986 c 191 § 5; 1961 c 14 § 81.80.190. Prior: 1935 c 184 § 16; RRS § 6382-16.]

**Construction—Severability—1986 c 191:** See RCW 43.200.905 and 43.200.906.

**81.80.195 Liability insurance requirements exclusive.** This chapter shall exclusively govern the liability insurance requirements for motor vehicle common and contract carriers. Any motor vehicle that meets the public liability requirements prescribed under RCW 81.80.190 shall not be required to comply with any ordinances of a city or county prescribing insurance requirements. [1989 c 264 § 2.]

**Policy—1989 c 264:** "The state legislature has prescribed what requirements are necessary for public liability insurance for motor vehicle common and contract carriers to adequately protect both public and private property, both real and personal. It is therefore necessary and desirable for the state to prevent each city or county from applying its own separate insurance regulations in addition to those required by the commission." [1989 c 264 § 1.]

**81.80.200 Conditions may be attached to permits.**

The commission is hereby vested with power and authority in issuing permits to any of the carriers classified in accordance with RCW 81.80.120 to attach thereto such terms and conditions and to require such insurance or security as it may deem necessary for the protection of the public highways and to be for the best interest of the shipping and the general public. All such regulations and conditions shall be deemed temporary and may be revoked by the commission upon recommendation of the state or county authorities in charge of highway maintenance or safety when in the judgment of such authorities such revocation is required in order to protect the public or preserve the public highways. [1961 c 14 § 81.80.200. Prior: 1937 c 166 § 14; 1935 c 184 § 17; RRS § 6382-17.]

**81.80.211 Hours of operators—Rules and regulations.** The commission may adopt rules and regulations relating to the hours of duty of motor carrier drivers and operators. [1961 c 14 § 81.80.211. Prior: 1953 c 95 § 23.]

(2008 Ed.)

**81.80.220 Tariff rates to be charged.** A household goods carrier shall not collect or receive a greater, less, or different remuneration for the transportation of property or for any service in connection therewith than the rates and charges that are either legally established and filed with the commission or are specified in the contract or contracts filed. A household goods carrier shall not refund or remit in any manner or by any device any portion of the rates and charges required to be collected by each tariff or contract or filing with the commission.

The commission may check the records of all carriers under this chapter and of those employing the services of the carrier to discover all discriminations, under or overcharges, and rebates, and may suspend or revoke permits for violations of this section.

The commission may refuse to accept any time schedule, tariff, or contract that, in the opinion of the commission, limits the service of a carrier to profitable trips only or to the carrying of high class commodities in competition with other carriers who give a complete service affording one carrier an unfair advantage over a competitor. [2007 c 234 § 79; 1961 c 14 § 81.80.220. Prior: 1937 c 166 § 16; 1935 c 184 § 19; RRS § 6382-19.]

**81.80.230 Penalty for rebating, etc.—Procedure for collection.**

Any person, whether a household goods carrier subject to this chapter, shipper, or consignee, or any officer, employee, agent, or representative thereof, who: (1) Offers, grants, gives, solicits, accepts, or receives any rebate, concession, or discrimination in violation of this chapter; (2) by means of any false statement or representation, or by the use of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease, or bill of sale, or by any other means or device assists, suffers, or permits any person or persons, natural or artificial, to obtain transportation of property subject to this chapter for less than the applicable rate, fare, or charge; or (3) fraudulently seeks to evade or defeat regulation of motor carriers under this chapter is subject to a civil penalty of not more than one hundred dollars for each violation. Each and every violation is a separate and distinct offense, and in case of a continuing violation every day's continuance is a separate and distinct violation. Every act or omission that procures, aids, or abets in the violation is also a violation under this section and subject to the penalty under this section.

The penalty under this section is due and payable when the person incurring the penalty receives a notice in writing from the commission describing the violation with reasonable particularity and advising the person that the penalty is due. The commission may, upon a written application received within fifteen days, remit or mitigate any penalty under this section or discontinue any prosecution to recover the penalty upon such terms as the commission in its discretion deems proper. The commission may ascertain the facts on all applications. If the penalty is not paid to the commission within fifteen days after receipt of the notice imposing the penalty, or the application for remission or mitigation is not made within fifteen days after the violator has received notice of the disposition of the application, the attorney general shall bring an action in the name of the state of Washington in the superior court of Thurston county or another county

where the violator may do business, to recover the penalty. In all such actions, the procedure and rules of evidence are the same as in an ordinary civil action except as otherwise provided in this section. All penalties recovered under this section must be paid into the state treasury and credited to the public service revolving fund. [2007 c 234 § 80; 1980 c 132 § 2; 1961 c 14 § 81.80.230. Prior: 1947 c 264 § 6; Rem. Supp. 1947 § 6382-19a.]

**Effective date—1980 c 132:** See note following RCW 81.29.020.

**81.80.250 Bond to protect shippers and consignees.**

The commission may require any household goods carrier to file a surety bond, or deposit security, in an amount determined by the commission, that is conditioned on the carrier compensating the shippers and consignees for all money belonging to the shippers and consignees, and coming into the possession of the carrier in connection with its transportation service. Any household goods carrier required by law to compensate a shipper or consignee for any loss, damage, or default, for which a connecting common carrier is legally responsible, must be subrogated to the rights of the shipper or consignee under any bond or deposit of security to the extent of the amount paid. [2007 c 234 § 81; 1961 c 14 § 81.80.250. Prior: 1935 c 184 § 21; RRS § 6382-21.]

**81.80.260 Operation in more than one class.** It is unlawful for any household goods carrier to operate any vehicle at the same time in more than one class of operation, except upon approval of the commission and a finding that the operation is in the public interest.

An exempt carrier shall not transport property for compensation except as provided under this chapter. [2007 c 234 § 82; 1967 c 69 § 3; 1961 c 14 § 81.80.260. Prior: 1935 c 184 § 22; RRS § 6382-22.]

**Severability—1967 c 69:** See note following RCW 81.80.010.

**81.80.270 Permits—Acquisition of carrier holding permit—Commission approval—Duties on cessation of operation.** Permits issued under this chapter are neither irrevocable nor subject to transfer or assignment except upon a proper showing that property rights might be affected thereby, and then in the discretion of the commission.

Any person, partnership, or corporation, singly or in combination with any other person, partnership, or corporation, whether a household goods carrier holding a permit or otherwise, or any combination of such, shall not acquire control or enter into any agreement or arrangement to acquire control of a household goods carrier holding a permit through ownership of its stock or through purchase, lease, or contract to manage the business, or otherwise, except after and with the approval and authorization of the commission. However, upon the dissolution of a partnership, which holds a permit, because of the death, bankruptcy, or withdrawal of a partner where the partner's interest is transferred to his or her spouse or to one or more remaining partners, or in the case of a corporation which holds a permit, in the case of the death of a shareholder where a shareholder's interest upon death is transferred to his or her spouse or to one or more of the remaining shareholders, the commission shall transfer the permit to the newly organized partnership that is substantially

composed of the remaining partners, or continue the corporation's permit without hearing and protest. In all other cases, any transaction either directly or indirectly entered into without approval of the commission is void, and it is unlawful for any person seeking to acquire or divest control of the permit to be a party to the transaction without approval of the commission.

Every carrier who ceases operation and abandons his or her rights under the permits issued to him or her shall notify the commission within thirty days of the cessation or abandonment. [2007 c 234 § 83; 1973 c 115 § 12; 1969 ex.s. c 210 § 12; 1965 ex.s. c 134 § 1; 1963 c 59 § 6; 1961 c 14 § 81.80.270. Prior: 1959 c 248 § 24; 1937 c 166 § 18; 1935 c 184 § 23; RRS § 6382-23.]

**81.80.272 Transfer of decedent's interest—Temporary continuance of operations.**

Except as otherwise provided in RCW 81.80.270, any permit granted or issued to any household goods carrier under this chapter and held by a person alone or in conjunction with others other than as stockholders in a corporation at the time of his or her death is transferable as any other right or interest of the person's estate subject to the following:

(1) Application for transfer must be made to the commission in a form and contain information prescribed by the commission. The transfer described in the application must be approved if it appears from the application or from any hearing held thereon or from any investigation thereof that the proposed transferee is fit, willing, and able properly to perform the services authorized by the permit to be transferred and to conform to the provisions of this chapter and the requirements, rules, and regulations of the commission, otherwise the application must be denied.

(2) Temporary continuance of motor carrier operations without prior compliance with this section is recognized as justified by the public interest when the personal representatives, heirs, or surviving spouses of deceased persons desire to continue the operations of the carriers whom they succeed in interest subject to reasonable rules and regulations prescribed by the commission.

In case of temporary continuance under this section, the successor shall immediately procure insurance or deposit security as required by RCW 81.80.190.

Immediately upon any temporary continuance of motor carrier operations and in any event not more than thirty days thereafter, the successor shall give notice of the succession by written notice to the commission containing information prescribed by the commission. [2007 c 234 § 84; 1973 c 115 § 13; 1965 ex.s. c 134 § 2.]

**81.80.280 Cancellation, suspension, and alteration of permits.**

Permits may be canceled, suspended, altered, or amended by the commission upon complaint by any interested party, or upon the commission's own motion after notice and opportunity for hearing, when the permittee or permittee's agent has repeatedly violated this chapter, the rules and regulations of the commission, or the motor laws of this state or of the United States, or the household goods carrier has made unlawful rebates or has not conducted its operation in accordance with the permit. The commission may

enjoin any person from any violation of this chapter, or any order, rule, or regulation made by the commission pursuant to the terms hereof. If the suit is instituted by the commission, a bond is not required as a condition to the issuance of the injunction. [2007 c 234 § 85; 1987 c 209 § 1; 1961 c 14 § 81.80.280. Prior: 1935 c 184 § 24; RRS § 6382-24.]

**81.80.290 Rules and regulations.** The commission shall have power and authority, by general order or otherwise, to prescribe rules and regulations in conformity with this chapter to carry out the purposes thereof, applicable to any and all "motor carriers," or to any persons transporting property by motor vehicle for compensation even though they do not come within the term "motor carrier" as herein defined.

The commission shall mail each holder of a permit under this chapter a copy of such rules and regulations. [1961 c 14 § 81.80.290. Prior: 1935 c 184 § 25; RRS § 6382-25.]

*Violation of rules pertaining to vehicle equipment on motor carriers transporting hazardous material: RCW 46.48.175.*

**81.80.305 Markings required—Exemptions.** (1) All motor vehicles, other than those exempt under subsection (2) of this section, must display a permanent marking identifying the name or number, or both, on each side of the power units. For a motor vehicle that is a common or contract carrier under permit by the commission as described in subsection (3)(a) of this section, a private carrier under subsection (4) of this section, or a leased carrier as described in subsection (5) of this section, any required identification that is added, modified, or renewed after September 1, 1991, must be displayed on the driver and passenger doors of the power unit. The identification must be in a clearly legible style with letters no less than three inches high and in a color contrasting with the surrounding body panel.

(2) This section does not apply to (a) vehicles exempt under RCW 81.80.040, and (b) vehicles operated by private carriers that singly or in combination are less than thirty-six thousand pounds gross vehicle weight.

(3) If the motor vehicle is operated as (a) a common or contract carrier under a permit by the commission, the identification must contain the name of the permittee, or business name, and the permit number, or (b) a common or contract carrier holding both intrastate and interstate authority, the identification may be either the commission permit number or the federal vehicle marking requirement established by the United States department of transportation for interstate motor carriers.

(4) If the motor vehicle is a private carrier, the identification must contain the name and address of either the business operating the vehicle or the registered owner.

(5) If the motor vehicle is operated under lease, the vehicle must display either permanent markings or placards on the driver and passenger doors of the power unit. A motor vehicle under lease (a) that is operated as a common or contract carrier under permit by the commission must display identification as provided in subsection (3)(a) of this section, and (b) that is operated as a private carrier must display identification as provided in subsection (4) of this section. [2007 c 234 § 86; 1991 c 241 § 1.]

(2008 Ed.)

**81.80.321 Regulatory fee—Based on gross income—Legislative intent—Delinquent fee payments—Public service revolving fund.** In addition to all other fees to be paid, a common carrier and contract carrier shall pay a regulatory fee of no more than 0.0025 of its gross income from intrastate operations for the previous calendar year, or such other period as the commission designates by rule. The carrier shall pay the fee no later than four months after the end of the appropriate period and shall include with the payment such information as the commission requires by rule.

The legislature intends that the fees collected under this chapter shall reasonably approximate the cost of supervising and regulating motor carriers subject to this chapter, and to that end the commission may by general order decrease fees provided in this section if it determines that the moneys then in the motor carrier account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating carriers.

Any payment of the fee imposed by this section made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month.

All fees collected under any other provision of this chapter must be paid to the commission. The commission shall transmit the fees to the state treasurer within thirty days for deposit to the credit of the public service revolving fund. [1994 c 83 § 4; 1993 c 97 § 3.]

**Effective date—1993 c 97 §§ 2, 3, and 7:** "Sections 2, 3, and 7 of this act take effect January 1, 1994." [1993 c 97 § 8.]

**81.80.330 Enforcement of chapter.** The commission may administer and enforce all provisions of this chapter and inspect the vehicles, books, and documents of all motor carriers and the books, documents, and records of those using the service of the carriers for the purpose of discovering all discriminations and rebates and other information pertaining to the enforcement of this chapter and shall prosecute violations thereof. The commission shall employ auditors, inspectors, clerks, and assistants necessary for the enforcement of this chapter. The Washington state patrol shall perform all motor carrier safety inspections required by this chapter, including terminal safety audits, except for (1) those carriers subject to the economic regulation of the commission, or (2) a vehicle owned or operated by a carrier affiliated with a solid waste company subject to economic regulation by the commission. The Washington state patrol and the sheriffs of the counties shall make arrests and the county attorneys shall prosecute violations of this chapter. [2007 c 234 § 87; 1995 c 272 § 5; 1980 c 132 § 3; 1961 c 14 § 81.80.330. Prior: 1935 c 184 § 29; RRS § 6382-29.]

**Effective dates—1995 c 272:** See note following RCW 46.32.090.

**Effective date—1980 c 132:** See note following RCW 81.29.020.

**81.80.345 Venue—Hearings on applications.** Hearings on applications shall be heard in the county or adjoining county for which authority to operate is being applied. If more than one county is involved, the commission may hold the hearings at a location that will afford the greatest opportunity for testimony by witnesses representing the area for which authority to operate is being applied. [1988 c 58 § 1; 1963 c 242 § 3.]

**81.80.355 Unlawful advertising—Penalty.** Any person not holding a permit authorizing him to operate as a common carrier, contract carrier, or temporary carrier for the transportation of property for compensation in this state, or an exempt carrier, who displays on any building, vehicle, billboard or in any manner, any advertisement of, or by circular, letter, newspaper, magazine, poster, card or telephone directory, advertises the transportation of property for compensation shall be guilty of a misdemeanor and punishable as such. [1961 c 14 § 81.80.355. Prior: 1957 c 205 § 8; 1953 c 95 § 22.]

**81.80.357 Advertising—Household goods—Permit number required—Penalty.** (1) No person in the business of transporting household goods as defined by the commission in intrastate commerce shall advertise without listing the carrier's Washington utilities and transportation commission permit number in the advertisement.

(2) As of June 9, 1994, all advertising, contracts, correspondence, cards, signs, posters, papers, and documents which show a household goods motor carrier name or address shall show the carrier's Washington utilities and transportation commission permit number. The alphabetized listing of household good[s] motor carriers appearing in the advertising sections of telephone books or other directories and all advertising that shows the carrier's name or address shall show the carrier's current Washington utilities and transportation commission permit number.

(3) Advertising by electronic transmission need not contain the carrier's Washington utilities and transportation commission permit number if the carrier provides it to the person selling the advertisement and it is recorded in the advertising contract.

(4) No person shall falsify a Washington utilities and transportation commission permit number or use a false or inaccurate Washington utilities and transportation commission permit number in connection with any solicitation or identification as an authorized household goods motor carrier.

(5) If, upon investigation, the commission determines that a motor carrier or person acting in the capacity of a motor carrier has violated this section, the commission may issue a penalty not to exceed five hundred dollars for every violation. [1994 c 168 § 1.]

**81.80.360 Procedure—Penalties—General statute invoked.** All applicable provisions of this title, relating to procedure, powers of the department and penalties, shall apply to the operation and regulation of persons under this chapter, except insofar as such provisions may conflict with provisions of this chapter and rules and regulations issued thereunder by the commission. [1961 c 14 § 81.80.360. Prior: 1937 c 166 § 22; RRS § 6382-31a.]

**81.80.370 Application to interstate and foreign commerce.** This chapter applies to persons and motor vehicles engaged in interstate or foreign commerce to the full extent permitted by the Constitution and laws of the United States. [2007 c 234 § 88; 1961 c 14 § 81.80.370. Prior: 1935 c 184 § 32; RRS § 6382-32.]

**81.80.371 Federal authority and registration for compensatory services.** It is unlawful for any motor carrier to perform a transportation service for compensation upon the public highways of this state without first having secured appropriate federal authority from the United States department of transportation, if the authority is required, and without first having registered with the commission either directly or through a federally authorized uniform registration program. [2007 c 234 § 89; 1963 c 59 § 9.]

**81.80.430 Brokers and forwarders.** (1) A person who provides brokering or forwarding services for the transportation of property in intrastate commerce shall file with the commission and keep in effect, a surety bond or deposit of satisfactory security, in a sum to be determined by the commission, but not less than five thousand dollars, conditioned upon the broker or forwarder compensating shippers, consignees, and carriers for all moneys belonging to them and coming into the broker's or forwarder's possession in connection with the transportation service.

(2) Failure to file the bond or deposit security is sufficient cause for the commission to refuse to grant the application for a permit or registration. Failure to maintain the bond or the deposit of security is sufficient cause for cancellation of a permit or registration. [2007 c 234 § 90; 1991 c 146 § 1; 1990 c 109 § 1; 1989 c 60 § 2; 1988 c 31 § 2.]

**81.80.470 Recyclable materials collection and transportation—Construction.** (1) The collection or transportation of recyclable materials from a drop box or recycling buy-back center, or collection or transportation of recyclable materials by or on behalf of a commercial or industrial generator of recyclable materials to a recycler for use or reclamation is subject to regulation under this chapter.

(2) Nothing in this chapter changes RCW 81.77.010(8), to allow any entity, other than a solid waste collection company authorized by the commission or an entity collecting solid waste from a city or town under chapter 35.21 or 35A.21 RCW, to collect solid waste that may incidentally contain recyclable materials. [2007 c 234 § 91.]

## Chapter 81.84 RCW

### COMMERCIAL FERRIES

(Formerly: Steamboat companies)

#### Sections

81.84.010	Certificate of convenience and necessity required—Service initiation—Progress reports.
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81.84.050	Penalties—Remission, mitigation.
81.84.060	Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.
81.84.070	Temporary certificate—Immediate and urgent need—Waiver of provisions during state of emergency.

*Cities and towns may acquire and operate ferries: RCW 35.21.110.*

*Department of transportation as common carrier: RCW 47.60.220.*

*Excessive steam in boilers: RCW 70.54.080.*

*Lien on ships, equipment for labor, material, handling cargo, etc.: Chapter 60.36 RCW.*

*Navigation and harbor improvements: Title 88 RCW.*

*Privately owned ferries, county licensing: Chapter 36.53 RCW.*

*Tidelands, shorelands, harbor areas: Chapters 79.115, 79.125 RCW.*

**81.84.010 Certificate of convenience and necessity required—Service initiation—Progress reports.** (1) A commercial ferry may not operate any vessel or ferry for the public use for hire between fixed termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the commission a certificate declaring that public convenience and necessity require such operation. Service authorized by certificates issued before or after July 25, 1993, to a commercial ferry operator must be exercised by the operator in a manner consistent with the conditions established in the certificate or tariffs. However, a certificate is not required for a vessel primarily engaged in transporting freight other than vehicles, whose gross earnings from the transportation of passengers or vehicles, or both, are not more than ten percent of the total gross annual earnings of such vessel. This section does not affect the right of any county public transportation benefit area or other public agency within this state to construct, condemn, purchase, operate, or maintain, itself or by contract, agreement, or lease, with any person, firm, or corporation, ferries or boats across the waters within this state, including rivers and lakes and Puget Sound, if the operation is not over the same route or between the same districts being served by a certificate holder without first acquiring the rights granted to the certificate holder under the certificate.

(2) The holder of a certificate of public convenience and necessity granted under this chapter must initiate service within five years of obtaining the certificate, except that the holder of a certificate of public convenience and necessity for passenger-only ferry service in Puget Sound must initiate service within twenty months of obtaining the certificate. The certificate holder shall report to the commission every six months after the certificate is granted on the progress of the certificated route. The reports shall include, but not be limited to, the progress of environmental impact, parking, local government land use, docking, and financing considerations. Except in the case of passenger-only ferry service in Puget Sound, if service has not been initiated within five years of obtaining the certificate, the commission may extend the certificate on a twelve-month basis for up to three years if the six-month progress reports indicate there is significant advancement toward initiating service. [2007 c 234 § 92. Prior: 2003 c 373 § 4; 2003 c 83 § 211; 1993 c 427 § 2; 1961 c 14 § 81.84.010; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

**Findings—Intent—2003 c 373:** See note following RCW 47.64.090.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**81.84.020 Application—Hearing—Issuance of certificate—Determining factors.** (1) Upon the filing of an application, the commission shall give reasonable notice to the department, affected cities, counties, and public transportation benefit areas and any common carrier which might be adversely affected, of the time and place for hearing on such application. The commission may, after notice and an oppor-

tunity for a hearing, issue the certificate as prayed for, or refuse to issue it, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by the certificate any terms and conditions as in its judgment the public convenience and necessity may require; but the commission may not grant a certificate to operate between districts or into any territory prohibited by RCW 47.60.120 or already served by an existing certificate holder, unless the existing certificate holder has failed or refused to furnish reasonable and adequate service, has failed to provide the service described in its certificate or tariffs after the time allowed to initiate service has elapsed, or has not objected to the issuance of the certificate as prayed for.

(2) Before issuing a certificate, the commission shall determine that the applicant has the financial resources to operate the proposed service for at least twelve months, based upon the submission by the applicant of a pro forma financial statement of operations. Issuance of a certificate must be determined upon, but not limited to, the following factors: Ridership and revenue forecasts; the cost of service for the proposed operation; an estimate of the cost of the assets to be used in providing the service; a statement of the total assets on hand of the applicant that will be expended on the proposed operation; and a statement of prior experience, if any, in such field by the applicant. The documentation required of the applicant under this section must comply with the provisions of RCW 9A.72.085.

(3) In granting a certificate for passenger-only ferries and determining what conditions to place on the certificate, the commission shall consider and give substantial weight to the effect of its decisions on public agencies operating, or eligible to operate, passenger-only ferry service.

(4) Until July 1, 2007, the commission shall not accept or consider an application for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million people. Applications for passenger-only ferry service serving any county in the Puget Sound area with a population of over one million pending before the commission as of May 9, 2005, must be held in abeyance and not be considered before July 1, 2007. [2007 c 234 § 93; 2006 c 332 § 11. Prior: 2005 c 313 § 609; 2005 c 121 § 7; 2003 c 373 § 5; 2003 c 83 § 212; 1993 c 427 § 3; 1961 c 14 § 81.84.020; prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

**Severability—2005 c 313:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 313 § 901.]

**Effective date—2005 c 313:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 9, 2005]." [2005 c 313 § 902.]

**Findings—Intent—2003 c 373:** See note following RCW 47.64.090.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**81.84.025 Certificate—Insurance or bond required—Amounts.** The commission, in granting a certificate to operate as a commercial ferry, shall require the operator to first obtain liability and property damage insurance from a company licensed to write liability insurance in the state or a surety bond of a company licensed to write surety

bonds in the state, on each vessel or ferry to be used, in the amount of not less than one hundred thousand dollars for any recovery for personal injury by one person, and not less than one million dollars and in such additional amount as the commission shall determine, for all persons receiving personal injury and property damage by reason of one act of negligence, and not less than fifty thousand dollars for damage to property of any person other than the insured; or combined bodily injury and property damage liability insurance of not less than one million dollars, and to maintain such liability and property damage insurance or surety bond in force on each vessel or ferry while so used. Each policy for liability or property damage insurance or surety bond required by this section must be filed with the commission and kept in full force and effect, and failure to do so is cause for revocation of the operator's certificate. [1993 c 427 § 4.]

**81.84.030 Certificate—Transfer.** No certificate or any right or privilege thereunder held, owned, or obtained under the provisions of this chapter shall be sold, assigned, leased, mortgaged, or in any manner transferred, either by the act of the parties or by operation of law, except upon authorization by the commission first obtained. [1993 c 427 § 5; 1961 c 14 § 81.84.030. Prior: 1950 ex.s. c 6 § 1, part; 1927 c 248 § 1, part; RRS § 10361-1, part.]

**81.84.040 Filing fees.** Any application for a certificate of public convenience and necessity or amendment thereof, or application to sell, lease, mortgage, or transfer a certificate of public convenience and necessity or any interest therein, shall be accompanied by such filing fee as the commission may prescribe by rule: PROVIDED, That such fee shall not exceed two hundred dollars. [1973 c 115 § 14; 1961 c 14 § 81.84.040. Prior: 1955 c 125 § 10; prior: 1939 c 123 § 3, part; 1937 c 158 § 4, part; RRS § 10417-3, part.]

**81.84.050 Penalties—Remission, mitigation.** Every commercial ferry and every officer, agent, or employee of any commercial ferry who violates or who procures, aids, or abets in the violation of any provision of this title, or any order, rule, regulation, or decision of the commission shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids, or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty herein provided for.

The penalty herein provided for shall become due and payable when the person incurring the same receives a notice in writing from the commission describing such violation with reasonable particularity and advising such person that the penalty is due.

The commission may, upon written application therefor, received within fifteen days, remit or mitigate any penalty provided for in this section or discontinue any prosecution to recover the same upon such terms as it in its discretion shall deem proper, and shall have authority to ascertain the facts

upon all such applications in such manner and under such regulations as it may deem proper.

If the amount of such penalty is not paid to the commission within fifteen days after receipt of notice imposing the same or, if application for remission or mitigation has not been made, within fifteen days after the violator has received notice of the disposition of such application, the attorney general shall bring an action to recover the penalty in the name of the state of Washington in the superior court of Thurston county or of some other county in which such violator may do business. In all such actions the procedure and rules of evidence shall be the same as in ordinary civil actions except as otherwise herein provided. All penalties recovered by the state under this chapter shall be paid into the state treasury and credited to the public service revolving fund. [1993 c 427 § 6; 1961 c 14 § 81.84.050. Prior: 1937 c 169 § 6; RRS § 10361-2.]

**81.84.060 Certificate—Grounds for cancellation, revocation, suspension, alteration, or amendment.** The commission, upon complaint by an interested party, or upon its own motion after notice and opportunity for hearing, may cancel, revoke, suspend, alter, or amend a certificate issued under this chapter on any of the following grounds:

(1) Failure of the certificate holder to initiate service by the conclusion of the fifth year after the certificate has been granted or by the conclusion of an extension granted under RCW 81.84.010(2), if the commission has considered the progress report information required under RCW 81.84.010(2);

(2) Failure of a certificate holder for passenger-only ferry service in Puget Sound to initiate service by the conclusion of the twentieth month after the certificate has been granted;

(3) Failure of the certificate holder to file an annual report;

(4) The filing by a certificate holder of an annual report that shows no revenue in the previous twelve-month period after service has been initiated;

(5) The violation of any provision of this chapter;

(6) The violation of or failure to observe the provisions or conditions of the certificate or tariffs;

(7) The violation of an order, decision, rule, regulation, or requirement established by the commission under this chapter;

(8) Failure of a certificate holder to maintain the required insurance coverage in full force and effect; or

(9) Failure or refusal to furnish reasonable and adequate service after initiating service.

The commission shall take appropriate action within thirty days upon a complaint by an interested party or of its own finding that a provision of this section has been violated. [2007 c 234 § 97; 2003 c 373 § 6; 2003 c 83 § 213; 1993 c 427 § 7.]

**Findings—Intent—2003 c 373:** See note following RCW 47.64.090.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**81.84.070 Temporary certificate—Immediate and urgent need—Waiver of provisions during state of emergency.** The commission may, with or without a hearing,

issue temporary certificates to operate under this chapter, but only after it finds that the issuance of the temporary certificate is necessary due to an immediate and urgent need and is otherwise consistent with the public interest. The certificate may be issued for a period of up to one hundred eighty days. The commission may prescribe such special rules and impose special terms and conditions on the granting of the certificate as in its judgment are reasonable and necessary in carrying out this chapter. The commission shall collect a filing fee, not to exceed two hundred dollars, for each application for a temporary certificate. The commission shall not issue a temporary certificate to operate on a route for which a certificate has been issued or for which an application by another commercial ferry operator is pending.

During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 416; 1993 c 427 § 8.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

## Chapter 81.88 RCW

### GAS AND HAZARDOUS LIQUID PIPELINES

#### Sections

81.88.005	Intent—Findings.
81.88.010	Definitions.
81.88.020	Pipeline corporations—Regulation—Eminent domain.
81.88.030	Pipeline carriers regulated as common carriers.
81.88.040	Violations—Rules—Penalties—Injunctive relief.
81.88.050	Pipeline safety account.
81.88.060	Hazardous liquid pipelines—Safety—Commission's duties.
81.88.065	Gas pipelines—Safety—Commission's duties.
81.88.070	Prevention of third-party excavation damage—Development and distribution of training curricula.
81.88.080	Pipeline mapping system—Commission specifications and evaluations.
81.88.090	Federal certification for pipeline safety program—Commission's duties.
81.88.100	Commission inspection of records, maps, or written procedures.
81.88.110	Pipeline company duties after notice of excavation.
81.88.140	Citizens committee on pipeline safety—Duties—Membership.
81.88.900	Conflict with federal requirements—2000 c 191.
81.88.901	Short title—2000 c 191.
81.88.902	Effective date—2000 c 191.

**81.88.005 Intent—Findings.** (1) The intent of chapter 191, Laws of 2000 is to protect the health and safety of the citizens of the state of Washington and the quality of the state's environment by developing and implementing environmental and public safety measures applicable to persons transporting hazardous liquids and gas by pipeline within the state of Washington. The legislature finds that public safety and the environment may best be protected by adopting standards that are equal to, or more stringent than, those adopted by the federal government, so long as they do not impermissibly interfere with interstate commerce.

(2) The legislature recognizes that additional federal authority is needed to implement a comprehensive pipeline safety program and by chapter 191, Laws of 2000 and other measures directs the state to seek that authority.

(3) It is also the intent of the legislature that the governor work with the state congressional delegation in seeking:

(a) To amend the federal pipeline safety act to delegate authority to qualified states to adopt and enforce standards equal to or more stringent than federal standards;

(b) State authority to administer and enforce federal requirements related to pipeline safety; and

(c) Higher levels of funding for state and federal pipeline safety activities and for states to respond to pipeline accident emergencies.

(4) While the legislature acknowledges that serious accidents have occurred for hazardous liquid and gas pipelines in this nation and elsewhere, it recognizes that there are fundamental differences between hazardous liquid pipelines and gas pipelines and that a different system of safety regulations must be applied for each kind of pipeline. [2000 c 191 § 1.]

**81.88.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Gas" means natural gas, flammable gas, or toxic or corrosive gas.

(3) "Gas pipeline" means all parts of a pipeline facility through which gas moves in transportation, including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies. "Gas pipeline" does not include any pipeline facilities, other than a master meter system, owned by a consumer or consumers of the gas, located exclusively on the consumer or consumers' property, and none of the gas leaves that property through a pipeline.

(4) "Gas pipeline company" means a person or entity constructing, owning, or operating a gas pipeline for transporting gas. "Gas pipeline company" includes a person or entity owning or operating a master meter system. "Gas pipeline company" does not include excavation contractors or other contractors that contract with a gas pipeline company.

(5) "Hazardous liquid" means: (a) Petroleum, petroleum products, or anhydrous ammonia as those terms are defined in 49 C.F.R. Part 195; and (b) carbon dioxide.

(6) "Hazardous liquid pipeline" means all parts of a pipeline facility through which a hazardous liquid moves in transportation including, but not limited to, line pipe, valves, and other appurtenances connected to line pipe, pumping units, fabricated assemblies associated with pumping units, metering and delivery stations and fabricated assemblies therein, and breakout tanks. "Hazardous liquid pipeline" does not include all parts of a pipeline facility through which a hazardous liquid moves in transportation through refining or manufacturing facilities or storage or in-plant piping systems associated with such facilities, a pipeline subject to safety regulations of the United States coast guard, or a pipeline that serves refining, manufacturing, or truck, rail, or vessel terminal facilities, if the pipeline is less than one mile long, measured outside facility grounds, and does not cross an offshore area or a waterway used for commercial navigation.

(7) "Hazardous liquid pipeline company" means a person or entity constructing, owning, or operating a hazardous liq-

uid pipeline. "Hazardous liquid pipeline company" does not include excavation contractors or other contractors that contract with a hazardous liquid pipeline company.

(8) "Line pipe" means a tube, usually cylindrical, through which a hazardous liquid or gas is transported from one point to another.

(9) "Local government" means a political subdivision of the state.

(10) "Master meter system" means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer who either purchases the gas directly through a meter or by any other means, such as by rents.

(11) "Person" means an individual, partnership, franchise holder, association, corporation, a state, a city, a town, a county, or any other political subdivision or instrumentality of a state, and its employees, agents, or legal representatives.

(12) "Pipeline company," without further qualification, means a hazardous liquid pipeline company or a gas pipeline company. [2007 c 142 § 1; 2001 c 238 § 6; 2000 c 191 § 2.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**81.88.020 Pipeline corporations—Regulation—Eminent domain.** All corporations having for one of their principal purposes the construction, maintenance and operation of pipelines and appurtenances for the conveyance and transportation as common carriers of oils, gas, gasoline and other petroleum products shall be subject to control and regulation by the commission in the same manner and to the same extent as other public service corporations. The power of eminent domain is hereby conferred upon such corporations to be used for acquiring rights-of-way for common carrier pipelines and they shall have the right to condemn and appropriate lands and property and interests therein for their use under the same procedure as is provided for the condemnation and appropriation of private property by railway companies, but no private property shall be taken or damaged until the compensation to be made therefor shall have been ascertained and paid as provided in the case of condemnation and appropriation by railway companies. Any property or interest therein acquired by any corporation under the provisions of this section by the exercise of the right of eminent domain shall be used exclusively for the purposes for which it was acquired. In all actions brought under this section to enforce the right of eminent domain, courts wherein such actions are brought may give such actions preference over all other civil actions in the matter of setting the same for hearing or trial and in hearing the same. [1961 c 14 § 81.88.020. Prior: 1951 c 94 § 2; 1915 c 132 § 2; RRS § 9965.]

**81.88.030 Pipeline carriers regulated as common carriers.** Every person, copartnership, corporation or other association now or hereafter engaged in the business of producing from natural deposits and/or carrying or transporting natural gas and/or crude oil or petroleum or the products thereof for hire, by pipelines within this state shall be a common carrier within the meaning and subject to the provisions

of this title: PROVIDED, HOWEVER, That the provisions of this section shall not apply to distribution systems owned and operated under franchise for the sale, delivery, or distribution of natural gas at retail. [1961 c 14 § 81.88.030. Prior: 1933 ex.s. c 61 § 1; RRS § 9965-1.]

**81.88.040 Violations—Rules—Penalties—Injunctive relief.** (1) A person, officer, agent, or employee of a pipeline company who, as an individual or acting as an officer, agent, or employee of such a company, violates or fails to comply with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, or who procures, aids, or abets another person or entity in the violation of or noncompliance with this chapter or a rule adopted under RCW 81.88.060 or 81.88.065, is guilty of a gross misdemeanor.

(2)(a) A pipeline company, or any person, officer, agent, or employee of a pipeline company that violates a provision of this chapter, or a rule adopted under RCW 81.88.060 or 81.88.065, is subject to a civil penalty to be assessed by the commission.

(b) The commission shall adopt rules: (i) Setting penalty amounts, but may not exceed the penalties specified in the federal pipeline safety laws, 49 U.S.C. Sec. 60101 et seq.; and (ii) establishing procedures for mitigating penalties assessed.

(c) In determining the amount of the penalty in a particular instance, the commission shall consider: (i) The appropriateness of the penalty in relation to the position of the person charged with the violation; (ii) the gravity of the violation; and (iii) the good faith of the person or company charged in attempting to achieve compliance after notification of the violation.

(d) The amount of the penalty may be recovered in a civil action in the superior court of Thurston county or of some other county in which the violator may do business. In all actions for recovery, the rules of evidence shall be the same as in ordinary civil actions. All penalties recovered under this section must be paid into the state treasury and credited to the pipeline safety account.

(3) The commission shall adopt rules incorporating by reference other substances designated as hazardous by the secretary of transportation under 49 U.S.C. Sec. 60101(a)(4).

(4) The commission may seek injunctive relief to enforce the provisions of this chapter.

(5) Nothing in this section duplicates the authority of the energy facility site evaluation council under chapter 80.50 RCW. [2007 c 142 § 2; 2000 c 191 § 3; 1998 c 123 § 1.]

**81.88.050 Pipeline safety account.** The pipeline safety account is created in the custody of the state treasurer. All fees received by the commission for the pipeline safety program according to RCW 80.24.060 and 81.24.090 and all receipts from the federal office of pipeline safety and any other state or federal funds provided for pipeline safety shall be deposited in the account. Any penalties collected under this chapter, or otherwise designated to this account must be deposited in the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for funding pipeline safety. [2007 c 142 § 3; 2001 c 238 § 7; 2000 c 191 § 4.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**81.88.060 Hazardous liquid pipelines—Safety—Commission’s duties.** (1) Each hazardous liquid pipeline company shall design, construct, operate, and maintain its hazardous liquid pipeline so that it is safe and efficient. Each hazardous liquid pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to hazardous liquid pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 4; 2001 c 238 § 9; 2000 c 191 § 5.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**81.88.065 Gas pipelines—Safety—Commission’s duties.** (1) Each gas pipeline company shall design, construct, operate, and maintain its gas pipeline so that it is safe and efficient. Each gas pipeline company is responsible for the conduct of its contractors regarding compliance with pipeline safety requirements.

(2) The commission shall develop and administer a comprehensive program of gas pipeline safety in accordance with this chapter.

(3) The commission may adopt rules to carry out the purposes of this chapter as long as the rules are compatible with minimum federal requirements.

(4) The commission shall coordinate information related to natural gas pipeline safety by providing technical assistance to local planning and siting authorities. [2007 c 142 § 5.]

**81.88.070 Prevention of third-party excavation damage—Development and distribution of training curricula.**

(1) The commission shall develop, in consultation with representatives of hazardous liquid pipeline companies, gas pipeline companies, local governments, and the excavation and construction industries: (a) A curricula aimed at the prevention of third-party excavation damage to hazardous liquid pipelines and gas pipelines; and (b) a plan for distribution of the curricula.

(2) The curricula shall include training on:

(a) Prevention of damage to hazardous liquid and gas pipelines;

(b) The danger involved if a hazardous liquid or gas pipeline is damaged;

(c) The significance of hazardous liquid or gas pipeline damage that does not cause immediate failure; and

(d) The importance of immediately reporting damage to a hazardous liquid or gas pipeline and the importance of immediately repairing a damaged hazardous liquid or gas pipeline. [2000 c 191 § 6.]

(2008 Ed.)

**81.88.080 Pipeline mapping system—Commission specifications and evaluations.** (1) The commission shall require hazardous liquid pipeline companies, and gas pipeline companies with interstate pipelines, or gas pipelines operating over two hundred fifty pounds per square inch gauge, to provide accurate maps of these pipelines to specifications developed by the commission sufficient to meet the needs of first responders.

(2) The commission shall evaluate the sufficiency of the maps and consolidate the maps into a statewide geographic information system. The commission shall assist local governments in obtaining hazardous liquid and gas pipeline location information and maps. The maps shall be made available to the one-number locator services as provided in chapter 19.122 RCW. The mapping system shall be consistent with the United States department of transportation national pipeline mapping program.

(3) The commission shall periodically update the mapping system. [2007 c 142 § 6; 2000 c 191 § 7.]

**81.88.090 Federal certification for pipeline safety program—Commission’s duties.** The commission shall maintain federal certification for the state’s pipeline safety program. The commission, at a minimum, shall do the following:

(1) Inspect hazardous liquid pipelines and gas pipelines periodically as specified in the inspection program;

(2) Collect fees;

(3) Order and oversee the testing of hazardous liquid pipelines and gas pipelines as authorized by federal law and regulation; and

(4) File reports with the United States secretary of transportation as required to maintain federal certification. [2007 c 142 § 7; 2001 c 238 § 10; 2000 c 191 § 9.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**81.88.100 Commission inspection of records, maps, or written procedures.** The commission may inspect any record, map, or written procedure required by federal law to be kept by a pipeline company concerning releases, and the design, construction, testing, or operation and maintenance of pipelines. Nothing in this section affects the commission’s access to records under any other provision of law. [2007 c 142 § 8; 2000 c 191 § 11.]

**81.88.110 Pipeline company duties after notice of excavation.** A pipeline company that has been notified by an excavator that excavation work will occur near a hazardous liquid pipeline shall ensure that the pipeline company’s representative consults with the excavator on-site prior to the excavation. The pipeline company has the discretion to require that the pipeline section in the vicinity of the excavation is fully uncovered and examined for damage prior to being reburied. [2000 c 191 § 21.]

**81.88.140 Citizens committee on pipeline safety—Duties—Membership.** (1) The citizens committee on pipeline safety is established to advise the state agencies and other appropriate federal and local government agencies and officials on matters relating to hazardous liquid and gas pipeline

safety, routing, construction, operation, and maintenance. The committee shall serve as an advisory committee for the commission on matters relating to the commission's pipeline safety programs and activities. The commission shall consult with and provide periodic reports to the committee on matters related to the commission's pipeline safety programs and activities, including but not limited to the development and regular review of funding elements for pipeline safety programs and activities.

(2) The committee shall have thirteen total members who shall be appointed by the governor to staggered three-year terms and shall consist of: (a) Nine members representing local government, including elected officials and the public; and (b) four nonvoting members, representing owners and operators of hazardous liquid and gas pipelines. All members of the committee, voting and nonvoting, may participate fully in the committee's meetings, activities, and deliberations and shall timely receive all notices and information related to committee business and decisions.

(3) The committee shall review and comment on proposed rules and the operation of the state pipeline safety programs.

(4) The committee may create one or more technical advisory committees comprised of gas and hazardous liquid pipeline owners or operators, agency representatives, natural resource and environmental interests, or other interested parties.

(5) The committee established in this section constitutes a class one group under RCW 43.03.220. Expenses for this group, as well as staff support, shall be provided by the utilities and transportation commission. [2001 c 238 § 11; 2000 c 191 § 14.]

**Intent—Finding—Effective date—2001 c 238:** See notes following RCW 80.24.060.

**81.88.900 Conflict with federal requirements—2000 c 191.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2000 c 191 § 26.]

**81.88.901 Short title—2000 c 191.** This act may be known and cited as the Washington state pipeline safety act. [2000 c 191 § 27.]

**81.88.902 Effective date—2000 c 191.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2000]. [2000 c 191 § 29.]

## Chapter 81.96 RCW

### WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

#### Sections

81.96.010	Ratification and approval—Adherence.
81.96.020	Terms and provisions.
81.96.030	Service of secretary of transportation as state member—Execution of compact.

**81.96.010 Ratification and approval—Adherence.** The western regional short-haul air transportation compact proposed for adoption by the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, is hereby ratified and approved and the adherence of this state to the provisions of this compact, upon its ratification and approval by at least six of the other twelve states, is hereby declared. [1972 ex.s. c 36 § 2.]

**81.96.020 Terms and provisions.** The terms and provisions of the compact referred to in RCW 81.96.010 are as follows:

#### WESTERN REGIONAL SHORT-HAUL AIR TRANSPORTATION COMPACT

##### Article I PURPOSE

The party states recognize that short-haul air transportation is essential to a balanced and efficient transportation system in the West, meeting special needs created by particular geographic and population patterns in both rural and urban areas. They further recognize that it is not economically feasible for the commercial airlines to provide a full complement of short-haul air services or to explore fully the capabilities and limitations of the various types and locations of such services. They also recognize that careful planning, experimentation, and testing are needed before appropriate short-haul air transportation can be developed for all the situations in which it would be beneficial to the economy and general welfare of the western states. To meet this need, the party states agree that a regional compact should be established for the purpose of organizing and conducting a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West.

##### Article II REGIONAL COMMISSION

A. There is hereby established an agency of the party states to be known as the Western Regional Short-Haul Air Transportation Commission (hereinafter called the "Commission").

B. The Commission shall be composed of one member from each party state and one federal member, if authorized by federal law, who shall be the Secretary of Transportation or his designee. Each state member shall be appointed, suspended, or removed and shall serve subject to and in accordance with the laws of the state which he represents.

C. The state members shall each be entitled to one vote on the Commission. No action of the Commission shall be binding unless taken at a meeting at which a majority of all

members representing the party states are present, and unless a majority of the total number of votes on the Commission are cast in favor thereof. The federal member shall not be entitled to a vote on the Commission unless authorized by a majority vote of the state members. The state members may provide that decisions of the Commission shall require the affirmative vote of the federal member and of a majority of the state members, if such provision is necessary in order to meet the requirements of federal law. In matters coming before the Commission, the state members shall, to the extent practicable, consult with representatives of appropriate local subdivisions within their respective states and the federal member, if any, shall consult with the federal departments and agencies having an interest in the subject matter.

D. The state members of the Commission shall elect annually, from among their number, a chairman and a vice chairman. The state members may provide that the chairman so elected shall be designated as the state cochairman and the federal member shall be designated as the federal cochairman, if such provision is necessary in order to meet the requirements of federal law.

E. Each state member shall have an alternate appointed in accordance with the laws of the state which he represents. The federal member, if any, shall have an alternate appointed in accordance with federal law. An alternate shall be entitled to vote in the event of the absence, death, disability, removal, or resignation of the state or federal member for whom he is an alternate.

### Article III

#### FUNCTIONS OF THE COMMISSION

A. It shall be the primary function of the Commission to authorize and effect a series of demonstration programs to test the feasibility of new short-haul air transportation concepts in the West. To carry out this function, the Commission shall have power to:

- (1) Establish basic regional demonstration policy and coordinate with federal policy makers where appropriate;
- (2) Create a management plan and implement programs through a suitable staff;
- (3) Designate demonstration arenas and facilities;
- (4) Select demonstration operators;
- (5) Establish a funding plan for the demonstration programs selected; and
- (6) Establish means of monitoring and evaluating the demonstration programs.

### Article IV

#### ADMINISTRATIVE POWERS AND DUTIES OF THE COMMISSION

A. The Commission shall adopt bylaws, rules, and regulations for the conduct of its business and the performance of its functions, and shall have the power to amend and rescind such bylaws, rules, and regulations. The Commission shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

B. The Commission may accept, use, and dispose of gifts or donations of services or property, real, personal, or mixed,

tangible or intangible, for any of its purposes and functions under this compact.

C. The Commission may enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in carrying out its functions and on such terms as it may deem appropriate, with any department, agency, or instrumentality of the United States or with any state, or any political subdivision, agency, or instrumentality thereof, or with any person, firm, association, or corporation.

D. In order to obtain information needed to carry out its duties, the Commission may hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and print or otherwise reproduce and distribute so much of its proceedings and reports thereon as it may deem advisable. The chairman of the Commission, or any member designated by the Commission for the purpose, shall have authority to administer oaths when it is determined by the Commission that testimony shall be taken or evidence received under oath.

E. The Commission may arrange for the head of any federal, state, or local department or agency to furnish to the Commission such information as may be available to or procurable by such department or agency, relating to the duties and functions of the Commission.

F. The Commission annually shall make to the Governor of each party state, a report covering the activities of the Commission for the preceding year, and embodying such recommendations as may have been adopted by the Commission, which report shall be transmitted to the legislature of said state. The Commission may issue such additional reports as it may deem desirable.

### Article V

#### FINANCES

A. The members of the Commission shall serve without compensation from the Commission, but the compensation and expenses of each state member in attending Commission meetings may be paid by the state he represents in accordance with the laws of that state. All other expenses incurred by the Commission shall be paid by the Commission.

B. The Commission shall submit periodically to the executive head or designated officer of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof. Each such budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The share to be paid by each party state shall be determined by a majority vote of the state members of the Commission. The federal member, if any, shall not participate or vote in such determination. The costs shall be allocated equitably among the party states in accordance with their respective interests.

C. The Commission may meet any of its obligations in whole or in part with funds available to it from the federal government or other sources under Article IV(B) of this compact, provided that the Commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Commission makes use of funds available to it under Article IV(B) of this compact, the Commission shall not incur any

obligation prior to the allotment of funds by the party states adequate to meet the same.

#### Article VI PERSONNEL

A. The Commission may appoint and fix the compensation of an Executive Director, who shall be responsible for the day-to-day management of the operations conducted by the Commission. The Executive Director shall act as secretary-treasurer for the Commission and he, together with such other personnel as the Commission may direct, shall be bonded in such amounts as the Commission may require.

B. The Executive Director shall, with the approval of the Commission, appoint and remove or discharge such technical, clerical or other personnel on a regular, part-time, or consulting basis as may be necessary for the performance of the Commission's functions.

C. Officers and employees of the Commission shall be eligible for social security coverage in respect to old age and survivors' insurance provided the Commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford the officers and employees of the Commission terms and conditions of employment similar to those enjoyed by employees of the party states generally. The Commission shall not be bound by any statute or regulation of any party state in the employment or discharge of any officer or employee.

#### Article VII RECORDS AND AUDIT

A. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the Commission.

B. The audit authorities of each of the party states and of the appropriate federal departments and agencies, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the Commission that are pertinent.

C. The Commission shall keep books and records in compliance with federal requirements and standards where necessary to qualify for federal assistance, including records which fully disclose the amount and disposition of the proceeds of federal assistance the Commission has received, the total cost of the plan, program, or project or undertaking in connection with which such assistance is given or used, and the amount and nature of that portion of the cost of the plan, program, or project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

#### Article VIII ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL

A. Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided, that it shall not become initially effective until enacted into law by 7 states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the Governor of the withdrawing state has given notice to the Governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

#### Article IX CONSTRUCTION AND SEVERABILITY

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate its purposes. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1972 ex.s. c 36 § 3.]

**81.96.030 Service of secretary of transportation as state member—Execution of compact.** The secretary of transportation or his designee may serve as the Washington state member to the western regional short-haul air transportation compact and may execute the compact on behalf of this state with any other state or states legally joining therein. [1984 c 7 § 376; 1972 ex.s. c 36 § 4.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

#### Chapter 81.100 RCW HIGH OCCUPANCY VEHICLE SYSTEMS

##### Sections

81.100.010	Purpose.
81.100.020	Definitions.
81.100.030	Employer tax.
81.100.040	Adoption of goals.
81.100.050	Survey of tax use.
81.100.060	Imposition of surcharge ( <i>as amended by 2006 c 311</i> ).
81.100.060	Excise tax ( <i>as amended by 2006 c 318</i> ).
81.100.070	High occupancy vehicle account.
81.100.080	Use of funds.
81.100.090	Interlocal agreements.
81.100.100	Urban public transportation system.
81.100.900	Construction—Severability—Headings—1990 c 43.

*Use of moneys, construction priority:* See 1990 c 298 § 35.

**81.100.010 Purpose.** The need for mobility, growing travel demand, and increasing traffic congestion in urban areas necessitate accelerated development and increased utilization of the high occupancy vehicle system. RCW 81.100.030 and 81.100.060 provide taxing authority that counties or regional transportation investment districts can use in the near term to accelerate development and increase utilization of the high occupancy vehicle system by supplementing available federal, state, and local funds. [2002 c 56 § 409; 1990 c 43 § 12.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Construction—1990 c 43:** "This act shall be liberally construed to give effect to the intent of this act." [1990 c 43 § 56.]

**Severability—1990 c 43:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 43 § 57.]

**Headings—1990 c 43:** "Section headings, part headings, and the index as used in this act do not constitute any part of the law." [1990 c 43 § 55.]

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

(1) "Transit agency" means a city that operates a transit system, a public transportation benefit area, a county transportation authority, or a metropolitan municipal corporation.

(2) The "high occupancy vehicle system" includes high occupancy vehicle lanes, related high occupancy vehicle facilities, and high occupancy vehicle programs.

(3) "High occupancy vehicle lanes" mean lanes reserved for public transportation vehicles only or public transportation vehicles and private vehicles carrying no fewer than a specified number of passengers under RCW 46.61.165.

(4) "Related facilities" means park and ride lots, park and pool lots, ramps, bypasses, turnouts, signal preemption, and other improvements designed to maximize use of the high occupancy vehicle system.

(5) "High occupancy vehicle program" means advertising the high occupancy vehicle system, promoting carpool, vanpool, and transit use, providing vanpool vehicles, and enforcement of driving restrictions governing high occupancy vehicle lanes. [1990 c 43 § 13.]

**81.100.030 Employer tax.** (1) A county with a population of one million or more, or a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, and having within its boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the tax has not already been imposed by the county, may, with voter approval impose an excise tax of up to two dollars per employee per month on all employers or any class or classes of employers, public and private, including the state located in the agency's jurisdiction, measured by the number of full-time equivalent employees. In no event may the total taxes imposed under this section exceed two dollars per employee per month for any single employer. The county or investment district imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cul-

tural, health, charitable, or religious organizations as it deems appropriate.

Counties or investment districts may contract with the state department of revenue or other appropriate entities for administration and collection of the tax. Such contract shall provide for deduction of an amount for administration and collection expenses.

(2) The tax shall not apply to employment of a person when the employer has paid for at least half of the cost of a transit pass issued by a transit agency for that employee, valid for the period for which the tax would otherwise be owed.

(3) A county or investment district shall adopt rules that exempt from all or a portion of the tax any employer that has entered into an agreement with the county or investment district that is designed to reduce the proportion of employees who drive in single-occupant vehicles during peak commuting periods in proportion to the degree that the agreement is designed to meet the goals for the employer's location adopted under RCW 81.100.040.

The agreement shall include a list of specific actions that the employer will undertake to be entitled to the exemption. Employers having an exemption from all or part of the tax through this subsection shall annually certify to the county or investment district that the employer is fulfilling the terms of the agreement. The exemption continues as long as the employer is in compliance with the agreement.

If the tax authorized in RCW 81.100.060 is also imposed, the total proceeds from both tax sources each year shall not exceed the maximum amount which could be collected under RCW 81.100.060. [2002 c 56 § 410; 1991 c 363 § 153; 1990 c 43 § 14.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**81.100.040 Adoption of goals.** The legislature encourages counties, in conjunction with cities, metropolitan planning organizations, and transit agencies in metropolitan areas to adopt goals for reducing the proportion of commuters who drive in single-occupant vehicles during peak commuting periods. Any county imposing a tax under this chapter must adopt such goals. In adopting these goals, counties shall consider at least the following:

(1) Existing and anticipated levels of peak-period traffic congestion on roadways used by employees in commuting to work;

(2) Existing and anticipated levels of transit and vanpool service and carpool programs available to and from the work-site;

(3) Variations in employment density and employer size;

(4) Availability and cost of parking; and

(5) Consistency of the goals with the regional transportation plan. [1990 c 43 § 15.]

**81.100.050 Survey of tax use.** The department of transportation shall include in the annual transit report under RCW 35.58.2795 and 35.58.2796 an element describing actions taken under this chapter. On at least two occasions prior to December 31, 1998, the department shall include an

evaluation of the effectiveness of such actions. [1990 c 43 § 16.]

**81.100.060 Imposition of surcharge (as amended by 2006 c 311).** A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district (~~for capital improvements~~), but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than three-tenths of one percent in the case of a county, or eight-tenths of one percent in the case of a regional transportation investment district, of the value on vehicles registered to a person residing within the county or investment district and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.

Counties or investment districts imposing a ((tax)) surcharge under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct ((a)) a percentage amount, as provided by contract, not to exceed \*two percent of the taxes, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and \*82.44 RCW shall, insofar as they are applicable to motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section. A surcharge imposed under this section, or a change to the surcharge, shall take effect no sooner than seventy-five days after the department of licensing or the department of revenue receives notice of the surcharge or change to the surcharge, and shall take effect only on the first day of January, April, July, or October. Unless waived by the department of licensing or the department of revenue, notice includes providing the appropriate department with digital mapping and legal descriptions of areas in which the \*\*tax will be collected.

If the tax authorized in RCW 81.100.030 is also imposed, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section. [2006 c 311 § 15; 2002 c 56 § 411; 1998 c 321 § 34 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

**Reviser's note:** \*(1) RCW 82.44.135 authorizes a one percent deduction for the administration and collection of the vehicle surcharge. Both deduction percentages were enacted during the 2006 legislative session. See RCW 1.12.025 for rule of construction.

\*\*\*(2) The term "tax" referred to here apparently refers to the term "surcharge" as implemented in 2006 c 311 § 15.

**Findings—2006 c 311:** See note following RCW 36.120.020.

**81.100.060 Excise tax (as amended by 2006 c 318).** A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system, or a regional transportation investment district for capital improvements, but only to the extent that the surcharge has not already been imposed by the county, may, with voter approval, impose a local surcharge of not more than three-tenths of one percent of the value on vehicles registered to a person residing within the county and not more than 13.64 percent on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county or investment district. A county may impose the surcharge only to the extent that it has not been imposed by the district. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, 46.16.085, or 46.16.090.

Counties or investment districts imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as

provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW, as existing on January 1, 2006, shall, insofar as they are applicable to motor vehicle excise taxes, be applicable to surcharges imposed under this section before June 7, 2006. Motor vehicles subject to the local surcharge authorized in this section shall be administered in accordance with \*this act if the surcharge is first imposed on or after June 7, 2006. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section. [2006 c 318 § 2; 2002 c 56 § 411; 1998 c 321 § 34 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 12; 1991 c 363 § 154; 1990 c 43 § 17.]

**Reviser's note:** \*(1) RCW 82.44.135 authorizes a one percent deduction for the administration and collection of the vehicle surcharge. Both deduction percentages were enacted during the 2006 legislative session. See RCW 1.12.025 for rule of construction.

(2) RCW 81.100.060 was amended twice during the 2006 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Purpose—Severability—1998 c 321:** See notes following RCW 35.58.410.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 82.14.045.

**Legislative intent—1992 c 194:** See note following RCW 82.08.020.

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.*

**81.100.070 High occupancy vehicle account.** Funds collected by the department of revenue or other entity under RCW 81.100.030, or by the department of licensing under RCW 81.100.060, less the deduction for collection expenses, shall be deposited in the high occupancy vehicle account hereby created in the custody of the state treasurer. On the first day of the months of January, April, July, and October of each year, the state treasurer shall distribute the funds in the account to the counties on whose behalf the funds were received. The state treasurer shall make the distribution under this section without appropriation. [1991 sp.s. c 13 §§ 105, 119; 1990 c 43 § 18.]

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

**81.100.080 Use of funds.** (1) Funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon shall be used by the county or the regional transportation investment district in a manner consistent with the regional transportation plan only for costs of collection, costs of preparing, adopting, and enforcing agreements under RCW 81.100.030(3), for construction of high occupancy vehicle lanes and related facilities, mitigation of environmental concerns that result from construction or use of high occupancy vehicle lanes and related facilities, payment of principal and interest on bonds issued for the purposes of this section, for high occupancy vehicle programs as defined in RCW 81.100.020(5), or for commuter rail projects in accordance with RCW 81.104.120. Except for funds raised by an

Chapter 81.104 RCW

HIGH CAPACITY TRANSPORTATION SYSTEMS

Sections

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81.104.130	Financial responsibility.
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81.104.190	Contract for collection of taxes.
81.104.900	Construction—Severability—Headings—1990 c 43.
81.104.901	Section headings not part of law—Severability—Effective date—1992 c 101.

*High capacity transportation account: RCW 47.78.010.*

**81.104.010 Purpose.** Increasing congestion on Washington’s roadways calls for identification and implementation of high capacity transportation system alternatives. The legislature believes that local jurisdictions should coordinate and be responsible for high capacity transportation policy development, program planning, and implementation. The state should assist by working with local agencies on issues involving rights-of-way, partially financing projects meeting established state criteria including development and completion of the high occupancy vehicle lane system, authorizing local jurisdictions to finance high capacity transportation systems through voter-approved tax options, and providing technical assistance and information. [1992 c 101 § 18; 1991 c 318 § 1; 1990 c 43 § 22.]

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

(1) "High capacity transportation system" means a system of public transportation services within an urbanized region operating principally on exclusive rights-of-way, and the supporting services and facilities necessary to implement such a system, including interim express services and high occupancy vehicle lanes, which taken as a whole, provides a substantially higher level of passenger capacity, speed, and service frequency than traditional public transportation systems operating principally in general purpose roadways.

(2) "Rail fixed guideway system" means a light, heavy, or rapid rail system, monorail, inclined plane, funicular, trolley, or other fixed rail guideway component of a high capacity transportation system that is not regulated by the Federal Railroad Administration, or its successor. "Rail fixed guideway system" does not mean elevators, moving sidewalks or stairs, and vehicles suspended from aerial cables, unless they

investment district, no funds collected under RCW 81.100.030 or 81.100.060 after June 30, 2000, may be pledged for the payment or security of the principal or interest on any bonds issued for the purposes of this section. Not more than ten percent of the funds may be used for transit agency high occupancy vehicle programs.

(2) Notwithstanding the limitations in this chapter, a regional transportation investment district may use funds collected under RCW 81.100.030 or 81.100.060 and any investment earnings accruing thereon for projects contained in a plan developed under chapter 36.120 RCW. These expenditures shall not be limited to high occupancy vehicle systems.

(3) Priorities for construction of high occupancy vehicle lanes and related facilities shall be as follows:

(a)(i) To accelerate construction of high occupancy vehicle lanes on the interstate highway system, as well as related facilities;

(ii) To finance or accelerate construction of high occupancy vehicle lanes on the noninterstate state highway system, as well as related facilities.

(b) To finance construction of high occupancy vehicle lanes on local arterials, as well as related facilities.

(4) Moneys received by a county under this chapter shall be used in addition to, and not as a substitute for, moneys currently used by the county for the purposes specified in this section.

(5) Counties and investment districts may contract with cities or the state department of transportation for construction of high occupancy vehicle lanes and related facilities, and may issue general obligation bonds to fund such construction and use funds received under this chapter to pay the principal and interest on such bonds. [2006 c 311 § 14; 1990 c 43 § 19.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**81.100.090 Interlocal agreements.** Counties imposing a tax under this chapter shall enter into an agreement through the interlocal cooperation act with the department of transportation. The agreement shall provide an opportunity for the department of transportation, cities and transit agencies having within their boundaries a portion of the existing or planned high occupancy vehicle system as contained in the regional transportation plan, to coordinate programming and operational decisions affecting the high occupancy vehicle system. If two or more adjoining counties impose a tax under RCW 81.100.030 or 81.100.060, the counties shall jointly enter one interlocal agreement with the department of transportation. [1990 c 43 § 20.]

**81.100.100 Urban public transportation system.** The high occupancy vehicle system is an urban public transportation system as defined in RCW 47.04.082. [1990 c 43 § 21.]

**81.100.900 Construction—Severability—Headings—1990 c 43.** See notes following RCW 81.100.010.

are an integral component of a station served by a rail fixed guideway system.

(3) "Regional transit system" means a high capacity transportation system under the jurisdiction of one or more transit agencies except where a regional transit authority created under chapter 81.112 RCW exists, in which case "regional transit system" means the high capacity transportation system under the jurisdiction of a regional transit authority.

(4) "Transit agency" means city-owned transit systems, county transportation authorities, metropolitan municipal corporations, and public transportation benefit areas. [1999 c 202 § 9; 1992 c 101 § 19.]

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**81.104.020 State policy roles.** The department of transportation's current policy role in transit is expanded to include other high capacity transportation development as part of a multimodal transportation system.

(1) The department of transportation shall implement a program for high capacity transportation coordination, planning, and technical studies with appropriations from the high capacity transportation account.

(2) The department shall assist local jurisdictions and regional transportation planning organizations with high capacity transportation planning efforts. [1991 c 318 § 2; 1990 c 43 § 23.]

**81.104.030 Policy development outside central Puget Sound—Voter approval.** (1) In any county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders, except for any county having a population of more than one million or a county that has a population more than four hundred thousand and is adjacent to a county with a population of more than one million, transit agencies may elect to establish high capacity transportation service. Such agencies shall form a regional policy committee with proportional representation based upon population distribution within the designated service area and a representative of the department of transportation, or such agencies may use the designated metropolitan planning organization as the regional policy committee.

Transit agencies participating in joint regional policy committees shall seek voter approval within their own service boundaries of a high capacity transportation system plan and financing plan. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington.

(2) Transit agencies in counties adjoining state or international boundaries are authorized to participate in the regional high capacity transportation programs of an adjoining state or Canadian province. [1995 2nd sp.s. c 14 § 541; 1993 c 428 § 1; 1992 c 101 § 20; 1991 c 318 § 3; 1991 c 309 § 2; (1991 c 363 § 155 repealed by 1991 c 309 § 6); 1990 c 43 § 24.]

**Severability—1995 2nd sp.s. c 14:** See note following RCW 43.105.017.

**81.104.040 Policy development in central Puget Sound—Voter approval.** Transit agencies in each county with a population of one million or more, and in each county with a population of from two hundred ten thousand to less than one million bordering a county with a population of one million or more that are authorized on January 1, 1991, to provide high capacity transportation planning and operating services must establish through interlocal agreements a joint regional policy committee with proportional representation based upon the population distribution within each agency's designated service area, as determined by the parties to the agreement.

(1) The membership of the joint regional policy committee shall consist of locally elected officials who serve on the legislative authority of the existing transit systems and a representative from the department of transportation. Nonvoting membership for elected officials from adjoining counties may be allowed at the committee's discretion.

(2) The joint regional policy committee shall be responsible for the preparation and adoption of a regional high capacity transportation implementation program, which shall include the system plan, project plans, and a financing plan. This program shall be in conformance with the regional transportation planning organization's regional transportation plan and consistent with RCW 81.104.080.

(3) The joint regional policy committee shall present an adopted high capacity transportation system plan and financing plan to the boards of directors of the transit agencies within the service area or to the regional transit authority, if such authority has been formed. The authority shall proceed as prescribed in RCW 81.112.030. [1992 c 101 § 21; 1991 c 318 § 4; 1990 c 43 § 25.]

**81.104.050 Expansion of service.** Regional high capacity transportation service may be expanded beyond the established district boundaries through interlocal agreements among the transit agencies and any regional transit authorities in existence. [1992 c 101 § 22; 1991 c 318 § 5; 1990 c 43 § 26.]

**81.104.060 State role in planning and implementation.** (1) The state's planning role in high capacity transportation development as one element of a multimodal transportation system should facilitate cooperative state and local planning efforts.

(2) The department of transportation may serve as a contractor for high capacity transportation system and project design, administer construction, and assist agencies authorized to provide service in the acquisition, preservation, and joint use of rights-of-way.

(3) The department and local jurisdictions shall continue to cooperate with respect to the development of high occupancy vehicle lanes and related facilities, associated roadways, transfer stations, people mover systems developed either by the public or private sector, and other related projects.

(4) The department in cooperation with local jurisdictions shall develop policies which enhance the development of high speed interregional systems by both the private and the public sector. These policies may address joint use of rights-of-way, identification and preservation of transporta-

tion corridors, and joint development of stations and other facilities. [1991 c 318 § 6; 1990 c 43 § 27.]

**81.104.070 Responsibility for system implementation.** (1) The state shall not become an operating agent for regional high capacity transportation systems.

(2) Agencies providing high capacity transportation service are responsible for planning, construction, operations, and funding including station area design and development, and parking facilities. Agencies may implement necessary contracts, joint development agreements, and interlocal government agreements. Agencies providing service shall consult with affected local jurisdictions and cooperate with comprehensive planning processes. [1990 c 43 § 28.]

**81.104.080 Regional transportation planning.** Where applicable, regional transportation plans and local comprehensive plans shall address the relationship between urban growth and an effective high capacity transportation system plan, and provide for cooperation between local jurisdictions and transit agencies.

(1) Regional high capacity transportation plans shall be included in the designated regional transportation planning organization's regional transportation plan review and update process to facilitate development of a coordinated multimodal transportation system and to meet federal funding requirements.

(2) Interlocal agreements between transit authorities, cities, and counties shall set forth conditions for assuring land uses compatible with development of high capacity transportation systems. These include developing sufficient land use densities through local actions in high capacity transportation corridors and near passenger stations, preserving transit rights-of-way, and protecting the region's environmental quality. The implementation program for high capacity transportation systems shall favor cities and counties with supportive land use plans. In developing local actions intended to carry out these policies cities and counties shall insure the opportunity for public comment and participation in the siting of such facilities, including stations or transfer facilities. Agencies providing high capacity transportation services, in cooperation with public and private interests, shall promote transit-compatible land uses and development which includes joint development.

(3) Interlocal agreements shall be consistent with state planning goals as set forth in chapter 36.70A RCW. Agreements shall also include plans for concentrated employment centers, mixed-use development, and housing densities that support high capacity transportation systems.

(4) Agencies providing high capacity transportation service and other transit agencies shall develop a cooperative process for the planning, development, operations, and funding of feeder transportation systems. Feeder systems may include existing and future intercity passenger systems and alternative technology people mover systems which may be developed by the private or public sector.

(5) Cities and counties along corridors designated in a high capacity transportation system plan shall enter into agreements with their designated regional transportation planning organizations, for the purpose of participating in a

right-of-way preservation review process which includes activities to promote the preservation of the high capacity transportation rights-of-way. The regional transportation planning organization shall serve as the coordinator of the review process.

(a) Cities and counties shall forward all development proposals for projects within and adjoining to the rights-of-way proposed for preservation to the designated regional transportation planning organizations, which shall distribute the proposals for review by parties to the right-of-way preservation review process.

(b) The regional transportation planning organizations shall also review proposals for conformance with the regional transportation plan and associated regional development strategies. The designated regional transportation planning organization shall within ninety days compile local and regional agency comments and communicate the same to the originating jurisdiction and the joint regional policy committee. [1991 c 318 § 7; 1990 c 43 § 29.]

**81.104.090 Department of transportation responsibilities—Funding of planning projects.** The department of transportation shall be responsible for distributing amounts appropriated from the high capacity transportation account, which shall be allocated by the department of transportation based on criteria in subsection (2) of this section. The department shall assemble and participate in a committee comprised of transit agencies eligible to receive funds from the high capacity transportation account for the purpose of reviewing fund applications.

(1) State high capacity transportation account funds may provide up to eighty percent matching assistance for high capacity transportation planning efforts.

(2) Authorizations for state funding for high capacity transportation planning projects shall be subject to the following criteria:

(a) Conformance with the designated regional transportation planning organization's regional transportation plan;

(b) Local matching funds;

(c) Demonstration of projected improvement in regional mobility;

(d) Conformance with planning requirements prescribed in RCW 81.104.100, and if five hundred thousand dollars or more in state funding is requested, conformance with the requirements of RCW 81.104.110; and

(e) Establishment, through interlocal agreements, of a joint regional policy committee as defined in RCW 81.104.030 or 81.104.040.

(3) The department of transportation shall provide general review and monitoring of the system and project planning process prescribed in RCW 81.104.100. [1995 c 269 § 2602; 1993 c 393 § 2; 1991 c 318 § 8; 1990 c 43 § 30.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Effective date—1993 c 393:** See RCW 47.66.900.

**81.104.100 Planning process.** To assure development of an effective high capacity transportation system, local authorities shall follow the following planning process:

(1) Regional, multimodal transportation planning is the ongoing urban transportation planning process conducted in each urbanized area by its regional transportation planning organization. During this process, regional transportation goals are identified, travel patterns are analyzed, and future land use and travel are projected. The process provides a comprehensive view of the region's transportation needs but does not select specified modes to serve those needs. The process shall identify a priority corridor or corridors for further study of high capacity transportation facilities if it is deemed feasible by local officials.

(2) High capacity transportation system planning is the detailed evaluation of a range of high capacity transportation system options, including: Do nothing, low capital, and ranges of higher capital facilities. To the extent possible this evaluation shall take into account the urban mass transportation administration's requirements identified in subsection (3) of this section.

High capacity transportation system planning shall proceed as follows:

(a) Organization and management. The responsible local transit agency or agencies shall define roles for various local agencies, review background information, provide for public involvement, and develop a detailed work plan for the system planning process.

(b) Development of options. Options to be studied shall be developed to ensure an appropriate range of technologies and service policies can be evaluated. A do-nothing option and a low capital option that maximizes the current system shall be developed. Several higher capital options that consider a range of capital expenditures for several candidate technologies shall be developed.

(c) Analysis methods. The local transit agency shall develop reports describing the analysis and assumptions for the estimation of capital costs, operating and maintenance costs, methods for travel forecasting, a financial plan and an evaluation methodology.

(d) The system plan submitted to the voters pursuant to RCW 81.104.140 shall address, but is not limited to the following issues:

(i) Identification of level and types of high capacity transportation services to be provided;

(ii) A plan of high occupancy vehicle lanes to be constructed;

(iii) Identification of route alignments and station locations with sufficient specificity to permit calculation of costs, ridership, and system impacts;

(iv) Performance characteristics of technologies in the system plan;

(v) Patronage forecasts;

(vi) A financing plan describing: Phasing of investments; capital and operating costs and expected revenues; cost-effectiveness represented by a total cost per system rider and new rider estimate; estimated ridership and the cost of service for each individual high capacity line; and identification of the operating revenue to operating expense ratio.

The financing plan shall specifically differentiate the proposed use of funds between high capacity transportation facilities and services, and high occupancy vehicle facilities;

(vii) Description of the relationship between the high capacity transportation system plan and adopted land use plans;

(viii) An assessment of social, economic, and environmental impacts; and

(ix) Mobility characteristics of the system presented, including but not limited to: Qualitative description of system/service philosophy and impacts; qualitative system reliability; travel time and number of transfers between selected residential, employment, and activity centers; and system and activity center mode splits.

(3) High capacity transportation project planning is the detailed identification of alignments, station locations, equipment and systems, construction schedules, environmental effects, and costs. High capacity transportation project planning shall proceed as follows: The local transit agency shall analyze and produce information needed for the preparation of environmental impact statements. The impact statements shall address the impact that development of such a system will have on abutting or nearby property owners. The process of identification of alignments and station locations shall include notification of affected property owners by normal legal publication. At minimum, such notification shall include notice on the same day for at least three weeks in at least two newspapers of general circulation in the county where such project is proposed. Special notice of hearings by the conspicuous posting of notice, in a manner designed to attract public attention, in the vicinity of areas identified for station locations or transfer sites shall also be provided.

In order to increase the likelihood of future federal funding, the project planning processes shall follow the urban mass transportation administration's requirements as described in "Procedures and Technical Methods for Transit Project Planning", published by the United States department of transportation, urban mass transportation administration, September 1986, or the most recent edition. Nothing in this subsection shall be construed to preclude detailed evaluation of more than one corridor in the planning process.

The department of transportation shall provide system and project planning review and monitoring in cooperation with the expert review panel identified in RCW 81.104.110. In addition, the local transit agency shall maintain a continuous public involvement program and seek involvement of other government agencies. [1992 c 101 § 23; 1991 sp.s. c 15 § 68; 1991 c 318 § 9; 1990 c 43 § 31.]

**Construction—Severability—1991 sp.s. c 15:** See note following RCW 46.68.110.

**81.104.110 Independent system plan oversight.** The legislature recognizes that the planning processes described in RCW 81.104.100 provide a recognized framework for guiding high capacity transportation studies. However, the process cannot guarantee appropriate decisions unless key study assumptions are reasonable.

To assure appropriate system plan assumptions and to provide for review of system plan results, an expert review panel shall be appointed to provide independent technical review for development of any system plan which is to be funded in whole or in part by the imposition of any voter-approved local option funding sources enumerated in RCW 81.104.140.

(1) The expert review panel shall consist of five to ten members who are recognized experts in relevant fields, such as transit operations, planning, emerging transportation technologies, engineering, finance, law, the environment, geography, economics, and political science.

(2) The expert review panel shall be selected cooperatively by the chairs of the senate and house transportation committees, the secretary of the department of transportation, and the governor to assure a balance of disciplines. In the case of counties adjoining another state or Canadian province the expert review panel membership shall be selected cooperatively with representatives of the adjoining state or Canadian province.

(3) The chair of the expert review panel shall be designated by the appointing authorities.

(4) The expert review panel shall serve without compensation but shall be reimbursed for expenses according to RCW 43.03.050 and 43.03.060. Reimbursement shall be paid from within the existing resources of the local authority planning under this chapter.

(5) The panel shall carry out the duties set forth in subsections (6) and (7) of this section until the date on which an election is held to consider the high capacity transportation system and financing plans.

(6) The expert panel shall review all reports required in RCW 81.104.100(2) and shall concentrate on service modes and concepts, costs, patronage and financing evaluations.

(7) The expert panel shall provide timely reviews and comments on individual reports and study conclusions to the department of transportation, the regional transportation planning organization, the joint regional policy committee, and the submitting lead transit agency. In the case of counties adjoining another state or Canadian province, the expert review panel shall provide its reviews, comments, and conclusions to the representatives of the adjoining state or Canadian province.

(8) The local authority planning under this chapter shall contract for consulting services for expert review panels. The amount of consultant support shall be negotiated with each expert review panel by the local authority and shall be paid from within the local authority's existing resources. [2005 c 319 § 136; 1998 c 245 § 165. Prior: 1991 c 318 § 10; 1991 c 309 § 3; 1990 c 43 § 32.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**81.104.115 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.**

(1) The department may collect and review the system safety program plan and the system security and emergency preparedness plan prepared by each owner or operator of a rail fixed guideway system. In carrying out this function, the department may adopt rules specifying the elements and standard to be contained in a system safety program plan and a system security and emergency preparedness plan, and the content of any investigation report, corrective action plan, and accompanying implementation schedule resulting from a reportable accident, unacceptable hazardous condition, or security breach. These rules may include due dates for the department's timely receipt of and response to required documents.

(2008 Ed.)

(2) The system security and emergency preparedness plan as described in subsection (1)(d) of RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is exempt from public disclosure under chapter 42.56 RCW by the department when collected from the owners and operators of fixed railway systems. However, the system safety program plan as described in RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 is not exempt from public disclosure.

(3) The department shall audit each system safety program plan and each system security and emergency preparedness plan at least once every three years. The department may contract with other persons or entities for the performance of duties required by this subsection. The department shall provide at least thirty days' advance notice to the owner or operator of a rail fixed guideway system before commencing the audit. The owner or operator of each rail fixed guideway system shall reimburse the reasonable expenses of the department in carrying out its responsibilities of this subsection within ninety days after receipt of an invoice. The department shall notify the owner or operator of the estimated expenses at least six months in advance of when the department audits the system.

(4) In the event of a reportable accident, unacceptable hazardous condition, or security breach, the department shall review the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator of the rail fixed guideway system to ensure that it meets the goal of preventing and mitigating a recurrence of the reportable accident, unacceptable hazardous condition, or security breach.

(a) The department may, at its option, perform a separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach. The department may contract with other persons or entities for the performance of duties required by this subsection.

(b) If the department does not concur with the investigation report, corrective action plan, and accompanying implementation schedule, submitted by the owner or operator, the department shall notify that owner or operator in writing within forty-five days of its receipt of the complete investigation report, corrective action plan, and accompanying implementation schedule.

(5) The secretary may adopt rules to implement this section and RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180, including rules establishing procedures and timelines for owners and operators of rail fixed guideway systems to comply with RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180 and the rules adopted under this section. If non-compliance by an owner or operator of a rail fixed guideway system results in the loss of federal funds to the state of Washington or a political subdivision of the state, the owner or operator is liable to the affected entity or entities for the amount of the lost funds.

(6) The department may impose sanctions upon owners and operators of rail fixed guideway systems, but only for failure to meet reasonable deadlines for submission of required reports and audits. The department is expressly prohibited from imposing sanctions for any other purposes,

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including, but not limited to, differences in format or content of required reports and audits.

(7) The department and its employees have no liability arising from the adoption of rules; the review of or concurrence in a system safety program plan and a system security and emergency preparedness plan; the separate, independent investigation of a reportable accident, unacceptable hazardous condition, or security breach; and the review of or concurrence in a corrective action plan for a reportable accident, unacceptable hazardous condition, or security breach.

(8) The department shall set by rule an annual fee for owners and operators of rail fixed guideway systems to defray the department's direct costs associated only with the system safety program plans, system security and emergency preparedness plans, and incident investigations, as described in this section, and the fee shall not be a flat fee but shall be imposed on each owner and operator in proportion to the effort expended by the department in relation to individual plans. The department shall establish by rule the manner and timing of the collection of the fee. [2007 c 422 § 7; 2005 c 274 § 359; 2001 c 127 § 1; 1999 c 202 § 7.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 202:** See note following RCW 35.21.228.

#### **81.104.120 Commuter rail service—Voter approval.**

(1) Transit agencies and regional transit authorities may operate or contract for commuter rail service where it is deemed to be a reasonable alternative transit mode. A reasonable alternative is one whose passenger costs per mile, including costs of trackage, equipment, maintenance, operations, and administration are equal to or less than comparable bus, entrained bus, trolley, or personal rapid transit systems.

(2) A county may use funds collected under RCW 81.100.030 or 81.100.060 to contract with one or more transit agencies or regional transit authorities for planning, operation, and maintenance of commuter rail projects which: (a) Are consistent with the regional transportation plan; (b) have met the project planning and oversight requirements of RCW 81.104.100 and 81.104.110; and (c) have been approved by the voters within the service area of each transit agency or regional transit authority participating in the project. For transit agencies in counties adjoining state or international boundaries where the high capacity transportation system plan and financing plan propose a bi-state or international high capacity transportation system, such voter approval shall be required from only those voters residing within the service area in the state of Washington. The phrase "approved by the voters" includes specific funding authorization for the commuter rail project.

(3) The utilities and transportation commission shall maintain safety responsibility for passenger rail service operating on freight rail lines. Agencies providing passenger rail service on lines other than freight rail lines shall maintain safety responsibility for that service. [1993 c 428 § 2; 1992 c 101 § 24; 1990 c 43 § 33.]

**81.104.130 Financial responsibility.** Agencies providing high capacity transportation service shall determine optimal debt-to-equity ratios, establish capital and operations

allocations, and establish fare-box recovery return policy. [1990 c 43 § 34.]

**81.104.140 Dedicated funding sources.** (1) Agencies authorized to provide high capacity transportation service, including transit agencies and regional transit authorities, and regional transportation investment districts acting with the agreement of an agency, are hereby granted dedicated funding sources for such systems. These dedicated funding sources, as set forth in RCW 81.104.150, 81.104.160, and 81.104.170, are authorized only for agencies located in (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under (a) of this subsection. In any county with a population of one million or more or in any county having a population of four hundred thousand or more bordering a county with a population of one million or more, these funding sources may be imposed only by a regional transit authority or a regional transportation investment district. Regional transportation investment districts may, with the approval of the regional transit authority within its boundaries, impose the taxes authorized under this chapter, but only upon approval of the voters and to the extent that the maximum amount of taxes authorized under this chapter have not been imposed.

(2) Agencies planning to construct and operate a high capacity transportation system should also seek other funds, including federal, state, local, and private sector assistance.

(3) Funding sources should satisfy each of the following criteria to the greatest extent possible:

- (a) Acceptability;
- (b) Ease of administration;
- (c) Equity;
- (d) Implementation feasibility;
- (e) Revenue reliability; and
- (f) Revenue yield.

(4) Agencies participating in regional high capacity transportation system development are authorized to levy and collect the following voter-approved local option funding sources:

- (a) Employer tax as provided in RCW 81.104.150, other than by regional transportation investment districts;
- (b) Special motor vehicle excise tax as provided in RCW 81.104.160; and
- (c) Sales and use tax as provided in RCW 81.104.170.

Revenues from these taxes may be used only to support those purposes prescribed in subsection (10) of this section. Before the date of an election authorizing an agency to impose any of the taxes enumerated in this section and authorized in RCW 81.104.150, 81.104.160, and 81.104.170, the agency must comply with the process prescribed in RCW 81.104.100 (1) and (2) and 81.104.110. No construction on exclusive right-of-way may occur before the requirements of RCW 81.104.100(3) are met.

(5) Authorization in subsection (4) of this section shall not adversely affect the funding authority of transit agencies not provided for in this chapter. Local option funds may be used to support implementation of interlocal agreements with respect to the establishment of regional high capacity trans-

portation service. Except when a regional transit authority exists, local jurisdictions shall retain control over moneys generated within their boundaries, although funds may be commingled with those generated in other areas for planning, construction, and operation of high capacity transportation systems as set forth in the agreements.

(6) Agencies planning to construct and operate high capacity transportation systems may contract with the state for collection and transference of voter-approved local option revenue.

(7) Dedicated high capacity transportation funding sources authorized in RCW 81.104.150, 81.104.160, and 81.104.170 shall be subject to voter approval by a simple majority. A single ballot proposition may seek approval for one or more of the authorized taxing sources. The ballot title shall reference the document identified in subsection (8) of this section.

(8) Agencies shall provide to the registered voters in the area a document describing the systems plan and the financing plan set forth in RCW 81.104.100. It shall also describe the relationship of the system to regional issues such as development density at station locations and activity centers, and the interrelationship of the system to adopted land use and transportation demand management goals within the region. This document shall be provided to the voters at least twenty days prior to the date of the election.

(9) For any election in which voter approval is sought for a high capacity transportation system plan and financing plan pursuant to RCW 81.104.040, a local voter's pamphlet shall be produced as provided in \*chapter 29.81A RCW.

(10) Agencies providing high capacity transportation service shall retain responsibility for revenue encumbrance, disbursement, and bonding. Funds may be used for any purpose relating to planning, construction, and operation of high capacity transportation systems and commuter rail systems, personal rapid transit, busways, bus sets, and entrained and linked buses. [2002 c 56 § 202; 1992 c 101 § 25. Prior: 1991 c 318 § 11; 1991 c 309 § 4; (1991 c 363 § 157 repealed by 1991 c 309 § 6); 1990 c 43 § 35.]

**\*Reviser's note:** Chapter 29.81A RCW was recodified as chapter 29A.32 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**81.104.150 Employer tax.** Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved may impose an excise tax of up to two dollars per month per employee on all employers located within the agency's jurisdiction, measured by the number of full-time equivalent employees, solely for the purpose of providing high capacity transportation service. The rate of tax shall be approved by the voters. This tax may not be imposed by: (1) A transit agency when the county within which it is located is imposing an excise tax pursuant to RCW 81.100.030; or (2) a regional transit authority when any county within the authority's boundaries is imposing an excise tax pursuant to RCW 81.100.030. The agency imposing the tax authorized in this section may provide for exemptions from the tax to such educational, cultural, health, chari-

table, or religious organizations as it deems appropriate. [1992 c 101 § 26; 1990 c 43 § 41.]

**81.104.160 Motor vehicle excise tax—Sales and use tax on car rentals.** An agency may impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax.

Any motor vehicle excise tax previously imposed under the provisions of RCW 81.104.160(1) shall be repealed, terminated and expire on December 5, 2002. [2003 c 1 § 6 (Initiative Measure No. 776, approved November 5, 2002); 1998 c 321 § 35 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1992 c 194 § 13; 1992 c 101 § 27; 1991 c 318 § 12; 1990 c 43 § 42.]

**Reviser's note:** The legality of the amendatory changes to this section made by section 6, chapter 1, Laws of 2003 (Initiative Measure No. 776) are still being contested.

**Severability—Savings—2003 c 1 (Initiative Measure No. 776):** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. If the repeal of taxes in section 6 of this act is judicially held to impair any contract in existence as of the effective date of this act, the repeal shall apply to any other contract, including novation, renewal, or refunding (in the case of bond contract)." [2003 c 1 § 10 (Initiative Measure No. 776, approved November 5, 2002).]

**Repeal of taxes by 2003 c 1 § 6 (Initiative Measure No. 776):** "If the repeal of taxes in section 6 of this act affects any bonds previously issued for any purpose relating to light rail, the people expect transit agencies to retire these bonds using reserve funds including accrued interest, sale of property or equipment, new voter approved tax revenues, or any combination of these sources of revenue. Taxing districts should abstain from further bond sales for any purpose relating to light rail until voters decide this measure. The people encourage transit agencies to put another tax revenue measure before voters if they want to continue with a light rail system dramatically changed from that previously represented to and approved by voters." [2003 c 1 § 7 (Initiative Measure No. 776, approved November 5, 2002).]

**Construction—Intent—2003 c 1 (Initiative Measure No. 776):** See notes following RCW 46.16.0621.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 35.58.410.

**Legislative intent—1992 c 194:** See note following RCW 82.08.020.

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**81.104.170 Sales and use tax.** Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters and if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing high capacity transportation service.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. The maximum

rate of such tax shall be approved by the voters and shall not exceed one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The maximum rate of such tax that may be imposed shall not exceed nine-tenths of one percent in any county that imposes a tax under RCW 82.14.340, or within a regional transit authority if any county within the authority imposes a tax under RCW 82.14.340. The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax authorized in this section. [1997 c 450 § 5; 1992 c 101 § 28; 1990 2nd ex.s. c 1 § 902; 1990 c 43 § 43.]

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.  
*Changes in tax law—Liability:* RCW 82.08.064, 82.14.055, and 82.32.430.  
*Local retail sales and use taxes:* Chapter 82.14 RCW.  
*Sales tax imposed—Retail sales—Retail car rental:* RCW 82.08.020.  
*Use tax imposed:* RCW 82.12.020.

### 81.104.180 Pledge of revenues for bond retirement.

Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities are authorized to pledge revenues from the employer tax authorized by RCW 81.104.150, the special motor vehicle excise tax authorized by RCW 81.104.160, and the sales and use tax authorized by RCW 81.104.170, to retire bonds issued solely for the purpose of providing high capacity transportation service. [1992 c 101 § 29; 1990 c 43 § 44.]

**81.104.190 Contract for collection of taxes.** Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit systems may contract with the state department of revenue or other appropriate entities for administration and collection of any tax authorized by RCW 81.104.150, 81.104.160, and 81.104.170. [1992 c 101 § 30; 1990 c 43 § 45.]

**81.104.900 Construction—Severability—Headings—1990 c 43.** See notes following RCW 81.100.010.

**81.104.901 Section headings not part of law—Severability—Effective date—1992 c 101.** See RCW 81.112.900 through 81.112.902.

## Chapter 81.108 RCW

### LOW-LEVEL RADIOACTIVE WASTE SITES

#### Sections

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81.108.110	Competitive companies—Exemptions—Waiver of provisions during state of emergency.
81.108.900	Construction.
81.108.901	Effective dates—1991 c 272.

**81.108.010 Purpose.** State and national policy directs that the management of low-level radioactive waste be accomplished by a system of interstate compacts and the development of regional disposal sites. The Northwest regional compact, comprised of the states of Alaska, Hawaii, Idaho, Montana, Oregon, Utah, and Washington, has as its disposal facility the low-level radioactive waste disposal site located near Richland, Washington. This site is expected to be the sole site for disposal of low-level radioactive waste for compact members effective January 1, 1993. Future closure of this site will require significant financial resources.

Low-level radioactive waste is generated by essential activities and services that benefit the citizens of the state. Washington state's low-level radioactive waste disposal site has been used by the nation and the Northwest compact as a disposal site since 1965. The public has come to rely on access to this site for disposal of low-level radioactive waste, which requires separate handling from other solid and hazardous wastes. The price of disposing of low-level radioactive waste at the Washington state low-level radioactive waste disposal site is anticipated to increase when the federal low-level radioactive waste policy amendments act of 1985 is implemented and waste generated outside the Northwest compact states is excluded.

When these events occur, to protect Washington and other Northwest compact states' businesses and services, such as electrical production, medical and university research, and private industries, upon which the public relies, there will be a need to regulate the rates charged by the operator of Washington's low-level radioactive waste disposal site. This chapter is adopted pursuant to section 8, chapter 21, Laws of 1990. [1991 c 272 § 1.]

**81.108.020 Definitions.** Definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the Washington utilities and transportation commission.

(2) "Effective rate" means the highest permissible rate, calculated as the lowest contract rate plus an administrative fee, if applicable, determined pursuant to RCW 81.108.040.

(3) "Extraordinary volume" means volumes of low-level radioactive waste delivered to a site caused by nonrecurring events, outside normal operations of a generator, that are in excess of twenty thousand cubic feet or twenty percent of the preceding year's total volume at such site, whichever is less.

(4) "Extraordinary volume adjustment" means a mechanism that allocates the potential rate reduction benefits of an extraordinary volume between all generators and the generator responsible for such extraordinary volume as described in RCW 81.108.070.

(5) "Generator" means a person, partnership, association, corporation, or any other entity whatsoever that, as a part of its activities, produces low-level radioactive waste.

(6) "Inflation adjustment" means a mechanism that adjusts the maximum disposal rate by a percentage equal to the change in price levels in the preceding period, as mea-

sured by a common, verifiable price index as determined in RCW 81.108.040.

(7) "Initial rate proceeding" means the proceeding described in RCW 81.108.040.

(8) "Maximum disposal rate" means the rate described in RCW 81.108.050.

(9) "Site" means a location, structure, or property used or to be used for the storage, treatment, or disposal of low-level radioactive waste for compensation within the state of Washington.

(10) "Site operator" means a low-level radioactive waste site operating company as defined in RCW 81.04.010.

(11) "Volume adjustment" means a mechanism that adjusts the maximum disposal rate in response to material changes in volumes of waste deposited at the site during the preceding period so as to provide a level of total revenues sufficient to recover the costs to operate and maintain the site. [1991 c 272 § 2.]

**81.108.030 Commission—Powers.** (1) The commission shall have jurisdiction over the sites and site operators as set forth in this chapter.

(2)(a) The commission shall establish rates to be charged by site operators. In establishing the rates, the commission shall assure that they are fair, just, reasonable, and sufficient considering the value of the site operator's leasehold and license interests, the unique nature of its business operations, the site operator's liability associated with the site, its investment incurred over the term of its operations, and the rate of return equivalent to that earned by comparable enterprises. The rates shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(b) In exercising the power in this subsection the commission may use any standard, formula, method, or theory of valuation reasonably calculated to arrive at the objective of prescribing and authorizing fair, just, reasonable, and sufficient rates. The relation of site operator expenses to site operator revenues may be deemed the proper test of a reasonable return.

(3) In all respects in which the commission has power and authority under this chapter, applications and complaints may be made and filed with it, process issued, hearings held, opinions, orders, and decisions made and filed, petitions for rehearing filed and acted upon, and petitions for review to the superior court filed therewith, appeals filed with the appellate courts of this state, considered and disposed of by said courts in the manner, under the conditions, and subject to the limitations, and with the effect specified in this title for public service companies generally.

(4) At any time after January 1, 1992, the commission may: (a) Prescribe a system of accounts for site operators using as a starting point the existing system used by site operators; (b) audit the books of site operators; (c) obtain books and records from site operators; (d) assess penalties; and (e) require semiannual reports regarding the results of operations for the site.

(5) The commission may adopt rules necessary to carry out its functions under this chapter. [1991 c 272 § 4.]

**81.108.040 Rates—Initial determination—Fees.** (1)

On or before March 1, 1992, site operators shall file a request with the commission to establish an initial maximum disposal rate. The filing shall include, at a minimum, testimony, exhibits, workpapers, summaries, annual reports, cost studies, proposed tariffs, and other documents as required by the commission in rate cases generally under its jurisdiction.

(2) After receipt of a request, the commission shall set the request for a hearing and require the site operator to provide for notice to all known customers that ship or deliver waste to the site. The proceedings before the commission shall be conducted in accordance with chapter 34.05 RCW and rules of procedure established by the commission.

(3) No later than January 1, 1993, the commission shall establish the initial maximum disposal rates that may be charged by site operators.

(4) In the initial rate proceeding the commission also shall determine the factors necessary to calculate the inflation, volume, and extraordinary volume adjustments.

(5) The commission also shall determine the administrative fee, which shall be a percentage or an amount that represents increased administrative costs associated with acceptance of small volumes of waste by a site operator. The administrative fee may be revised by the commission from time to time upon its own motion or upon the petition of an interested person.

(6) The rates specified in this section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 5.]

**81.108.050 Maximum rates—Revisions—Waiver of provisions during state of emergency.** (1) The maximum disposal rates that a site operator may charge generators shall be determined in accordance with this section. The rates shall include all charges for disposal services at the site.

(2) Initially, the maximum disposal rates shall be the initial rates established pursuant to RCW 81.108.040.

(3) Subsequently, the maximum disposal rates shall be adjusted in January of each year to incorporate inflation and volume adjustments. Such adjustments shall take effect thirty days after filing with the commission unless the commission authorizes that the adjustments take effect earlier, or the commission contests the calculation of the adjustments, in which case the commission may suspend the filing. A site operator shall provide notice to its customers concurrent with the filing.

(4)(a) Subsequently, a site operator may also file for revisions to the maximum disposal rates due to:

(i) Changes in any governmentally imposed fee, surcharge, or tax assessed on a volume or a gross revenue basis against or collected by the site operator, including site closure fees, perpetual care and maintenance fees, business and occupation taxes, site surveillance fees, leasehold excise taxes, commission regulatory fees, municipal taxes, and a tax or payment in lieu of taxes authorized by the state to compensate the county in which a site is located for that county's legitimate costs arising out of the presence of that site within that county; or

(ii) Factors outside the control of the site operator such as a material change in regulatory requirements regarding the physical operation of the site.

(b) Revisions to the maximum disposal rate shall take effect thirty days after filing with the commission unless the commission suspends the filing or authorizes the proposed adjustments to take effect earlier.

(5) Upon establishment of a contract rate pursuant to RCW 81.108.060 for a disposal fee, the site operator may not collect a disposal fee that is greater than the effective rate. The effective rate shall be in effect so long as such contract rate remains in effect. Adjustments to the maximum disposal rates may be made during the time an effective rate is in place. Contracts for disposal of extraordinary volumes pursuant to RCW 81.108.070 shall not be considered in determining the effective rate.

(6) The site operator may petition the commission for new maximum disposal rates at any time. Upon receipt of such a petition, the commission shall set the matter for hearing and shall issue an order within seven months of the filing of the petition. The petition shall be accompanied by the documents required to accompany the filing for initial rates. The hearing on the petition shall be conducted in accordance with the commission's rules of practice and procedure.

(7) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(8) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 411; 1997 c 243 § 1; 1991 c 272 § 6.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.108.060 Contracted disposal rates—Waiver of provisions during state of emergency.** (1) At any time, a site operator may contract with any person to provide a contract disposal rate lower than the maximum disposal rate.

(2) A contract or contract amendment shall be submitted to the commission for approval at least thirty days before its effective date. The commission may approve the contract or suspend the contract and set it for hearing. If the commission takes no action within thirty days of filing, the contract or amendment shall go into effect according to its terms. Each contract filing shall be accompanied with documentation to show that the contract does not result in discrimination between generators receiving like and contemporaneous service under substantially similar circumstances and provides for the recovery of all costs associated with the provision of the service.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100.

(4) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 412; 1991 c 272 § 7.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.108.070 Extraordinary volume adjustment.** (1) In establishing the extraordinary volume adjustment, unless the site operator and generator of the extraordinary volume agree to a contract disposal rate, one-half of the extraordinary volume delivery shall be priced at the maximum disposal rate and one-half shall be priced at the site operator's incremental cost to receive the delivery. Such incremental cost shall be determined in the initial rate proceeding.

(2) For purposes of the subsequent calculation of the volume adjustment, one-half of the total extraordinary volume shall be included in the calculation.

(3) This section shall only take effect following a finding that the site operator is a monopoly pursuant to RCW 81.108.100. [1991 c 272 § 8.]

**81.108.080 Complaint—Hearing.** (1) At any time, the commission or an interested person may file a complaint against a site operator alleging that the rates established pursuant to RCW 81.108.040 or 81.108.050 are not in conformity with the standards set forth in RCW 81.108.030 or that the site operator is otherwise not acting in conformity with the requirements of this chapter. Upon filing of the complaint, the commission shall cause a copy of the complaint to be served upon the site operator. The complaining party shall have the burden of proving that the maximum disposal rates determined pursuant to RCW 81.108.050 are not just, fair, reasonable, or sufficient. The hearing shall conform to the rules of practice and procedure of the commission for other complaint cases.

(2) The commission shall encourage alternate forms of dispute resolution to resolve disputes between a site operator and any other person regarding matters covered by this chapter. [1991 c 272 § 9.]

**81.108.090 Revenue statement—Fees—Delinquent fee payments.** (1) A site operator shall, on or before May 1, 1992, and each year thereafter, file with the commission a statement showing its gross operating revenue from intrastate operations for the preceding calendar year, or portion thereof, and pay to the commission a fee equal to one percent of the amount of the gross operating revenue, exclusive of site surveillance fees, perpetual care and maintenance fees, site closure fees, and state or federally imposed out-of-region surcharges.

(2) Fees collected under this chapter shall reasonably approximate the cost of supervising and regulating site operators. The commission may order a decrease in fees by March 1st of any year in which it determines that the moneys then in the radioactive waste disposal companies account of the public service revolving fund and the fees currently to be paid will exceed the reasonable cost of supervising and regulating site operators.

(3) Fees collected under this section or under any other provision of this chapter shall be paid to the commission and shall be transmitted to the state treasurer within thirty days to be deposited to the credit of the public service revolving fund.

(4) Any payment of a fee imposed by this chapter made after its due date shall include a late fee of two percent of the amount due. Delinquent fees shall accrue interest at the rate of one percent per month. [1994 c 83 § 5; 1991 c 272 § 10.]

#### **81.108.100 Exemptions—Monopolies—Hearings—**

**Rates.** (1) A low-level waste disposal site operator is exempt as specified in RCW 81.108.030(2)(a), 81.108.040(6), 81.108.050(7), 81.108.060(3), and 81.108.070(3) unless a monopoly situation exists with respect to the site operated by such site operator. A monopoly situation exists if either of the following is present:

(a) No disposal facility is available to Northwest compact generators of low-level radioactive waste other than the site or sites operated by such site operator or its affiliates; or

(b) Disposal rates at other sites are not reasonable alternatives for Northwest compact generators, considering: Disposal rates at other facilities; current disposal rates charged by the site operator; historic relationships between the site operator's rates and rates at other facilities; and changes in the operator's rates considering changes in waste volumes, taxes, and fees. A monopoly situation does not exist if either of the following facilities operates or is projected to operate after December 31, 1992:

(i) Any existing low-level radioactive waste disposal site outside the state of Washington, other than facilities operated by affiliates of a site operator, provided that such site or sites do not charge disposal rates that discriminate against Northwest compact generators, except to the extent, through December 31, 1994, such discrimination is authorized by amendment of current federal law.

(ii) An existing facility within the Northwest compact not receiving low-level radioactive waste offers to receive such waste under substantially similar terms and conditions.

(2) The exemption shall be in effect until such time as the commission finds, after notice and hearing, upon motion by the commission or upon petition by any interested party, that a monopoly situation exists or will exist as of January 1, 1993. The finding shall be based upon application of the criteria set forth in this section. The commission may assess a site operator for all of the commission's costs of supervision and regulation prior to and relative to determining whether the exemption applies to the site operator. If the commission determines that a site operator is not subject to the exemption, it shall collect its costs of supervision and regulation under RCW 81.108.090.

(3) When an exemption is in effect, any increase in the rates charged by the operator effective January 1, 1993, for services other than the base rate for disposal of solid material in packages of twelve cubic feet or less shall be no more than the percentage increase in the base rate in effect on January 1, 1993. [1991 c 272 § 11.]

**81.108.110 Competitive companies—Exemptions—Waiver of provisions during state of emergency.** (1) At any time after this chapter has been implemented with respect to a site operator, such site operator may petition the commission to be classified as competitive. The commission may initiate classification proceedings on its own motion. The commission shall enter its final order with respect to classifi-

cation within seven months from the date of filing of a company's petition or the commission's motion.

(2) The commission shall classify a site operator as a competitive company if the commission finds, after notice and hearing, that the disposal services offered are subject to competition because the company's customers have reasonably available alternatives. In determining whether a company is competitive, the commission's consideration shall include, but not be limited to:

(a) Whether the system of interstate compacts and regional disposal sites established by federal law has been implemented so that the Northwest compact site located near Richland, Washington is the exclusive site option for disposal by customers within the Northwest compact states;

(b) Whether waste generated outside the Northwest compact states is excluded; and

(c) The ability of alternative disposal sites to make functionally equivalent services readily available at competitive rates, terms, and conditions.

(3) The commission may reclassify a competitive site operator if reclassification would protect the public interest as set forth in this section.

(4) Competitive low-level radioactive waste disposal companies shall be exempt from commission regulation and fees during the time they are so classified.

(5) During a state of emergency declared under RCW 43.06.010(12), the governor may waive or suspend the operation or enforcement of this section or any portion of this section or under any administrative rule, and issue any orders to facilitate the operation of state or local government or to promote and secure the safety and protection of the civilian population. [2008 c 181 § 413; 1991 c 272 § 12.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**81.108.900 Construction.** Nothing in this chapter shall be construed to affect the jurisdiction of another state agency. [1991 c 272 § 13.]

**81.108.901 Effective dates—1991 c 272.** (1) Sections 1 through 15 and 22 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Sections 1 through 14 and 22 of this act shall take effect July 1, 1991, and section 15 of this act shall take effect immediately [May 20, 1991].

(2) Sections 16 through 21 and 23 of this act shall take effect January 1, 1993. [1991 c 272 § 24.]

### **Chapter 81.112 RCW**

#### **REGIONAL TRANSIT AUTHORITIES**

(Formerly: Regional transportation authorities)

##### Sections

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*Additional powers: RCW 81.104.120.*

*Funding sources*

*employer taxes: RCW 81.104.150.*

*sales and use taxes: RCW 81.104.170.*

*vehicle taxes: RCW 81.104.160.*

**81.112.010 Findings—Intent.** The legislature recognizes that existing transportation facilities in the central Puget Sound area are inadequate to address mobility needs of the area. The geography of the region, travel demand growth, and public resistance to new roadways combine to further necessitate the rapid development of alternative modes of travel.

The legislature finds that local governments have been effective in cooperatively planning a multicounty, high capacity transportation system. However, a continued multi-jurisdictional approach to funding, construction, and operation of a multicounty high capacity transportation system may impair the successful implementation of such a system.

The legislature finds that a single agency will be more effective than several local jurisdictions working collectively at planning, developing, operating, and funding a high capacity transportation system. The single agency's services must be carefully integrated and coordinated with public transportation services currently provided. As the single agency's services are established, any public transportation services currently provided that are duplicative should be eliminated. Further, the single agency must coordinate its activities with other agencies providing local and state roadway services, implementing comprehensive planning, and implementing transportation demand management programs and assist in developing infrastructure to support high capacity systems including but not limited to feeder systems, park and ride facilities, intermodal centers, and related roadway and operational facilities. Coordination can be best achieved through common governance, such as integrated governing boards.

It is therefore the policy of the state of Washington to empower counties in the state's most populous region to create a local agency for planning and implementing a high capacity transportation system within that region. The authorization for such an agency, except as specifically provided in this chapter, is not intended to limit the powers of existing transit agencies. [1992 c 101 § 1.]

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

(1) "Authority" means a regional transit authority authorized under this chapter.

(2) "Board" means the board of a regional transit authority.

(3) "Service area" or "area" means the area included within the boundaries of a regional transit authority.

(4) "System" means a regional transit system authorized under this chapter and under the jurisdiction of a regional transit authority.

(5) "Facilities" means any lands, interest in land, air rights over lands, and improvements thereto including vessel terminals, and any equipment, vehicles, vessels, and other components necessary to support the system.

(6) "Proof of payment" means evidence of fare prepayment authorized by a regional transit authority for the use of trains, including but not limited to commuter trains and light rail trains. [1999 c 20 § 2; 1992 c 101 § 2.]

**Purpose—Intent—1999 c 20:** See note following RCW 81.112.210.

**81.112.030 Formation—Submission of ballot propositions to voters.** Two or more contiguous counties each having a population of four hundred thousand persons or more may establish a regional transit authority to develop and operate a high capacity transportation system as defined in chapter 81.104 RCW.

The authority shall be formed in the following manner:

(1) The joint regional policy committee created pursuant to RCW 81.104.040 shall adopt a system and financing plan, including the definition of the service area. This action shall be completed by September 1, 1992, contingent upon satisfactory completion of the planning process defined in RCW 81.104.100. The final system plan shall be adopted no later than June 30, 1993. In addition to the requirements of RCW 81.104.100, the plan for the proposed system shall provide explicitly for a minimum portion of new tax revenues to be allocated to local transit agencies for interim express services. Upon adoption the joint regional policy committee shall immediately transmit the plan to the county legislative authorities within the adopted service area.

(2) The legislative authorities of the counties within the service area shall decide by resolution whether to participate in the authority. This action shall be completed within forty-five days following receipt of the adopted plan or by August 13, 1993, whichever comes first.

(3) Each county that chooses to participate in the authority shall appoint its board members as set forth in RCW 81.112.040 and shall submit its list of members to the secretary of the Washington state department of transportation. These actions must be completed within thirty days following each county's decision to participate in the authority.

(4) The secretary shall call the first meeting of the authority, to be held within thirty days following receipt of the appointments. At its first meeting, the authority shall elect officers and provide for the adoption of rules and other operating procedures.

(5) The authority is formally constituted at its first meeting and the board shall begin taking steps toward implementation of the system and financing plan adopted by the joint

regional policy committee. If the joint regional policy committee fails to adopt a plan by June 30, 1993, the authority shall proceed to do so based on the work completed by that date by the joint regional policy committee. Upon formation of the authority, the joint regional policy committee shall cease to exist. The authority may make minor modifications to the plan as deemed necessary and shall at a minimum review local transit agencies' plans to ensure feeder service/high capacity transit service integration, ensure fare integration, and ensure avoidance of parallel competitive services. The authority shall also conduct a minimum thirty-day public comment period.

(6) If the authority determines that major modifications to the plan are necessary before the initial ballot proposition is submitted to the voters, the authority may make those modifications with a favorable vote of two-thirds of the entire membership. Any such modification shall be subject to the review process set forth in RCW 81.104.110. The modified plan shall be transmitted to the legislative authorities of the participating counties. The legislative authorities shall have forty-five days following receipt to act by motion or ordinance to confirm or rescind their continued participation in the authority.

(7) If any county opts to not participate in the authority, but two or more contiguous counties do choose to continue to participate, the authority's board shall be revised accordingly. The authority shall, within forty-five days, redefine the system and financing plan to reflect elimination of one or more counties, and submit the redefined plan to the legislative authorities of the remaining counties for their decision as to whether to continue to participate. This action shall be completed within forty-five days following receipt of the redefined plan.

(8) The authority shall place on the ballot within two years of the authority's formation, a single ballot proposition to authorize the imposition of taxes to support the implementation of an appropriate phase of the plan within its service area. In addition to the system plan requirements contained in RCW 81.104.100(2)(d), the system plan approved by the authority's board before the submittal of a proposition to the voters shall contain an equity element which:

(a) Identifies revenues anticipated to be generated by corridor and by county within the authority's boundaries;

(b) Identifies the phasing of construction and operation of high capacity system facilities, services, and benefits in each corridor. Phasing decisions should give priority to jurisdictions which have adopted transit-supportive land use plans; and

(c) Identifies the degree to which revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue.

A simple majority of those voting within the boundaries of the authority is required for approval. If the vote is affirmative, the authority shall begin implementation of the projects identified in the proposition. However, the authority may not submit any authorizing proposition for voter-approved taxes prior to July 1, 1993; nor may the authority issue bonds or form any local improvement district prior to July 1, 1993.

(9) If the vote on a proposition fails, the board may redefine the proposition, make changes to the authority bound-

aries, and make corresponding changes to the composition of the board. If the composition of the board is changed, the participating counties shall revise the membership of the board accordingly. The board may then submit the revised proposition or a different proposition to the voters. No single proposition may be submitted to the voters more than twice. Beginning no sooner than the 2007 general election, the authority may place additional propositions on the ballot to impose taxes to support additional phases of plan implementation.

(10) At the 2007 general election, the authority shall submit a proposition to support a system and financing plan or additional implementation phases of the authority's system and financing plan as part of a single ballot proposition that includes a plan to support a regional transportation investment plan developed under chapter 36.120 RCW. The authority's plan shall not be considered approved unless both a majority of the persons voting on the proposition residing within the authority vote in favor of the proposition and a majority of the persons voting on the proposition residing within the proposed regional transportation investment district vote in favor of the proposition.

(11) Additional phases of plan implementation may include a transportation subarea equity element which (a) identifies the combined authority and regional transportation investment district revenues anticipated to be generated by corridor and by county within the authority's boundaries, and (b) identifies the degree to which the combined authority and regional transportation investment district revenues generated within each county will benefit the residents of that county, and identifies when such benefits will accrue. For purposes of the transportation subarea equity principle established under this subsection, the authority may use the five subareas within the authority's boundaries as identified in the authority's system plan adopted in May 1996.

(12) If the authority is unable to achieve a positive vote on a proposition within two years from the date of the first election on a proposition, the board may, by resolution, reconstitute the authority as a single-county body. With a two-thirds vote of the entire membership of the voting members, the board may also dissolve the authority. [2007 c 509 § 3; 2006 c 311 § 12; 1994 c 44 § 1; 1993 sp.s. c 23 § 62; 1992 c 101 § 3.]

**Findings—Intent—Constitutional challenges—Expedited appeals—Severability—Effective date—2007 c 509:** See notes following RCW 36.120.070.

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Effective dates—1993 sp.s. c 23:** See note following RCW 43.89.010.

**81.112.040 Board appointments—Voting—Expenses.** (1) The regional transit authority shall be governed by a board consisting of representatives appointed by the county executive and confirmed by the council or other legislative authority of each member county. Membership shall be based on population from that portion of each county which lies within the service area. Board members shall be appointed initially on the basis of one for each one hundred forty-five thousand population within the county. Such appointments shall be made following consultation with city and town jurisdictions within the service area. In addition, the secretary of transportation or the secretary's designee shall

serve as a member of the board and may have voting status with approval of a majority of the other members of the board. Only board members, not including alternates or designees, may cast votes.

Each member of the board, except the secretary of transportation or the secretary's designee, shall be:

(a) An elected official who serves on the legislative authority of a city or as mayor of a city within the boundaries of the authority;

(b) On the legislative authority of the county, if fifty percent of the population of the legislative official's district is within the authority boundaries; or

(c) A county executive from a member county within the authority boundaries.

When making appointments, each county executive shall ensure that representation on the board includes an elected city official representing the largest city in each county and assures proportional representation from other cities, and representation from unincorporated areas of each county within the service area. At least one-half of all appointees from each county shall serve on the governing authority of a public transportation system.

Members appointed from each county shall serve staggered four-year terms. Vacancies shall be filled by appointment for the remainder of the unexpired term of the position being vacated.

The governing board shall be reconstituted, with regard to the number of representatives from each county, on a population basis, using the official office of financial management population estimates, five years after its initial formation and, at minimum, in the year following each official federal census. The board membership may be reduced, maintained, or expanded to reflect population changes but under no circumstances may the board membership exceed twenty-five.

(2) Major decisions of the authority shall require a favorable vote of two-thirds of the entire membership of the voting members. "Major decisions" include at least the following: System plan adoption and amendment; system phasing decisions; annual budget adoption; authorization of annexations; modification of board composition; and executive director employment.

(3) Each member of the board is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation as provided in RCW 43.03.250. [1994 c 109 § 1; 1992 c 101 § 4.]

**81.112.050 Area included—Elections—Expiration of subsection.** (1) At the time of formation, the area to be included within the boundary of the authority shall be that area set forth in the system plan adopted by the joint regional policy committee. Prior to submitting the system and financing plan to the voters, the authority may make adjustments to the boundaries as deemed appropriate but must assure that, to the extent possible, the boundaries: (a) Include the largest-population urban growth area designated by each county under chapter 36.70A RCW; and (b) follow election precinct boundaries. If a portion of any city is determined to be within the service area, the entire city must be included within the boundaries of the authority.

(2) After voters within the authority boundaries have approved the system and financing plan, elections to add areas contiguous to the authority boundaries may be called by resolution of the regional transit authority, after consultation with affected transit agencies and with the concurrence of the legislative authority of the city or town if the area is incorporated, or with the concurrence of the county legislative authority if the area is unincorporated. Only those areas that would benefit from the services provided by the authority may be included and services or projects proposed for the area must be consistent with the regional transportation plan. The election may include a single ballot proposition providing for annexation to the authority boundaries and imposition of the taxes at rates already imposed within the authority boundaries.

(3) Upon receipt of a resolution requesting exclusion from the boundaries of the authority from a city whose municipal boundaries cross the boundaries of an authority and thereby result in only a portion of the city being subject to local option taxes imposed by the authority under chapters 81.104 and 81.112 RCW in order to implement a high capacity transit plan, and where the vote to approve the city's incorporation occurred simultaneously with an election approving the local option taxes, then upon a two-thirds majority vote of the governing board of the authority, the governing board shall redraw the boundaries of the authority to exclude that portion of the city that is located within the authority's boundaries, and the excluded area is no longer subject to local option taxes imposed by the authority. This subsection expires December 31, 1998. [1998 c 192 § 1; 1992 c 101 § 5.]

**81.112.060 Powers.** An authority shall have the following powers:

(1) To establish offices, departments, boards, and commissions that are necessary to carry out the purposes of the authority, and to prescribe the functions, powers, and duties thereof.

(2) To appoint or provide for the appointment of, and to remove or to provide for the removal of, all officers and employees of the authority.

(3) To fix the salaries, wages, and other compensation of all officers and employees of the authority.

(4) To employ such engineering, legal, financial, or other specialized personnel as may be necessary to accomplish the purposes of the authority.

(5) To determine risks, hazards, and liabilities in order to obtain insurance consistent with these determinations. This insurance may include any types of insurance covering, and for the benefit of, one or more parties with whom the authority contracts for any purpose, and insurance for the benefit of its board members, authority officers, and employees to insure against liability for acts or omissions while performing or in good faith purporting to perform their official duties. All insurance obtained for construction of authority projects with a total project cost exceeding one hundred million dollars may be acquired by bid or by negotiation. In order to allow the authority flexibility to secure appropriate insurance by negotiation, the authority is exempt from RCW 48.30.270. [2007 c 166 § 1; 2000 2nd sp.s. c 4 § 32; 1992 c 101 § 6.]

**81.112.070 General powers.** In addition to the powers specifically granted by this chapter an authority shall have all powers necessary to implement a high capacity transportation system and to develop revenues for system support. An authority may contract with the United States or any agency thereof, any state or agency thereof, any public transportation benefit area, any county, county transportation authority, city, metropolitan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm, or corporation for: (1) The purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies; (2) the design, construction, or operation of high capacity transportation system facilities; or (3) the provision or receipt of services, facilities, or property rights to provide revenues for the system. An authority shall have the power to contract pursuant to RCW 39.33.050. In addition, an authority may contract with any governmental agency or with any private person, firm, or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights-of-way of all kinds which are owned, leased, or held by the other party and for the purpose of planning, constructing, or operating any facility or performing any service that the authority may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any authority facilities is let to any private person, firm, or corporation, a general schedule of rental rates for equipment with or without operators applicable to all private certificated carriers shall be publicly posted, and for other facilities competitive bids shall first be called upon such notice, bidder qualifications, and bid conditions as the board shall determine. This shall allow use of negotiated procurements. [1992 c 101 § 7.]

**81.112.080 Additional powers—Acquisition of facilities—Disposal of property—Rates, tolls, fares, charges.** An authority shall have the following powers in addition to the general powers granted by this chapter:

(1) To carry out the planning processes set forth in RCW 81.104.100;

(2) To acquire by purchase, condemnation, gift, or grant and to lease, construct, add to, improve, replace, repair, maintain, operate, and regulate the use of high capacity transportation facilities and properties within authority boundaries including surface, underground, or overhead railways, tramways, busways, buses, bus sets, entrained and linked buses, ferries, or other means of local transportation except taxis, and including escalators, moving sidewalks, personal rapid transit systems or other people-moving systems, passenger terminal and parking facilities and properties, and such other facilities and properties as may be necessary for passenger, vehicular, and vessel access to and from such people-moving systems, terminal and parking facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such high capacity transportation systems. When developing specifications for high capacity transportation system operating equipment, an authority shall take into account efforts to establish or sustain a domestic manufacturing capacity for such equipment. The right of eminent domain shall be exercised by an authority in the

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same manner and by the same procedure as or may be provided by law for cities of the first class, except insofar as such laws may be inconsistent with the provisions of this chapter. Public transportation facilities and properties which are owned by any city, county, county transportation authority, public transportation benefit area, or metropolitan municipal corporation may be acquired or used by an authority only with the consent of the agency owning such facilities. Such agencies are hereby authorized to convey or lease such facilities to an authority or to contract for their joint use on such terms as may be fixed by agreement between the agency and the authority.

The facilities and properties of an authority whose vehicles will operate primarily within the rights-of-way of public streets, roads, or highways, may be acquired, developed, and operated without the corridor and design hearings that are required by \*RCW 35.58.273 for mass transit facilities operating on a separate right-of-way;

(3) To dispose of any real or personal property acquired in connection with any authority function and that is no longer required for the purposes of the authority, in the same manner as provided for cities of the first class. When an authority determines that a facility or any part thereof that has been acquired from any public agency without compensation is no longer required for authority purposes, but is required by the agency from which it was acquired, the authority shall by resolution transfer it to such agency;

(4) To fix rates, tolls, fares, and charges for the use of such facilities and to establish various routes and classes of service. Fares or charges may be adjusted or eliminated for any distinguishable class of users. [1992 c 101 § 8.]

\*Reviser's note: RCW 35.58.273 was repealed by 2002 c 6 § 2.

**81.112.086 Maintenance plan.** As a condition of receiving state funding, a regional transit authority shall submit a maintenance and preservation management plan for certification by the department of transportation. The plan must inventory all transportation system assets within the direction and control of the transit authority, and provide a plan for preservation of assets based on lowest life-cycle cost methodologies. [2006 c 334 § 28; 2003 c 363 § 306.]

**Effective date—2006 c 334:** See note following RCW 47.01.051.

**Finding—Intent—2003 c 363:** See note following RCW 35.84.060.

**Part headings not law—Severability—2003 c 363:** See notes following RCW 47.28.241.

**81.112.090 Agreements with operators of high capacity transportation services.** Except in accordance with an agreement made as provided in this section, upon the date an authority begins high capacity transportation service, no person or private corporation may operate a high capacity transportation service within the authority boundary with the exception of services owned or operated by any corporation or organization solely for the purposes of the corporation or organization and for the use of which no fee or fare is charged.

The authority and any person or corporation legally operating a high capacity transportation service wholly within or partly within and partly without the authority boundary on the date an authority begins high capacity

transportation service may enter into an agreement under which such person or corporation may continue to operate such service or any part thereof for such time and upon such terms and conditions as provided in such agreement. Such agreement shall provide for a periodic review of the terms and conditions contained therein. Where any such high capacity transportation service will be required to cease to operate within the authority boundary, the authority may agree with the owner of such service to purchase the assets used in providing such service, or if no agreement can be reached, an authority shall condemn such assets in the manner and by the same procedure as is or may be provided by law for the condemnation of other properties for cities of the first class, except insofar as such laws may be inconsistent with this chapter.

Wherever a privately owned public carrier operates wholly or partly within an authority boundary, the Washington utilities and transportation commission shall continue to exercise jurisdiction over such operation as provided by law. [1992 c 101 § 9.]

**81.112.100 Transfer of local government powers to authority.** An authority shall have and exercise all rights with respect to the construction, acquisition, maintenance, operation, extension, alteration, repair, control and management of high capacity transportation system facilities that are identified in the system plan developed pursuant to RCW 81.104.100 that any city, county, county transportation authority, metropolitan municipal corporation, or public transportation benefit area within the authority boundary has been previously empowered to exercise and such powers shall not thereafter be exercised by such agencies without the consent of the authority. Nothing in this chapter shall restrict development, construction, or operation of a personal rapid transit system by a city or county.

An authority may adopt, in whole or in part, and may complete, modify, or terminate any planning, environmental review, or procurement processes related to the high capacity transportation system that had been commenced by a joint regional policy committee or a city, county, county transportation authority, metropolitan municipality, or public transportation benefit area prior to the formation of the authority. [1992 c 101 § 10.]

**81.112.110 Acquisition of existing system—Components.** If an authority acquires any existing components of a high capacity transportation system, it shall assume and observe all existing labor contracts relating to the transportation system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such transportation systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of the transportation system prior to such acquisition. At such times as may be required by such contracts, the authority shall engage in collective bargaining with the duly appointed rep-

resentatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. Facilities and equipment which are acquired after July 1, 1993, related to high capacity transportation services which are to be assumed by the authority as specifically identified in the adopted system plan shall be acquired by the authority in a manner consistent with RCW 81.112.070 through 81.112.100. [1992 c 101 § 11.]

**81.112.120 Treasurer—Funds—Auditor—Bond.** The board of an authority, by resolution, shall designate a person having experience in financial or fiscal matters as treasurer of the authority. The board may designate, with the concurrence of the treasurer, the treasurer of a county within which the authority is located. Such a treasurer shall possess all of the powers, responsibilities, and duties the county treasurer possesses for a public transportation benefit area authority related to investing surplus authority funds. The board shall require a bond with a surety company authorized to do business in the state of Washington in an amount and under the terms and conditions the board, by resolution, from time to time finds will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All authority funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by the authority upon orders or vouchers approved by the board.

The treasurer shall establish a special fund, into which shall be paid all authority funds, and the treasurer shall maintain such special accounts as may be created by the authority into which shall be placed all money as the board may, by resolution, direct.

If the treasurer of the authority is the treasurer of a county, all authority funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories. If the treasurer of the authority is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state that have qualified for insured deposits under any federal deposit insurance act as the board, by resolution, shall designate.

The authority may by resolution designate a person having experience in financial or fiscal matters, as the auditor of the authority. Such auditor shall possess all of the powers, responsibilities, and duties related to creating and maintaining funds, issuing warrants, and maintaining a record of receipts and disbursements.

The board may provide and require a reasonable bond of any other person handling moneys or securities of the authority, but the authority shall pay the premium on the bond. [1992 c 101 § 12.]

**81.112.130 General obligation bonds.** Notwithstanding RCW 39.36.020(1), an authority may at any time contract indebtedness or borrow money for authority purposes and may issue general obligation bonds in an amount not exceeding, together with any existing indebtedness of the authority not authorized by the voters, one and one-half percent of the value of the taxable property within the boundaries of the authority; and with the assent of three-fifths of the voters therein voting at an election called for that purpose, may con-

tract indebtedness or borrow money for authority purposes and may issue general obligation bonds therefor, provided the total indebtedness of the authority shall not exceed five percent of the value of the taxable property therein. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW.

The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1992 c 101 § 13.]

**81.112.140 Revenue bonds.** (1) An authority may issue revenue bonds to provide funds to carry out its authorized functions without submitting the matter to the voters of the authority. The authority shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the authority may obligate itself to pay such amounts of the gross revenue of the high capacity transportation system constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the authority shall determine and may obligate the authority to pay such amounts out of otherwise unpledged revenue that may be derived from the ownership, use, or operation of properties or facilities owned, used, or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes, or other sources of payment lawfully authorized for such purpose, as the authority shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such high capacity transportation system or any other revenue, fees, tolls, charges, tariffs, fares, special taxes, or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the authority.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1992 c 101 § 14.]

**81.112.150 Local improvement districts authorized—Special assessment bonds.** (1) An authority may form a local improvement district to provide any transportation improvement it has the authority to provide, impose special assessments on all property specially benefited by the transportation improvements, and issue special assessment bonds or revenue bonds to fund the costs of the transportation improvement. Local improvement districts shall be created and assessments shall be made and collected pursuant to chapters 35.43, 35.44, 35.49, 35.50, 35.51, 35.53, and 35.54 RCW.

(2) The board shall by resolution establish for each special assessment bond issue the amount, date, terms, conditions, denominations, maximum fixed or variable interest rate or rates, maturity or maturities, redemption rights, registration privileges, if any, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may include, but not be limited

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to: (a) A book entry system of recording the ownership of a bond whether or not physical bonds are issued; or (b) recording the ownership of a bond together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond and either the reissuance of the old bond or the issuance of a new bond to the new owner. Facsimile signatures may be used on the bonds and any coupons. The maximum term of any special assessment bonds shall not exceed thirty years beyond the date of issue. Special assessment bonds issued pursuant to this section shall not be an indebtedness of the authority issuing the bonds, and the interest and principal on the bonds shall only be payable from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund that the authority has created. The owner or bearer of a special assessment bond or any interest coupon issued pursuant to this section shall not have any claim against the authority arising from the bond or coupon except for the payment from special assessments made for the improvement for which the bonds were issued and any local improvement guaranty fund the authority has created. The authority issuing the special assessment bonds is not liable to the owner or bearer of any special assessment bond or any interest coupon issued pursuant to this section for any loss occurring in the lawful operation of its local improvement guaranty fund. The substance of the limitations included in this subsection shall be plainly printed, written, or engraved on each special assessment bond issued pursuant to this section.

(3) Assessments shall reflect any credits given by the authority for real property or property right donations made pursuant to RCW 47.14.030.

(4) The board may establish and pay moneys into a local improvement guaranty fund to guarantee special assessment bonds issued by the authority. [1992 c 101 § 15.]

**81.112.160 County assessor's duties.** It shall be the duty of the assessor of each component county to certify annually to a regional transit authority the aggregate assessed valuation of all taxable property within the boundaries of the authority as the same appears from the last assessment roll of the county. [1992 c 101 § 16.]

**81.112.170 Interim financing.** A regional transit authority may apply for high capacity transportation account funds and for central Puget Sound account funds for high capacity transit planning and system development.

Transit agencies contained wholly or partly within a regional transit authority may make grants or loans to the authority for high capacity transportation planning and system development. [1992 c 101 § 17.]

**81.112.180 Rail fixed guideway system—Safety program plan and security and emergency preparedness plan.** (1) Each regional transit authority that owns or operates a rail fixed guideway system as defined in RCW 81.104.015 shall submit a system safety program plan and a system security and emergency preparedness plan for that guideway to the state department of transportation by September 1, 1999, or at least one hundred eighty calendar days before beginning operations or instituting revisions to its

plans. These plans must describe the authority's procedures for (a) reporting and investigating reportable accidents, unacceptable hazardous conditions, and security breaches, (b) submitting corrective action plans and annual safety and security audit reports, (c) facilitating on-site safety and security reviews by the state department of transportation, and (d) addressing passenger and employee security. The plans must, at a minimum, conform to the standards adopted by the state department of transportation. If required by the department, the regional transit authority shall revise its plans to incorporate the department's review comments within sixty days after their receipt, and resubmit its revised plans for review.

(2) Each regional transit authority shall implement and comply with its system safety program plan and system security and emergency preparedness plan. The regional transit authority shall perform internal safety and security audits to evaluate its compliance with the plans, and submit its audit schedule to the department of transportation no later than December 15th each year. The regional transit authority shall prepare an annual report for its internal safety and security audits undertaken in the prior year and submit it to the department no later than February 15th. This annual report must include the dates the audits were conducted, the scope of the audit activity, the audit findings and recommendations, the status of any corrective actions taken as a result of the audit activity, and the results of each audit in terms of the adequacy and effectiveness of the plans.

(3) Each regional transit authority shall notify the department of transportation within two hours of an occurrence of a reportable accident, unacceptable hazardous condition, or security breach. The department may adopt rules further defining a reportable accident, unacceptable hazardous condition, or security breach. The regional transit authority shall investigate all reportable accidents, unacceptable hazardous conditions, or security breaches and provide a written investigation report to the department within forty-five calendar days after the reportable accident, unacceptable hazardous condition, or security breach.

(4) The system security and emergency preparedness plan required in subsection (1)(d) of this section is exempt from public disclosure under chapter 42.56 RCW. However, the system safety program plan as described in this section is not subject to this exemption. [2007 c 422 § 6; 2005 c 274 § 360; 1999 c 202 § 6.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—1999 c 202:** See note following RCW 35.21.228.

**81.112.190 Requirements for signage.** Each authority shall incorporate in plans for stations along any light-rail facility signing that is easily understood by the traveling public, including, but not limited to, persons with disabilities, non-English speaking persons, and visitors from other nations. The signage must employ graphics consistent with international symbols for transportation facilities and signage that are consistent with department of transportation guidelines and programs. The signage must also use distinguishing symbols or pictograms developed by the authority as a means to identify stations and may identify points of interest along the corridor for persons who use languages that are not

Roman-alphabet based. These requirements are intended to apply to new sign installation and not to existing signs, installed before July 24, 2005. The authority may replace existing signs as it chooses; however, it shall use the new signing designs when existing signs are replaced. All signage must comply with requirements of applicable federal law and may include recommendations contained in federal publications providing directions on way-finding for persons with disabilities. [2005 c 19 § 3.]

**Intent—Findings—2005 c 19:** See note following RCW 35.95A.140.

**81.112.210 Fare payment—Fines and penalties established—Enforcement.** (1) An authority is authorized to establish, by resolution, a schedule of fines and penalties for civil infractions established in RCW 81.112.220. Fines established by a regional transit authority shall not exceed those imposed for class 1 infractions under RCW 7.80.120.

(2)(a) A regional transit authority may designate persons to monitor fare payment who are equivalent to and are authorized to exercise all the powers of an enforcement officer, defined in RCW 7.80.040. An authority is authorized to employ personnel to either monitor fare payment, or to contract for such services, or both.

(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment also have the authority to take the following actions:

- (i) Request proof of payment from passengers;
- (ii) Request personal identification from a passenger who does not produce proof of payment when requested;
- (iii) Issue a citation conforming to the requirements established in RCW 7.80.070; and
- (iv) Request that a passenger leave the regional transit authority train, including but not limited to commuter trains and light rail trains, when the passenger has not produced proof of payment after being asked to do so by a person designated to monitor fare payment.

(3) Regional transit authorities shall keep records of citations in the manner prescribed by RCW 7.80.150. All civil infractions established by chapter 20, Laws of 1999 shall be heard and determined by a district court as provided in RCW 7.80.010 (1) and (4). [1999 c 20 § 3.]

**Purpose—Intent—1999 c 20:** "The purpose of this act is to facilitate ease of boarding of commuter trains and light rail trains operated by regional transit authorities by allowing for barrier free entry ways. This act provides regional transit authorities with the power to require proof of payment; to set a schedule of fines and penalties not to exceed those classified as class 1 infractions under RCW 7.80.120; to employ individuals to monitor fare payment or contract for such services; to issue citations for fare nonpayment or related activities; and to keep records regarding citations issued for the purpose of tracking violations and issuing citations consistent with established schedules. This act is intended to be consistent with and implemented pursuant to chapter 7.80 RCW with regard to civil infractions, the issuance of citations, and the maintenance of citation records." [1999 c 20 § 1.]

**81.112.220 Fare payment—Proof of payment—Civil infractions.** (1) Persons traveling on trains, including but not limited to commuter trains or light rail trains, operated by an authority, shall pay the fare established by the authority. Such persons shall produce proof of payment when requested by a person designated to monitor fare payment.

(2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under RCW 81.112.210(1):

- (a) Failure to pay the required fare;
- (b) Failure to display proof of payment when requested to do so by a person designated to monitor fare payment; and
- (c) Failure to depart the train, including but not limited to commuter trains and light rail trains, when requested to do so by a person designated to monitor fare payment. [1999 c 20 § 4.]

**Purpose—Intent—1999 c 20:** See note following RCW 81.112.210.

**81.112.230 Fare payment—Prosecution for theft, trespass, or other charges.** Nothing in RCW 81.112.020 and 81.112.210 through 81.112.230 shall be deemed to prevent law enforcement authorities from prosecuting for theft, trespass, or other charges by any individual who:

- (1) Fails to pay the required fare on more than one occasion within a twelve-month period;
- (2) Fails to timely select one of the options for responding to the notice of civil infraction after receiving a statement of the options provided in this chapter for responding to the notice of infraction and the procedures necessary to exercise these options; or
- (3) Fails to depart the train, including but not limited to commuter trains and light rail trains, when requested to do so by a person designated to monitor fare payment. [2006 c 270 § 12; 1999 c 20 § 5.]

**Purpose—Intent—1999 c 20:** See note following RCW 81.112.210.

**81.112.300 Sale and leaseback, similar transactions—Authorized.** (1) In order to enable regional transit authorities to acquire or finance equipment or facilities, or reduce the cost of equipment or facilities, regional transit authorities may enter into sale and leaseback, leaseout and leaseback, and other similar transactions with respect to equipment, facilities, and other real and personal property. In connection with any such transaction, a regional transit authority may execute, as it considers appropriate, contracts, agreements, notes, security agreements, conveyances, bills of sale, deeds, leases as lessee or lessor, and currency hedges, defeasance arrangements, interest rate, currency or other swap transactions, one or more payment undertaking agreements, and agreements relating to foreign and domestic currency. These agreements or instruments must have terms, maturities, durations, provisions as to governing laws, grants of security interests, and other provisions that are approved by the board of the regional transit authority.

(2) "Payment undertaking agreement" means one or more agreements, undertakings or arrangements under which all or a portion of the funds generated by a sale and leaseback, leaseout and leaseback, or other similar transaction are directed or paid over to a financial institution, insurance company, or other entity that agrees to meet or fulfill, in consideration for the funds, some or all of the obligations of the regional transit authority, or any public corporation or other entity created under RCW 81.112.320, to make future rent, debt service, or purchase price installment payments in connection with the transaction. [2000 2nd sp.s. c 4 § 18.]

**Findings—2000 2nd sp.s. c 4 §§ 18-30:** "The legislature finds that additional funds or other benefits can be made available to Washington regional transit authorities by facilitating their entry into sale and leaseback, leaseout and leaseback, and similar transactions that provide to private parties, in consideration for the funds or other benefits obtained by the regional transit authorities, tax benefits that are not otherwise available to regional transit authorities. The legislature further finds that such transactions have been encouraged by agencies of the federal government as ways to provide additional funds for public facilities. To facilitate such transactions for regional transit authorities, the legislature has determined that while regional transit authorities may currently have the necessary statutory authority and may currently enjoy exemptions from Washington state taxes for such transactions, an explicit statement of statutory authority and exemption from Washington state taxes is necessary and helpful for the parties to such transactions. In recognition of the complexity of such transactions, the legislature desires that the authority and exemptions provided by RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 be subject to certain limitations and be granted for a period as specified in RCW 81.112.330." [2000 2nd sp.s. c 4 § 17.]

**Construction—2000 2nd sp.s. c 4 §§ 18-30:** "The authority granted by RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 is in addition and supplemental to any authority previously granted and does not limit nor is limited by any other powers or authority previously granted to regional transit authorities or any public corporation, or restrictions on such powers or authority. Nothing in RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 limits other statutory authority previously granted to regional transit authorities or public corporations or other tax exemptions granted to regional transit authorities or public corporations. Nothing in RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 limits the authority of the state, any political subdivision thereof, or any other public or municipal corporation to undertake the activities described in RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 as expressly or impliedly authorized by other provisions of law. Nothing in RCW 81.112.300, 81.112.310, 81.112.320, 82.08.834, 82.12.834, 82.04.050, 82.04.4201, 82.29A.134, 82.45.010, 84.36.605, 35.21.756, 35.21.755, and 81.112.330 is an authorization to provide indemnification to the extent the indemnification is prohibited or restricted by other provisions of law or the Constitution of the state of Washington." [2000 2nd sp.s. c 4 § 31.]

**81.112.310 Sale and leaseback—Conditions.** Transactions undertaken under RCW 81.112.300 are subject to the following conditions:

(1) The financial institution, insurance company, or other entity that enters into a payment undertaking agreement with the regional transit authority or public development corporation or entity created under RCW 81.112.320 as a counterparty must have a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the payment undertaking agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the obligations of the counterparty must be guaranteed by a financial institution, insurance company, or other entity with that credit rating. The payment undertaking agreement must require that the obligations of the counterparty or the guarantor, as the case may be, must be collateralized by collateral of a type and in an amount specified by the governing body of the regional transit authority if the credit ratings of the counterparty or its guarantor fall below the level required by this subsection.

(2) The amount to be paid by the counterparties under payment undertaking agreements for a transaction under the terms of the agreements, when combined with the amount of

securities, deposits, and investments set aside by the regional transit authority for payment in respect of the transactions, together with interest or other earnings on the securities, deposits, or investments, must be sufficient to pay when due all amounts required to be paid by the regional transit authority, or public corporation or entity created under RCW 81.112.320, as rent, debt service, or installments of purchase price, as the case may be, over the full term of the transaction plus any optional purchase price due under the transaction. A certification by an independent financial expert, banker, or certified public accountant, who is not an employee of the regional transit authority or public corporation or entity created under RCW 81.112.320, certifying compliance with this requirement is conclusive evidence that the arrangements, by their terms, comply with the requirement under this subsection on the sufficiency of the amount.

(3) The payment undertaking agreements, and all other basic and material agreements entered into in connection with the transactions, must specify that the parties to the agreements consent to the jurisdiction of state courts of Washington for disputes arising out of the agreements and agree not to contest venue before such courts. Regardless of the choice of law specified in the foregoing agreements, the agreements must acknowledge that the regional transit authority or public development corporation or entity created under RCW 81.112.320 that is a party to the agreements is an entity created under the laws of the state of Washington whose power and authority and limitations and restrictions on the power and authority are governed by the laws of the state of Washington.

Payment undertaking agreements that meet the foregoing requirement must be treated for all relevant purposes as agreements under which future services are performed for a present payment and shall not be treated as payment agreements within the meaning of chapter 39.96 RCW. [2000 2nd sp.s. c 4 § 19.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**81.112.320 Sale and leaseback—Creation of public entity.** To accomplish any of the activities under RCW 81.112.300, a regional transit authority may create a public corporation, commission, or authority under RCW 35.21.730 through 35.21.755, and authorize the corporation, commission, or authority to provide any of the facilities and services that a regional transit authority may provide including any activities under RCW 81.112.300. A regional transit authority has all the powers, authorities, and rights granted to any city, town, or county or their agents under RCW 35.21.730 through 35.21.755 for the purposes of entering into and implementing transactions under RCW 81.112.300. [2000 2nd sp.s. c 4 § 20.]

**Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20:** See note following RCW 82.08.020.

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**81.112.330 Sale and leaseback—Restrictions, requirements.** (1) Except as provided in subsection (3) of this section, no regional transit authority may initiate a trans-

action authorized under RCW 81.112.300 after June 30, 2007.

(2) The termination of authority to enter into transactions after June 30, 2007, does not affect the validity of any transactions entered into under RCW 81.112.300.

(3) A regional transit authority may enter into a transaction in accordance with RCW 81.112.300 after June 30, 2007, to replace or refinance a transaction that relates to specific obligations entered into on or before that date and that has terminated, or is, under the terms of the replacement or refinance, to terminate, before the final stated term of that transaction. The exemptions from taxes provided by RCW 82.08.834, 82.12.834, 82.04.4201, 82.29A.134, 82.36.605 [84.36.605], 35.21.756, 82.04.050, 82.45.010, and 35.21.755 apply to the replacement or refinance transactions.

(4) A regional transit authority, or public corporation or entity created under RCW 81.112.320, that undertakes a transaction authorized by RCW 81.112.300, shall provide to the state finance committee, or its financial advisor, at the state finance committee's discretion, a copy of all material agreements executed in connection with the transaction within three months of the closing of the transaction and shall make a report to the state finance committee, the president of the senate, and the speaker of the house of representatives on transactions authorized by RCW 81.112.300. The report must include the amount of the transactions, the expected savings or losses resulting from the transactions, the transaction costs, including fees and detailed pricing information, the risks associated with the transaction, and any other information the regional transit authority determines relevant. The report must be submitted within six months of the closing of each transaction. [2000 2nd sp.s. c 4 § 30.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**81.112.900 Section headings not part of law—1992 c 101.** Section headings as used in this act do not constitute any part of the law. [1992 c 101 § 33.]

**81.112.901 Severability—1992 c 101.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 101 § 34.]

**81.112.902 Effective date—1992 c 101.** This act shall take effect July 1, 1992. [1992 c 101 § 35.]

## Chapter 81.900 RCW CONSTRUCTION

### Sections

81.900.010	Continuation of existing law.
81.900.020	Title, chapter, section headings not part of law.
81.900.030	Invalidity of part of title not to affect remainder.
81.900.040	Repeals and saving.
81.900.050	Emergency—1961 c 14.

**81.900.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to

the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 14 § 81.98.010. Formerly RCW 81.98.010.]

**81.900.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 14 § 81.98.020. Formerly RCW 81.98.020.]

**81.900.030 Invalidity of part of title not to affect remainder.** If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1961 c 14 § 81.98.030. Formerly RCW 81.98.030.]

**81.900.040 Repeals and saving.** See 1961 c 14 § 81.98.040. Formerly RCW 81.98.040.

**81.900.050 Emergency—1961 c 14.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 14 § 81.98.050. Formerly RCW 81.98.050.]



# Title 82

## EXCISE TAXES

### Chapters

- 82.01 Department of revenue.
- 82.02 General provisions.
- 82.03 Board of tax appeals.
- 82.04 Business and occupation tax.
- 82.08 Retail sales tax.
- 82.12 Use tax.
- 82.14 Local retail sales and use taxes.
- 82.14A Cities and towns—License fees and taxes on financial institutions.
- 82.14B Counties—Tax on telephone access line use.
- 82.16 Public utility tax.
- 82.18 Solid waste collection tax.
- 82.19 Litter tax.
- 82.21 Hazardous substance tax—Model toxics control act.
- 82.23A Petroleum products—Underground storage tank program funding.
- 82.23B Oil spill response tax.
- 82.24 Tax on cigarettes.
- 82.26 Tax on tobacco products.
- 82.27 Tax on enhanced food fish.
- 82.29A Leasehold excise tax.
- 82.32 General administrative provisions.
- 82.32A Taxpayer rights and responsibilities.
- 82.33 Economic and revenue forecasts.
- 82.33A Economic climate council.
- 82.34 Pollution control facilities—Tax exemptions and credits.
- 82.36 Motor vehicle fuel tax.
- 82.38 Special fuel tax act.
- 82.41 Multistate motor fuel tax agreement.
- 82.42 Aircraft fuel tax.
- 82.44 Motor vehicle excise tax.
- 82.45 Excise tax on real estate sales.
- 82.46 Counties and cities—Excise tax on real estate sales.
- 82.47 Border area motor vehicle fuel and special fuel tax.
- 82.48 Aircraft excise tax.
- 82.49 Watercraft excise tax.
- 82.50 Travel trailers and campers excise tax.
- 82.52 Extension of excises to federal areas.
- 82.56 Multistate tax compact.
- 82.58 Simplified sales and use tax administration act.
- 82.60 Tax deferrals for investment projects in rural counties.
- 82.62 Tax credits for eligible business projects in rural counties.
- 82.63 Tax deferrals for high technology businesses.
- 82.64 Syrup tax.
- 82.65A Intermediate care facilities for the mentally retarded.
- 82.66 Tax deferrals for new thoroughbred race tracks.
- 82.70 Commute trip reduction incentives.
- 82.72 Telephone program excise tax administration.
- 82.73 Washington main street program tax incentives.

- 82.74 Tax deferrals for fruit and vegetable businesses.
- 82.75 Tax deferrals for biotechnology and medical device manufacturing businesses.
- 82.80 Local option transportation taxes.
- 82.82 Community empowerment zones—Tax deferral program.
- 82.98 Construction.

*Additional taxes, see titles pertaining to particular taxing authorities, e.g., counties, cities, school districts, public utility districts.*

*Expenditure limitations: Chapter 43.135 RCW.*

*Hotels, motels, special excise tax on charges for furnishing lodging: Chapters 67.28 and 67.40 RCW.*

*Termination of tax preferences: Chapter 43.136 RCW.*

### Chapter 82.01 RCW

#### DEPARTMENT OF REVENUE

#### Sections

- 82.01.050 Department established—Director of revenue.
- 82.01.060 Director—Powers and duties—Rule-making authority.
- 82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.
- 82.01.080 Director—Delegation of powers and duties—Responsibility.
- 82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission.
- 82.01.100 Assistance to other state agencies in administration and collection of taxes.
- 82.01.115 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor.

*Apportionment factors (for school districts) to be based on current figures—Rules and regulations: RCW 28A.150.400.*

*Escheat of postal savings system accounts, director's duties: Chapter 63.48 RCW.*

*Gambling activities, reports to department of revenue: RCW 9.46.130.*

*Motor vehicle fund, distribution of amount to counties, department to furnish information: RCW 46.68.124.*

*Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.*

*Questionnaires—Job opportunities for welfare recipients—Department to mail: RCW 74.08A.350.*

*Refunds of erroneous or excessive payments: RCW 43.88.170.*

*Termination of tax preferences: Chapter 43.136 RCW.*

**82.01.050 Department established—Director of revenue.** There is established a department of state government to be known as the department of revenue of the state of Washington, of which the chief executive officer shall be known as the director of revenue. [1967 ex.s. c 26 § 2.]

**Effective date—1967 ex.s. c 26:** "This act shall take effect July 1, 1967." [1967 ex.s. c 26 § 53.]

**82.01.060 Director—Powers and duties—Rule-making authority.** The director of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the director, through

the department of revenue, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the department, shall:

(1) Assess and collect all taxes and administer all programs relating to taxes which are the responsibility of the tax commission at the time chapter 26, Laws of 1967 ex. sess. takes effect or which the legislature may hereafter make the responsibility of the director or of the department;

(2) Make, adopt and publish such rules as he or she may deem necessary or desirable to carry out the powers and duties imposed upon him or her or the department by the legislature: PROVIDED, That the director may not adopt rules after July 23, 1995, that are based solely on a section of law stating a statute's intent or purpose, on the enabling provisions of the statute establishing the agency, or on any combination of such provisions, for statutory authority to adopt any rule;

(3) Rules adopted by the tax commission before July 23, 1995, shall remain in force until such time as they may be revised or rescinded by the director;

(4) Provide by general regulations for an adequate system of departmental review of the actions of the department or of its officers and employees in the assessment or collection of taxes;

(5) Maintain a tax research section with sufficient technical, clerical and other employees to conduct constant observation and investigation of the effectiveness and adequacy of the revenue laws of this state and of the sister states in order to assist the governor, the legislature and the director in estimation of revenue, analysis of tax measures, and determination of the administrative feasibility of proposed tax legislation and allied problems;

(6) Recommend to the governor such amendments, changes in, and modifications of the revenue laws as seem proper and requisite to remedy injustice and irregularities in taxation, and to facilitate the assessment and collection of taxes in the most economical manner. [1995 c 403 § 106; 1977 c 75 § 92; 1967 ex.s. c 26 § 3.]

**Findings—Short title—Intent—1995 c 403:** See note following RCW 34.05.328.

**Part headings not law—Severability—1995 c 403:** See RCW 43.05.903 and 43.05.904.

**Effective date—1967 ex.s. c 26:** See note following RCW 82.01.050.

**82.01.070 Director—General supervision—Appointment of assistant director, personnel—Personal service contracts for out-of-state auditing services.** The director shall have charge and general supervision of the department of revenue. The director shall appoint an assistant director for administration, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the assistant director, and subject to the provisions of chapter 41.06 RCW may appoint and employ such clerical, technical and other personnel as may be necessary to carry out the powers and duties of the department. The director may also enter into personal service contracts with out-of-state individuals or business entities for the performance of auditing services outside the state of Washington when normal efforts to recruit classified employees are unsuccessful. The director may agree to pay to the department's employees or contractors who reside out of state such amounts in addition to their ordinary rate of compensation as are necessary to defray the extra costs of facilities, living, and

other costs reasonably related to the out-of-state services, subject to legislative appropriation for those purposes. The special allowances shall be in such amounts or at such rates as are approved by the office of financial management. This section does not apply to audit functions performed in states contiguous to the state of Washington. [1997 c 156 § 1; 1982 c 128 § 1; 1967 ex.s. c 26 § 4.]

**Effective date—1982 c 128:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1982." [1982 c 128 § 2.]

**82.01.080 Director—Delegation of powers and duties—Responsibility.** The director may delegate any power or duty vested in or transferred to the director by law, or executive order, to the assistant director or to any of the director's subordinates; but the director shall be responsible for the official acts of the officers and employees of the department. [1997 c 156 § 2; 1967 ex.s. c 26 § 5.]

**82.01.090 Director—Exercise of powers, duties and functions formerly vested in tax commission.** Except for the powers and duties devolved upon the board of tax appeals by the provisions of RCW 82.03.010 through 82.03.190, the director of revenue shall, after July 1, 1967, exercise those powers, duties and functions theretofore vested in the tax commission of the state of Washington, including all powers, duties and functions of the commission acting as the commission or as the state board of equalization or in any other capacity. [1967 ex.s. c 26 § 6.]

**82.01.100 Assistance to other state agencies in administration and collection of taxes.** Assistance of the department of revenue in the administration or collection of those state taxes which are administered or collected by other state agencies may be requested by the agencies concerned. Such assistance may be given by the director to the extent that the limitations of time, personnel and the conduct of the duties of the department shall allow. The department shall be reimbursed by any agency to which assistance is rendered. [1967 ex.s. c 26 § 11.]

**82.01.115 Listing of reduction in revenues from tax exemptions to be submitted to legislature by department of revenue—Periodic review and submission of recommendations to legislature by governor.** See RCW 43.06.400.

## Chapter 82.02 RCW GENERAL PROVISIONS

### Sections

82.02.010	Definitions.
82.02.020	State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.
82.02.030	Additional tax rates.
82.02.040	Authority of operating agencies to levy taxes.
82.02.050	Impact fees—Intent—Limitations.
82.02.060	Impact fees—Local ordinances—Required provisions.
82.02.070	Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.
82.02.080	Impact fees—Refunds.

- 82.02.090 Impact fees—Definitions.
- 82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.
- 82.02.200 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.
- 82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent.
- 82.02.220 Exclusion of steam, electricity, or electrical energy from definition of certain terms.
- 82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes.
- 82.02.240 Professional employer organizations—Liability for certain taxes and fees.

**82.02.010 Definitions.** For the purpose of this title, unless otherwise required by the context:

- (1) "Department" means the department of revenue of the state of Washington;
- (2) The word "director" means the director of the department of revenue of the state of Washington;
- (3) The word "taxpayer" includes any individual, group of individuals, corporation, or association liable for any tax or the collection of any tax hereunder, or who engages in any business or performs any act for which a tax is imposed by this title;
- (4) Words in the singular number shall include the plural and the plural shall include the singular. Words in one gender shall include all other genders. [1979 c 107 § 9; 1967 ex.s. c 26 § 14; 1961 c 15 § 82.02.010. Prior: 1935 c 180 § 3; RRS § 8370-3.]

**Effective date—1967 ex.s. c 26:** See note following RCW 82.01.050.

**82.02.020 State preempts certain tax fields—Fees prohibited for the development of land or buildings—Voluntary payments by developers authorized—Limitations—Exceptions.** Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted trans-

portation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

- (1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;
- (2) The payment shall be expended in all cases within five years of collection; and
- (3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected. [2008 c 113 § 2; 2006 c 149 § 3; 2005 c 502 § 5; 1997 c 452 § 21; 1996 c 230 § 1612; 1990 1st ex.s. c 17 § 42; 1988 c 179 § 6; 1987 c 327 § 17; 1982 1st ex.s. c 49 § 5; 1979 ex.s. c 196 § 3; 1970

ex.s. c 94 § 8; 1967 c 236 § 16; 1961 c 15 § 82.02.020. Prior: (i) 1935 c 180 § 29; RRS § 8370-29. (ii) 1949 c 228 § 28; 1939 c 225 § 22; 1937 c 227 § 24; Rem. Supp. 1949 § 8370-219. Formerly RCW 82.32.370.]

**Application—Effective date—2008 c 113:** See notes following RCW 64.34.440.

**Findings—Construction—2006 c 149:** See notes following RCW 36.70A.540.

**Effective date—2005 c 502:** See note following RCW 1.12.070.

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Part headings not law—Effective date—1996 c 230:** See notes following RCW 57.02.001.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Severability—Prospective application—Section captions—1988 c 179:** See RCW 39.92.900 and 39.92.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Severability—1970 ex.s. c 94:** See RCW 82.14.900.

**82.02.030 Additional tax rates.** The rate of the additional taxes under RCW 54.28.020(2), 54.28.025(2), 66.24.210(2), 82.16.020(2), 82.27.020(5), and 82.29A.030(2) shall be seven percent. [1993 sp.s. c 25 § 107; 1993 c 492 § 312; 1990 c 42 § 319. Prior: 1987 1st ex.s. c 9 § 6; 1987 c 472 § 15; 1987 c 80 § 4; 1986 c 296 § 5; 1985 c 471 § 9; 1983 2nd ex.s. c 3 § 6; 1983 c 7 § 8; 1982 2nd ex.s. c 14 § 1; 1982 1st ex.s. c 35 § 31.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Severability—Effective date—1987 1st ex.s. c 9:** See notes following RCW 46.29.050.

**Severability—1987 c 472:** See RCW 79.71.900.

**Severability—Effective date—1986 c 296:** See notes following RCW 48.14.020.

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—Effective dates—1983 c 7:** See notes following RCW 82.08.020.

**Effective date—Applicability—1982 2nd ex.s. c 14:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

The tax rates imposed under this act are effective on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 2nd ex.s. c 14 § 3.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.02.040 Authority of operating agencies to levy taxes.** Nothing in this title may be deemed to grant to any operating agency organized under chapter 43.52 RCW, or a

project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 55.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.02.050 Impact fees—Intent—Limitations.** (1) It is the intent of the legislature:

(a) To ensure that adequate facilities are available to serve new growth and development;

(b) To promote orderly growth and development by establishing standards by which counties, cities, and towns may require, by ordinance, that new growth and development pay a proportionate share of the cost of new facilities needed to serve new growth and development; and

(c) To ensure that impact fees are imposed through established procedures and criteria so that specific developments do not pay arbitrary fees or duplicative fees for the same impact.

(2) Counties, cities, and towns that are required or choose to plan under RCW 36.70A.040 are authorized to impose impact fees on development activity as part of the financing for public facilities, provided that the financing for system improvements to serve new development must provide for a balance between impact fees and other sources of public funds and cannot rely solely on impact fees.

(3) The impact fees:

(a) Shall only be imposed for system improvements that are reasonably related to the new development;

(b) Shall not exceed a proportionate share of the costs of system improvements that are reasonably related to the new development; and

(c) Shall be used for system improvements that will reasonably benefit the new development.

(4) Impact fees may be collected and spent only for the public facilities defined in RCW 82.02.090 which are addressed by a capital facilities plan element of a comprehensive land use plan adopted pursuant to the provisions of RCW 36.70A.070 or the provisions for comprehensive plan adoption contained in chapter 36.70, 35.63, or 35A.63 RCW. After the date a county, city, or town is required to adopt its development regulations under chapter 36.70A RCW, continued authorization to collect and expend impact fees shall be contingent on the county, city, or town adopting or revising a comprehensive plan in compliance with RCW 36.70A.070, and on the capital facilities plan identifying:

(a) Deficiencies in public facilities serving existing development and the means by which existing deficiencies will be eliminated within a reasonable period of time;

(b) Additional demands placed on existing public facilities by new development; and

(c) Additional public facility improvements required to serve new development.

If the capital facilities plan of the county, city, or town is complete other than for the inclusion of those elements which are the responsibility of a special district, the county, city, or town may impose impact fees to address those public facility needs for which the county, city, or town is responsible. [1994 c 257 § 24; 1993 sp.s. c 6 § 6; 1990 1st ex.s. c 17 § 43.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:**  
See RCW 36.70A.900 and 36.70A.901.

*SEPA: RCW 43.21C.065.*

**82.02.060 Impact fees—Local ordinances—Required provisions.** The local ordinance by which impact fees are imposed:

(1) Shall include a schedule of impact fees which shall be adopted for each type of development activity that is subject to impact fees, specifying the amount of the impact fee to be imposed for each type of system improvement. The schedule shall be based upon a formula or other method of calculating such impact fees. In determining proportionate share, the formula or other method of calculating impact fees shall incorporate, among other things, the following:

(a) The cost of public facilities necessitated by new development;

(b) An adjustment to the cost of the public facilities for past or future payments made or reasonably anticipated to be made by new development to pay for particular system improvements in the form of user fees, debt service payments, taxes, or other payments earmarked for or prorable to the particular system improvement;

(c) The availability of other means of funding public facility improvements;

(d) The cost of existing public facilities improvements; and

(e) The methods by which public facilities improvements were financed;

(2) May provide an exemption for low-income housing, and other development activities with broad public purposes, from these impact fees, provided that the impact fees for such development activity shall be paid from public funds other than impact fee accounts;

(3) Shall provide a credit for the value of any dedication of land for, improvement to, or new construction of any system improvements provided by the developer, to facilities that are identified in the capital facilities plan and that are required by the county, city, or town as a condition of approving the development activity;

(4) Shall allow the county, city, or town imposing the impact fees to adjust the standard impact fee at the time the fee is imposed to consider unusual circumstances in specific cases to ensure that impact fees are imposed fairly;

(5) Shall include a provision for calculating the amount of the fee to be imposed on a particular development that permits consideration of studies and data submitted by the developer to adjust the amount of the fee;

(6) Shall establish one or more reasonable service areas within which it shall calculate and impose impact fees for various land use categories per unit of development;

(7) May provide for the imposition of an impact fee for system improvement costs previously incurred by a county, city, or town to the extent that new growth and development will be served by the previously constructed improvements provided such fee shall not be imposed to make up for any system improvement deficiencies. [1990 1st ex.s. c 17 § 44.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:**  
See RCW 36.70A.900 and 36.70A.901.

(2008 Ed.)

**82.02.070 Impact fees—Retained in special accounts—Limitations on use—Administrative appeals.**

(1) Impact fee receipts shall be earmarked specifically and retained in special interest-bearing accounts. Separate accounts shall be established for each type of public facility for which impact fees are collected. All interest shall be retained in the account and expended for the purpose or purposes for which the impact fees were imposed. Annually, each county, city, or town imposing impact fees shall provide a report on each impact fee account showing the source and amount of all moneys collected, earned, or received and system improvements that were financed in whole or in part by impact fees.

(2) Impact fees for system improvements shall be expended only in conformance with the capital facilities plan element of the comprehensive plan.

(3) Impact fees shall be expended or encumbered for a permissible use within six years of receipt, unless there exists an extraordinary and compelling reason for fees to be held longer than six years. Such extraordinary or compelling reasons shall be identified in written findings by the governing body of the county, city, or town.

(4) Impact fees may be paid under protest in order to obtain a permit or other approval of development activity.

(5) Each county, city, or town that imposes impact fees shall provide for an administrative appeals process for the appeal of an impact fee; the process may follow the appeal process for the underlying development approval or the county, city, or town may establish a separate appeals process. The impact fee may be modified upon a determination that it is proper to do so based on principles of fairness. The county, city, or town may provide for the resolution of disputes regarding impact fees by arbitration. [1990 1st ex.s. c 17 § 46.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:**  
See RCW 36.70A.900 and 36.70A.901.

**82.02.080 Impact fees—Refunds.** (1) The current owner of property on which an impact fee has been paid may receive a refund of such fees if the county, city, or town fails to expend or encumber the impact fees within six years of when the fees were paid or other such period of time established pursuant to RCW 82.02.070(3) on public facilities intended to benefit the development activity for which the impact fees were paid. In determining whether impact fees have been encumbered, impact fees shall be considered encumbered on a first in, first out basis. The county, city, or town shall notify potential claimants by first-class mail deposited with the United States postal service at the last known address of claimants.

The request for a refund must be submitted to the county, city, or town governing body in writing within one year of the date the right to claim the refund arises or the date that notice is given, whichever is later. Any impact fees that are not expended within these time limitations, and for which no application for a refund has been made within this one-year period, shall be retained and expended on the indicated capital facilities. Refunds of impact fees under this subsection shall include interest earned on the impact fees.

(2) When a county, city, or town seeks to terminate any or all impact fee requirements, all unexpended or unencum-

bered funds, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all fee requirements are to be terminated, the county, city, or town shall place notice of such termination and the availability of refunds in a newspaper of general circulation at least two times and shall notify all potential claimants by first-class mail to the last known address of claimants. All funds available for refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the local government, but must be expended for the indicated public facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within an account or accounts being terminated.

(3) A developer may request and shall receive a refund, including interest earned on the impact fees, when the developer does not proceed with the development activity and no impact has resulted. [1990 1st ex.s. c 17 § 47.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**82.02.090 Impact fees—Definitions.** Unless the context clearly requires otherwise, the following definitions shall apply in RCW 82.02.050 through 82.02.090:

(1) "Development activity" means any construction or expansion of a building, structure, or use, any change in use of a building or structure, or any changes in the use of land, that creates additional demand and need for public facilities. "Development activity" does not include buildings or structures constructed by a regional transit authority.

(2) "Development approval" means any written authorization from a county, city, or town which authorizes the commencement of development activity.

(3) "Impact fee" means a payment of money imposed upon development as a condition of development approval to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates additional demand and need for public facilities, that is a proportionate share of the cost of the public facilities, and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

(4) "Owner" means the owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

(5) "Proportionate share" means that portion of the cost of public facility improvements that are reasonably related to the service demands and needs of new development.

(6) "Project improvements" mean site improvements and facilities that are planned and designed to provide service for a particular development project and that are necessary for the use and convenience of the occupants or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the governing body of the county, city, or town shall be considered a project improvement.

(7) "Public facilities" means the following capital facilities owned or operated by government entities: (a) Public streets and roads; (b) publicly owned parks, open space, and recreation facilities; (c) school facilities; and (d) fire protection facilities in jurisdictions that are not part of a fire district.

(8) "Service area" means a geographic area defined by a county, city, town, or intergovernmental agreement in which a defined set of public facilities provide service to development within the area. Service areas shall be designated on the basis of sound planning or engineering principles.

(9) "System improvements" mean public facilities that are included in the capital facilities plan and are designed to provide service to service areas within the community at large, in contrast to project improvements. [2008 c 42 § 1; 1990 1st ex.s. c 17 § 48.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**82.02.100 Impact fees—Exception, mitigation fees paid under chapter 43.21C RCW.** A person required to pay a fee pursuant to RCW 43.21C.060 for system improvements shall not be required to pay an impact fee under RCW 82.02.050 through 82.02.090 for those same system improvements. [1992 c 219 § 2.]

**82.02.200 Contract to issue conditional federal employer identification numbers, credentials, and documents in conjunction with license applications.** The director may contract with the federal internal revenue service, or other appropriate federal agency, to issue conditional federal employer identification numbers, or other federal credentials or documents, at specified offices and locations of the agency in conjunction with any application for state licenses under chapter 19.02 RCW. [1997 c 51 § 6.]

**Intent—1997 c 51:** See note following RCW 19.02.300.

**82.02.210 Washington compliance with streamlined sales and use tax agreement—Intent.** (1) It is the intent of the legislature that Washington join as a member state in the streamlined sales and use tax agreement referred to in chapter 82.58 RCW. The agreement provides for a simpler and more uniform sales and use tax structure among states that have sales and use taxes. The intent of the legislature is to bring Washington's sales and use tax system into compliance with the agreement so that Washington may join as a member state and have a voice in the development and administration of the system, and to substantially reduce the burden of tax compliance on sellers.

(2) Chapter 168, Laws of 2003 does not include changes to Washington law that may be required in the future and that are not fully developed under the agreement. These include, but are not limited to, changes relating to online registration, reporting, and remitting of payments by businesses for sales and use tax purposes, monetary allowances for sellers and their agents, sourcing, and amnesty for businesses registering under the agreement.

(3) It is the intent of the legislature that the provisions of this title relating to the administration and collection of state and local sales and use taxes be interpreted and applied consistently with the agreement.

(4) The department of revenue shall report to the fiscal committees of the legislature on January 1, 2004, and each January 1st thereafter, on the development of the agreement and shall recommend changes to the sales and use tax structure and propose legislation as may be necessary to keep

Washington in compliance with the agreement. [2007 c 6 § 105; 2003 c 168 § 1.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Part headings not law—2003 c 168:** See note following RCW 82.08.010.

**82.02.220 Exclusion of steam, electricity, or electrical energy from definition of certain terms.** When the terms "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this title, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 701.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.02.230 One statewide rate and one jurisdiction-wide rate for sales and use taxes.** (1) There shall be one statewide rate for sales and use taxes imposed at the state level. This subsection does not apply to the taxes imposed by RCW 82.08.150, 82.12.022, or 82.18.020, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes.

(2) There shall be one jurisdiction-wide rate for local sales and use taxes imposed at levels below the state level. This subsection does not apply to the taxes imposed by chapter 67.28 RCW, RCW 35.21.280, 36.38.010, 36.38.040, 67.40.090, or 82.14.360, or to taxes imposed on the sale, rental, lease, or use of motor vehicles, aircraft, watercraft, modular homes, manufactured homes, or mobile homes. [2004 c 153 § 405; 2003 c 168 § 801.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.02.240 Professional employer organizations—Liability for certain taxes and fees.** (1) A professional employer organization is not liable for any tax imposed by or under the authority of this title or Title 35 RCW or any other tax, fee, or charge that the department administers based solely on the activities or status of a covered employee having a coemployment relationship with the professional employer organization.

(2) This subsection does not exempt a professional employer organization from:

(a) Any tax imposed by or under the authority of this or any other title based on:

(i) Professional employer services provided by the professional employer organization; or

(ii) The status or activities of employees of the professional employer organization that are not covered employees coemployed with a client; or

(b) The duty to withhold, collect, report, and remit payroll-related and unemployment taxes as required by state law and regulation.

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(3) The definitions in RCW 82.04.540 apply to this section. [2006 c 301 § 8.]

**Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301:** See notes following RCW 82.32.710.

## Chapter 82.03 RCW BOARD OF TAX APPEALS

### Sections

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*Limitation on increase in property value in appeals to board of tax appeals from county board of equalization: RCW 84.08.060.*

*Review of sale price established for certain shorelands: RCW 79.125.450.*

**82.03.010 Board created.** There is hereby created the board of tax appeals of the state of Washington as an agency of state government. [1967 ex.s. c 26 § 30.]

**Effective date—1967 ex.s. c 26:** See note following RCW 82.01.050.

**82.03.020 Members—Number—Qualifications—Appointment.** The board of tax appeals, hereinafter in chapter 26, Laws of 1967 ex. sess. referred to as the board, shall consist of three members qualified by experience and training in the field of state and local taxation, appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their terms shall be members of the same political party. [1967 ex.s. c 26 § 31.]

**82.03.030 Terms—Vacancies.** Members of the board shall be appointed for a term of six years and until their successors are appointed and have qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs: PROVIDED, That the terms of the first three members of the board shall be staggered so that one member shall be appointed to serve until March 1, 1969, one member until March 1, 1971, and one member until March 1, 1973. [1967 ex.s. c 26 § 32.]

**82.03.040 Removal of members—Grounds—Procedure.** Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment. [1967 ex.s. c 26 § 33.]

**82.03.050 Operation on part time or full time basis—Salary—Compensation—Travel expenses.** The board shall operate on either a part time or a full time basis, as determined by the governor. If it is determined that the board shall operate on a full time basis, each member of the board shall receive an annual salary to be determined by the governor. If it is determined that the board shall operate on a part time basis, each member of the board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his duties, but such compensation shall not exceed ten thousand dollars in a fiscal year. Each board member shall receive reimbursement for travel expenses incurred in the discharge of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 176; 1970 ex.s. c 65 § 2; 1967 ex.s. c 26 § 34.]

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

**Severability—1970 ex.s. c 65:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 65 § 11.]

**Effective date—1970 ex.s. c 65:** "This 1970 amendatory act shall take effect July 1, 1970." [1970 ex.s. c 65 § 12.]

**82.03.060 Members not to be candidate or hold public office, engage in inconsistent occupation nor be on political committee—Restriction on leaving board.** Each member of the board of tax appeals:

(1) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member of the board, nor shall he serve on or under any committee of any political party; and

(2) Shall not for a period of one year after the termination of his membership on the board, act in a representative capacity before the board on any matter. [1967 ex.s. c 26 § 35.]

**82.03.070 Executive director, tax referees, clerk, assistants.** The board may appoint, discharge and fix the compensation of an executive director, tax referees, a clerk, and such other clerical, professional and technical assistants as may be necessary. Tax referees shall not be subject to chapter 41.06 RCW. [1988 c 222 § 2; 1967 ex.s. c 26 § 36.]

**82.03.080 Chairman.** The board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chairman, and shall at least biennially thereafter meet and elect such a chairman. [1967 ex.s. c 26 § 37.]

**82.03.090 Office of board—Quorum—Hearings.** The principal office of the board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules and regulations necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1967 ex.s. c 26 § 38.]

**82.03.100 Findings and decisions—Signing—Filing—Public inspection.** The board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members of the board and upon being filed at the board's principal office, and shall be open to public inspection at all reasonable times. [1967 ex.s. c 26 § 39.]

**82.03.110 Publication of findings and decisions.** The board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof. [1967 ex.s. c 26 § 40.]

**82.03.120 Journal of final findings and decisions.** The board shall maintain at its principal office a copy of its final findings and decisions. The findings and decisions shall be available for public inspection at the principal office of the board at all reasonable times. [1988 c 222 § 3; 1967 ex.s. c 26 § 41.]

**82.03.130 Appeals to board—Jurisdiction as to types of appeals—Filing.** (1) The board shall have jurisdiction to decide the following types of appeals:

(a) Appeals taken pursuant to RCW 82.03.190.

(b) Appeals from a county board of equalization pursuant to RCW 84.08.130.

(c) Appeals by an assessor or landowner from an order of the director of revenue made pursuant to RCW 84.08.010 and 84.08.060, if filed with the board of tax appeals within thirty days after the mailing of the order, the right to such an appeal being hereby established.

(d) Appeals by an assessor or owner of an intercounty public utility or private car company from determinations by the director of revenue of equalized assessed valuation of property and the apportionment thereof to a county made pursuant to chapter 84.12 and 84.16 RCW, if filed with the board of tax appeals within thirty days after mailing of the determination, the right to such appeal being hereby established.

(e) Appeals by an assessor, landowner, or owner of an intercounty public utility or private car company from a determination of any county indicated ratio for such county compiled by the department of revenue pursuant to RCW 84.48.075: PROVIDED, That

(i) Said appeal be filed after review of the ratio under RCW 84.48.075(3) and not later than fifteen days after the mailing of the certification; and

(ii) The hearing before the board shall be expeditiously held in accordance with rules prescribed by the board and shall take precedence over all matters of the same character.

(f) Appeals from the decisions of sale price of second-class shorelands on navigable lakes by the department of natural resources pursuant to \*RCW 79.94.210.

(g) Appeals from urban redevelopment property tax apportionment district proposals established by governmental ordinances pursuant to RCW 39.88.060.

(h) Appeals from interest rates as determined by the department of revenue for use in valuing farmland under current use assessment pursuant to RCW 84.34.065.

(i) Appeals from revisions to stumpage value tables used to determine value by the department of revenue pursuant to RCW 84.33.091.

(j) Appeals from denial of tax exemption application by the department of revenue pursuant to RCW 84.36.850.

(k) Appeals pursuant to RCW 84.40.038(3).

(l) Appeals pursuant to RCW 84.39.020.

(2) Except as otherwise specifically provided by law hereafter, the provisions of RCW 1.12.070 shall apply to all notices of appeal filed with the board of tax appeals. [2005 c 253 § 7; 1998 c 54 § 1; 1994 c 123 § 3; 1992 c 206 § 9; 1989 c 378 § 4; 1982 1st ex.s. c 46 § 6; 1977 ex.s. c 284 § 2; 1967 ex.s. c 26 § 42.]

\***Reviser's note:** RCW 79.94.210 was recodified as RCW 79.125.450 pursuant to 2005 c 155 § 1008.

**Application—2005 c 253:** See note following RCW 84.39.010.

**Applicability—1994 c 123:** See note following RCW 84.36.815.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Purpose—Intent—1977 ex.s. c 284:** See note following RCW 84.48.075.

**82.03.140 Appeals to board—Election of formal or informal hearing.** In all appeals over which the board has jurisdiction under RCW 82.03.130, a party taking an appeal may elect either a formal or an informal hearing, such election to be made according to rules of practice and procedure to be promulgated by the board: PROVIDED, That nothing shall prevent the assessor or taxpayer, as a party to an appeal pursuant to RCW 84.08.130, within twenty days from the date of the receipt of the notice of appeal, from filing with the clerk of the board notice of intention that the hearing be a formal one: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the provisions of RCW 82.03.190: AND PROVIDED FURTHER, That upon an appeal under RCW 82.03.130(1)(e), the director of revenue may, within ten days from the date of its receipt of the notice of appeal, file with the clerk of the board notice of its intention that the hearing be held pursuant to chapter 34.05 RCW. In the event that appeals are taken from the same decision, order, or determination, as the case may be, by different parties and only one of such parties elects a formal hearing, a

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formal hearing shall be granted. [2000 c 103 § 1; 1988 c 222 § 4; 1982 1st ex.s. c 46 § 8; 1967 ex.s. c 26 § 43.]

**82.03.150 Appeals to board—Informal hearings, powers of board or tax referees—Assistance.** In all appeals involving an informal hearing, the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies by chapter 34.05 RCW. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b) the board or any member thereof may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board or any member thereof may deem necessary or appropriate. [2000 c 103 § 2; 1988 c 222 § 5; 1967 ex.s. c 26 § 44.]

**82.03.160 Appeals to board—Formal hearings, powers of board or tax referees—Assistance.** In all appeals involving a formal hearing the board or its tax referees shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions as are granted to agencies in chapter 34.05 RCW; and the board, and each member thereof, or its tax referees, shall be subject to all duties imposed upon, and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings. The board, or its tax referees, shall also have all powers granted the department of revenue pursuant to RCW 82.32.110. In the case of appeals within the scope of RCW 82.03.130(1)(b), the board, or any member thereof, may obtain such assistance, including the making of field investigations, from the staff of the director of revenue as the board, or any member thereof, may deem necessary or appropriate: PROVIDED, HOWEVER, That any communication, oral or written, from the staff of the director to the board or its tax referees shall be presented only in open hearing. [2000 c 103 § 3; 1989 c 175 § 175; 1988 c 222 § 6; 1967 ex.s. c 26 § 45.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**82.03.170 Rules of practice and procedure.** All proceedings, including both formal and informal hearings, before the board or any of its members or tax referees shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The board shall publish such rules and arrange for the reasonable distribution thereof. [1988 c 222 § 7; 1967 ex.s. c 26 § 46.]

**82.03.180 Judicial review.** Judicial review of a decision of the board of tax appeals shall be de novo in accordance with the provisions of RCW 82.32.180 or 84.68.020 as applicable except when the decision has been rendered pursuant to a formal hearing elected under RCW 82.03.140 or 82.03.190, in which event judicial review may be obtained only pursuant to RCW 34.05.510 through 34.05.598: PROVIDED, HOWEVER, That nothing herein shall be construed to modify the rights of a taxpayer conferred by RCW 82.32.180 and 84.68.020 to sue for tax refunds: AND PROVIDED FURTHER, That no review from a decision made

pursuant to RCW 82.03.130(1)(a) may be obtained by a taxpayer unless within the petition period provided by RCW 34.05.542 the taxpayer shall have first paid in full the contested tax, together with all penalties and interest thereon, if any. The director of revenue shall have the same right of review from a decision made pursuant to RCW 82.03.130(1)(a) as does a taxpayer; and the director of revenue and all parties to an appeal under RCW 82.03.130(1)(e) shall have the right of review from a decision made pursuant to RCW 82.03.130(1)(e). [2000 c 103 § 4; 1989 c 175 § 176; 1982 1st ex.s. c 46 § 9; 1967 ex.s. c 26 § 47.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**82.03.190 Appeal to board from denial of petition or notice of determination as to reduction or refund—Procedure—Notice.** Any person having received notice of a denial of a petition or a notice of determination made under RCW 82.32.160, 82.32.170, 82.34.110, or 82.49.060 may appeal by filing in accordance with RCW 1.12.070 a notice of appeal with the board of tax appeals within thirty days after the mailing of the notice of such denial or determination. In the notice of appeal the taxpayer shall set forth the amount of the tax which the taxpayer contends should be reduced or refunded and the reasons for such reduction or refund, in accordance with rules of practice and procedure prescribed by the board. However, if the notice of appeal relates to an application made to the department under chapter 82.34 RCW, the taxpayer shall set forth the amount to which the taxpayer claims the credit or exemption should apply, and the grounds for such contention, in accordance with rules of practice and procedure prescribed by the board. The board shall transmit a copy of the notice of appeal to the department and all other named parties within thirty days of its receipt by the board. If the taxpayer intends that the hearing before the board be held pursuant to the administrative procedure act (chapter 34.05 RCW), the notice of appeal shall also so state. In the event that the notice of appeal does not so state, the department may, within thirty days from the date of its receipt of the notice of appeal, file with the board notice of its intention that the hearing be held pursuant to the administrative procedure act. [1998 c 54 § 2; 1989 c 378 § 5; 1983 c 3 § 211; 1979 ex.s. c 209 § 50; 1975 1st ex.s. c 158 § 3; 1967 ex.s. c 26 § 48.]

**Effective date—Applicability—Severability—1979 ex.s. c 209:** See notes following RCW 83.04.010.

**Effective date—1975 1st ex.s. c 158:** See note following RCW 82.34.050.

*Review of disputes as to appraised value of watercraft: RCW 82.49.060.*

**82.03.200 Appeals from county board of equalization—Evidence submission in advance of hearing.** In all appeals taken pursuant to RCW 84.08.130 the assessor or taxpayer shall submit evidence of comparable sales to be used in a hearing to the board and to all parties at least ten business days in advance of such hearing. Failure to comply with the requirements set forth in this section shall be grounds for the board, upon objection, to continue the hearing or refuse to consider evidence not timely submitted. [1994 c 301 § 17.]

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## Chapter 82.04 RCW

### BUSINESS AND OCCUPATION TAX

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*Admission tax**cities: RCW 35.21.280.**counties: Chapter 36.38 RCW.**Commute trip reduction incentives: Chapter 82.70 RCW.**Housing authorities, tax exemption: Chapter 35.82 RCW.**Public utility districts, privilege taxes: Chapter 54.28 RCW.*

**82.04.010 Introductory.** Unless the context clearly requires otherwise, the definitions set forth in the sections preceding RCW 82.04.220 apply throughout this chapter. [1996 c 93 § 4; 1961 c 15 § 82.04.010. Prior: 1955 c 389 § 2; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.020 "Tax year," "taxable year."** "Tax year" or "taxable year" means either the calendar year, or the taxpayer's fiscal year when permission is obtained from the department of revenue to use a fiscal year in lieu of the calendar year. [1975 1st ex.s. c 278 § 39; 1961 c 15 § 82.04.020. Prior: 1955 c 389 § 3; prior: 1949 c 228 § 2, part; 1945 c 249

§ 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5; Rem. Supp. 1949 § 8370-5, part.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.04.030 "Person," "company."** "Person" or "company", herein used interchangeably, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise and the United States or any instrumentality thereof. [1995 c 318 § 1; 1963 ex.s. c 28 § 1; 1961 c 15 § 82.04.030. Prior: 1955 c 389 § 4; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1995 c 318:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 318 § 12.]

**Effective date—1963 ex.s. c 28:** "This act shall take effect on July 1, 1963." [1963 ex.s. c 28 § 17.]

*International companies investing in Washington—Eligibility for excise tax incentives: RCW 43.330.068.*

**82.04.035 "Plantation Christmas trees."** "Plantation Christmas trees" means Christmas trees which are exempt from the timber excise tax under RCW 84.33.170. [1987 c 23 § 1.]

**82.04.040 "Sale," "casual or isolated sale," "lease or rental."** (1) "Sale" means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a "sale at retail" or "retail sale" under RCW 82.04.050. It includes lease or rental, conditional sale contracts, and any contract under which possession of the property is given to the purchaser but title is retained by the vendor as security for the payment of the purchase price. It also includes the furnishing of food, drink, or meals for compensation whether consumed upon the premises or not.

(2) "Casual or isolated sale" means a sale made by a person who is not engaged in the business of selling the type of property involved.

(3)(a) "Lease or rental" means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend. "Lease or rental" includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 U.S.C. Sec. 7701(h)(1), as amended or renumbered as of January 1, 2003. The definition in this subsection (3) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting

principles, the United States internal revenue code, Washington state's commercial code, or other provisions of federal, state, or local law.

(b) "Lease or rental" does not include:

(i) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

(ii) A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments, and payment of an option price does not exceed the greater of one hundred dollars or one percent of the total required payments; or

(iii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (3)(b)(iii), an operator must do more than maintain, inspect, or set up the tangible personal property. [2004 c 153 § 402; 2003 c 168 § 103; 1961 c 15 § 82.04.040. Prior: 1959 ex.s. c 5 § 1; 1959 ex.s. c 3 § 1; 1955 c 389 § 5; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.04.050 "Sale at retail," "retail sale."** (1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person, but a purchase for the purpose of resale by a regional transit authority under RCW 81.112.300 is not a sale for resale; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7), 82.04.290, and 82.04.2908; or

(f) Purchases for the purpose of satisfying the person's obligations under an extended warranty as defined in subsection (7) of this section, if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of self-service laundry facilities, and also excluding sales of laundry service to nonprofit health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The constructing, repairing, or improving of any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The cleaning, fumigating, razing, or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) Automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same. For the purposes of this subsection, it shall be presumed that the sale of and charge made for the furnishing of lodging for a continuous period of one month or more to a person is a rental or lease of real property and not a mere license to enjoy the same;

(g) Persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4)(a) The term shall also include:

(i) The renting or leasing of tangible personal property to consumers; and

(ii) Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A consideration of this is that the operator is necessary for the tangible personal property to perform as designed. For the purpose of this subsection (4)(a)(ii), an operator must do more than maintain, inspect, or set up the tangible personal property.

(b) The term shall not include the renting or leasing of tangible personal property where the lease or rental is for the purpose of sublease or subrent.

(5) The term shall also include the providing of "competitive telephone service," "telecommunications service," or "ancillary services," as those terms are defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of prewritten computer software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of prewritten computer software.

(7) The term shall also include the sale of or charge made for an extended warranty to a consumer. For purposes of this subsection, "extended warranty" means an agreement for a specified duration to perform the replacement or repair of tangible personal property at no additional charge or a reduced charge for tangible personal property, labor, or both, or to provide indemnification for the replacement or repair of tangible personal property, based on the occurrence of specified events. The term "extended warranty" does not include an agreement, otherwise meeting the definition of extended warranty in this subsection, if no separate charge is made for the agreement and the value of the agreement is included in the sales price of the tangible personal property covered by the agreement. For purposes of this subsection, "sales price" has the same meaning as in RCW 82.08.010.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(9) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(10) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the

sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(11) The term shall not include the sale of or charge made for labor, services, or tangible personal property pursuant to agreements providing maintenance services for bus, rail, or rail fixed guideway equipment when a regional transit authority is the recipient of the labor, services, or tangible personal property, and a transit agency, as defined in RCW 81.104.015, performs the labor or services. [2007 c 54 § 4; 2007 c 6 § 1004. Prior: 2005 c 515 § 2; 2005 c 514 § 101; prior: 2004 c 174 § 3; 2004 c 153 § 407; 2003 c 168 § 104; 2002 c 178 § 1; 2000 2nd sp.s. c 4 § 23; prior: 1998 c 332 § 2; 1998 c 315 § 1; 1998 c 308 § 1; 1998 c 275 § 1; 1997 c 127 § 1; prior: 1996 c 148 § 1; 1996 c 112 § 1; 1995 1st sp.s. c 12 § 2; 1995 c 39 § 2; 1993 sp.s. c 25 § 301; 1988 c 253 § 1; prior: 1987 c 285 § 1; 1987 c 23 § 2; 1986 c 231 § 1; 1983 2nd ex.s. c 3 § 25; 1981 c 144 § 3; 1975 1st ex.s. c 291 § 5; 1975 1st ex.s. c 90 § 1; 1973 1st ex.s. c 145 § 1; 1971 ex.s. c 299 § 3; 1971 ex.s. c 281 § 1; 1970 ex.s. c 8 § 1; prior: 1969 ex.s. c 262 § 30; 1969 ex.s. c 255 § 3; 1967 ex.s. c 149 § 4; 1965 ex.s. c 173 § 1; 1963 c 7 § 1; prior: 1961 ex.s. c 24 § 1; 1961 c 293 § 1; 1961 c 15 § 82.04.050; prior: 1959 ex.s. c 5 § 2; 1957 c 279 § 1; 1955 c 389 § 6; 1953 c 91 § 3; 1951 2nd ex.s. c 28 § 3; 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Reviser's note:** This section was amended by 2007 c 6 § 1004 and by 2007 c 54 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 54 § 3.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Findings—2005 c 515:** "The legislature finds that:

(1) Public entities that receive tax dollars must continuously improve the way they operate and deliver service so citizens receive maximum value for their tax dollars; and

(2) An explicit statement clarifying that no sales or use tax shall apply to the entire charge paid by regional transit authorities for bus or rail combined operations and maintenance agreements that are provided to such authorities in support of their provision of urban transportation or transportation services is necessary to improve efficient service." [2005 c 515 § 1.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Retrospective effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Retrospective application—Effective date—2002 c 178:** See notes following RCW 67.28.180.

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

(2008 Ed.)

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Effective dates—1998 c 308:** "(1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003." [1998 c 308 § 6.]

**Effective date—1998 c 275:** "This act takes effect July 1, 1998." [1998 c 275 § 2.]

**Effective date—1997 c 127:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 127 § 2.]

**Severability—1996 c 148:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 148 § 7.]

**Effective date—1996 c 148:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 148 § 8.]

**Effective date—1996 c 112:** "This act shall take effect July 1, 1996." [1996 c 112 § 5.]

**Intent—1995 1st sp.s. c 12:** "It is the intent of the legislature that massage services be recognized as health care practitioners for the purposes of business and occupation tax application. To achieve this intent massage services are being removed from the definition of sale at retail and retail sale." [1995 1st sp.s. c 12 § 1.]

**Effective date—1995 1st sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 12 § 5.]

**Effective date—1995 c 39:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 39 § 3.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**Application to preexisting contracts—1975 1st ex.s. c 291; 1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective dates—1975 1st ex.s. c 291:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing institutions, and shall take effect immediately: PROVIDED, That sections 8 and 26 through 43 of this amendatory act shall be effective on and after January 1, 1976: PROVIDED FURTHER, That sections 2, 3, and 4, and subsections (1) and (2) of section 24 shall be effective on and after January 1, 1977: AND PROVIDED FURTHER, That subsections (3) through (15) of section 24 shall be effective on and after January 1, 1978." [1975 1st ex.s. c 291 § 46.]

**Severability—1975 1st ex.s. c 291:** "If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975 1st ex.s. c 291 § 45.]

**Effective date—1975 1st ex.s. c 90:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 90 § 5.]

**Effective date—1973 1st ex.s. c 145:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 145 § 2.]

**Effective dates—1971 ex.s. c 299:** "This 1971 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect as follows:

(1) Sections 1 through 12, 15 through 34 and 53 shall take effect July 1, 1971;

(2) Sections 13, 14, and 77 and 78 shall take effect June 1, 1971; and

(3) Sections 35 through 52 and 54 through 76 shall take effect as provided in section 53." [1971 ex.s. c 299 § 79.]

**Severability—1971 ex.s. c 299:** "If any phrase, clause, subsection or section of this 1971 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1971 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1971 ex.s. c 299 § 78.]

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**Effective date—1967 ex.s. c 149:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1967." [1967 ex.s. c 149 § 65.]

**Effective date—1965 ex.s. c 173:** "This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1965." [1965 ex.s. c 173 § 33.]

*Credit for retail sales or use taxes paid to other jurisdictions with respect to property used:* RCW 82.12.035.

*"Services rendered in respect to" defined:* RCW 82.04.051.

**82.04.051 "Services rendered in respect to"—Taxation of hybrid or subsequent agreements.** (1) As used in RCW 82.04.050, the term "services rendered in respect to" means those services that are directly related to the constructing, building, repairing, improving, and decorating of buildings or other structures and that are performed by a person who is responsible for the performance of the constructing, building, repairing, improving, or decorating activity. The term does not include services such as engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services provided to the consumer of, or person responsible for performing, the constructing, building, repairing, improving, or decorating services.

(2) A contract or agreement under which a person is responsible for both services that would otherwise be subject to tax as a service under RCW 82.04.290(2) and also constructing, building, repairing, improving, or decorating activities that would otherwise be subject to tax under another section of this chapter is subject to the tax that applies to the predominant activity under the contract or agreement.

(3) Unless otherwise provided by law, a contract or agreement under which a person is responsible for activities that are subject to tax as a service under RCW 82.04.290(2), and a subsequent contract or agreement under which the same person is responsible for constructing, building, repairing, improving, or decorating activities subject to tax under another section of this chapter, shall not be combined and taxed as a single activity if at the time of the first contract or agreement it was not contemplated by the parties, as evidenced by the facts, that the same person would be awarded both contracts.

(4) As used in this section "responsible for the performance" means that the person is obligated to perform the activities, either personally or through a third party. A person who reviews work for a consumer, retailer, or wholesaler but does not supervise or direct the work is not responsible for the performance of the work. A person who is financially obligated for the work, such as a bank, but who does not have control over the work itself is not responsible for the performance of the work. [1999 c 212 § 2.]

**Finding—Intent—1999 c 212:** "(1) The legislature finds that the taxation of "services rendered in respect to constructing buildings or other structures" has generally included the entire transaction for construction, including certain services provided directly to the consumer or owner rather than the person engaged in the performance of the constructing activity. Changes in business practices and recent administrative and court decisions have confused the issue. It is the intent of the legislature to clarify which services, if standing alone and not part of the construction agreement, are taxed as retail or wholesale sales, and which services will continue to be taxed as a service.

(2) It is further the intent of the legislature to confirm that the entire price for the construction of a building or other structure for a consumer or owner continues to be a retail sale, even though some of the individual services reflected in the price, if provided alone, would be taxed as services and not as separate retail or wholesale sales.

(3) Therefore, the intent of this act is to maintain the application of the law and not to extend retail treatment to activities not previously treated as retail activities. Services that are otherwise subject to tax as a service under RCW 82.04.290(2), including but not limited to engineering, architectural, surveying, flagging, accounting, legal, consulting, or administrative services, remain subject to tax as a service under RCW 82.04.290(2), if the person responsible for the performance of those services is not also responsible for the performance of the constructing, building, repairing, improving, or decorating activities. Additionally, unless otherwise provided by law, a person entering into an agreement to be responsible for the performance of services otherwise subject to tax as a service under RCW 82.04.290(2), and subsequently entering into a separate agreement to be responsible for the performance of constructing, building, repairing, improving, or decorating activities, is subject to tax as a service under RCW 82.04.290(2) with respect to the first agreement, and is subject to tax under the appropriate section of chapter 82.04 RCW with respect to the second agreement, if at the time of the first agreement there was no contemplation by the parties, as evidenced by the facts, that the agreements would be awarded to the same person." [1999 c 212 § 1.]

#### 82.04.055 "Selected business services."

**Reviser's note:** RCW 82.04.055 was amended by 1997 c 304 § 3 without reference to its repeal by 1997 c 7 § 5. It has been decodified for publication purposes under RCW 1.12.025.

**82.04.060 "Sale at wholesale," "wholesale sale."** "Sale at wholesale" or "wholesale sale" means: (1) Any sale of tangible personal property, any sale of services defined as a retail sale in RCW 82.04.050(2)(a), any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a), any sale of canned software, any sale of an extended warranty as defined in RCW 82.04.050(7), or any sale of competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, which is not a sale at retail; and (2) any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this subsection shall not include any natural products named in RCW 82.04.100. [2007 c 6 § 1007; 2005 c 514 § 102; 2002 c 367 § 1; 1998 c 332 § 5; 1996 c 148 § 3; 1983 2nd ex.s. c 3 § 26; 1961 c 15 § 82.04.060. Prior: 1955 ex.s. c 10 § 4; 1955 c 389 § 7; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—2002 c 367:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 367 § 7.]

**Effective date—2002 c 367:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 1, 2002." [2002 c 367 § 8.]

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Construction—Severability—Effective dates—1983 2nd ex. s. c 3:** See notes following RCW 82.04.255.

**82.04.062 "Sale at wholesale," "sale at retail" excludes sale of precious metal bullion and monetized bullion—Computation of tax.** (1) For purposes of this chapter, "wholesale sale," "sale at wholesale," "retail sale," and "sale at retail" do not include the sale of precious metal bullion or monetized bullion.

(2) In computing tax under this chapter on the business of making sales of precious metal bullion or monetized bullion, the tax shall be imposed on the amounts received as commissions upon transactions for the accounts of customers over and above the amount paid to other dealers associated in such transactions, but no deduction or offset is allowed on account of salaries or commissions paid to salesmen or other employees.

(3) For purposes of this section, "precious metal bullion" means any precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and palladium, and which is in such state or condition that its value depends upon its contents and not upon its form. For purposes of this section, "monetized bullion" means coins or other forms of money manufactured from gold, silver, or other metals and heretofore, now, or hereafter used as a medium of exchange under the laws of this state, the United States, or any foreign nation, but does not include coins or money sold to be manufactured into jewelry or works of art. [1985 c 471 § 5.]

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**82.04.065 Telephone, telecommunications, and ancillary services—Definitions. (Contingency, see note following RCW 82.04.530.)** (1) "Competitive telephone service" means the providing by any person of telecommunications equipment or apparatus, or service related to that equipment or apparatus such as repair or maintenance service, if the equipment or apparatus is of a type which can be provided by persons that are not subject to regulation as telephone companies under Title 80 RCW and for which a separate charge is made.

(2) "Ancillary services" means services that are associated with or incidental to the provision of "telecommunications services," including but not limited to "detailed telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

(3) "Conference-bridging service" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a tele-

phone number. "Conference-bridging service" does not include the telecommunications services used to reach the conference bridge.

(4) "Detailed telecommunications billing service" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(5) "Directory assistance" means an ancillary service of providing telephone number information, and/or address information.

(6) "Vertical service" means an ancillary service that is offered in connection with one or more telecommunications services, that offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including conference-bridging services.

(7) "Voice mail service" means an ancillary service that enables the customer to store, send, or receive recorded messages. "Voice mail service" does not include any vertical services that the customer may be required to have in order to use the voice mail service.

(8) "Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. "Telecommunications service" includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice over internet protocol services or is classified by the federal communications commission as enhanced or value added. "Telecommunications service" does not include:

(a) Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's primary purpose for the underlying transaction is the processed data or information;

(b) Installation or maintenance of wiring or equipment on a customer's premises;

(c) Tangible personal property;

(d) Advertising, including but not limited to directory advertising;

(e) Billing and collection services provided to third parties;

(f) Internet access service;

(g) Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, and routing of such services by the programming service provider. Radio and television audio and video programming services include but are not limited to cable service as defined in 47 U.S.C. Sec. 522(6) and audio and video programming services delivered by commercial mobile radio service providers, as defined in section 20.3, Title 47 C.F.R.;

(h) Ancillary services; or

(i) Digital products delivered electronically, including but not limited to software, music, video, reading materials, or ring tones.

(9) "800 service" means a telecommunications service that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name "800," "855," "866," "877," and "888" toll-

free calling, and any subsequent numbers designated by the federal communications commission.

(10) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live service. "900 service" does not include the charge for: Collection services provided by the seller of the telecommunications services to the subscriber, or services or products sold by the subscriber to the subscriber's customer. The service is typically marketed under the name "900" service, and any subsequent numbers designated by the federal communications commission.

(11) "Fixed wireless service" means a telecommunications service that provides radio communication between fixed points.

(12) "Mobile wireless service" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by way of example only, telecommunications services that are provided by a commercial mobile radio service provider.

(13) "Paging service" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers; these transmissions may include messages and/or sounds.

(14) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(15) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(16) "Private communications service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of the channel or channels.

(17) "Value-added nonvoice data service" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(18) "Charges for mobile telecommunications services" means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, regardless of whether individ-

ual transmissions originate or terminate within the licensed service area of the mobile telecommunications service provider.

(19) "Customer" means: (a) The person or entity that contracts with the home service provider for mobile telecommunications services; or (b) the end user of the mobile telecommunications service, if the end user of mobile telecommunications services is not the contracting party, but this subsection (19)(b) applies only for the purpose of determining the place of primary use. The term does not include a reseller of mobile telecommunications service, or a serving carrier under an arrangement to serve the customer outside the home service provider's licensed service area.

(20) "Designated database provider" means a person representing all the political subdivisions of the state that is:

(a) Responsible for providing an electronic database prescribed in 4 U.S.C. Sec. 119(a) if the state has not provided an electronic database; and

(b) Approved by municipal and county associations or leagues of the state whose responsibility it would otherwise be to provide a database prescribed by 4 U.S.C. Secs. 116 through 126.

(21) "Enhanced zip code" means a United States postal zip code of nine or more digits.

(22) "Home service provider" means the facilities-based carrier or reseller with whom the customer contracts for the provision of mobile telecommunications services.

(23) "Licensed service area" means the geographic area in which the home service provider is authorized by law or contract to provide commercial mobile radio service to the customer.

(24) "Mobile telecommunications service" means commercial mobile radio service, as defined in section 20.3, Title 47 C.F.R. as in effect on June 1, 1999.

(25) "Mobile telecommunications service provider" means a home service provider or a serving carrier.

(26) "Place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be:

(a) The residential street address or the primary business street address of the customer; and

(b) Within the licensed service area of the home service provider.

(27) "Prepaid telephone calling service" means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.

(28) "Reseller" means a provider who purchases telecommunications services from another telecommunications service provider and then resells, uses as a component part of, or integrates the purchased services into a mobile telecommunications service. "Reseller" does not include a serving carrier with whom a home service provider arranges for the services to its customers outside the home service provider's licensed service area.

(29) "Serving carrier" means a facilities-based carrier providing mobile telecommunications service to a customer

outside a home service provider's or reseller's licensed service area.

(30) "Taxing jurisdiction" means any of the several states, the District of Columbia, or any territory or possession of the United States, any municipality, city, county, township, parish, transportation district, or assessment jurisdiction, or other political subdivision within the territorial limits of the United States with the authority to impose a tax, charge, or fee. [2007 c 6 § 1003; 2007 c 6 § 1002; 2002 c 67 § 2; 1997 c 304 § 5; 1983 2nd ex.s. c 3 § 24.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**\*Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018:** "Sections 1003, 1006, 1014, and 1018 of this act take effect the later of: The date chapter 67, Laws of 2002, becomes null and void; or July 1, 2008." [2007 c 6 § 1707.]

**\*Reviser's note:** 2002 C 67 § 18 was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. That section has been decodified for publication purposes under RCW 1.12.025.

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**Findings—Severability—Effective date—1997 c 304:** See notes following RCW 35.21.717.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

*License fees or taxes on telephone business by cities: RCW 35.21.712 through 35.21.715.*

*Sales tax exemption for certain telephone, telecommunications, and ancillary services: RCW 82.08.0289.*

**82.04.070 "Gross proceeds of sales."** "Gross proceeds of sales" means the value proceeding or accruing from the sale of tangible personal property and/or for services rendered, without any deduction on account of the cost of property sold, the cost of materials used, labor costs, interest, discount paid, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [1961 c 15 § 82.04.070. Prior: 1955 c 389 § 8; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.080 "Gross income of the business."** "Gross income of the business" means the value proceeding or accruing by reason of the transaction of the business engaged in and includes gross proceeds of sales, compensation for the rendition of services, gains realized from trading in stocks, bonds, or other evidences of indebtedness, interest, discount, rents, royalties, fees, commissions, dividends, and other emoluments however designated, all without any deduction on account of the cost of tangible property sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. [1961 c 15 § 82.04.080. Prior: 1955 c 389 § 9; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

(2008 Ed.)

**82.04.090 "Value proceeding or accruing."** "Value proceeding or accruing" means the consideration, whether money, credits, rights, or other property expressed in terms of money, actually received or accrued. The term shall be applied, in each case, on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the taxpayer. However, persons operating grain warehouses licensed under chapter 22.09 RCW may elect to report the value proceeding or accruing from grain warehouse operations on either a cash receipts or accrual basis. The department of revenue may provide by regulation that the value proceeding or accruing from sales on the installment plan under conditional contracts of sale may be reported as of the dates when the payments become due. [2001 c 20 § 1; 1975 1st ex.s. c 278 § 40; 1961 c 15 § 82.04.090. Prior: 1955 c 389 § 10; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—2001 c 20:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 20 § 2.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.04.100 "Extractor."** "Extractor" means every person who from the person's own land or from the land of another under a right or license granted by lease or contract, either directly or by contracting with others for the necessary labor or mechanical services, for sale or for commercial or industrial use mines, quarries, takes or produces coal, oil, natural gas, ore, stone, sand, gravel, clay, mineral or other natural resource product, or fells, cuts or takes timber, Christmas trees other than plantation Christmas trees, or other natural products, or takes fish, shellfish, or other sea or inland water foods or products. "Extractor" does not include persons performing under contract the necessary labor or mechanical services for others; or persons meeting the definition of farmer under RCW 82.04.213. [2001 c 118 § 1; 1987 c 23 § 3; 1985 c 148 § 2; 1965 ex.s. c 173 § 2; 1961 c 15 § 82.04.100. Prior: 1955 c 389 § 11; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

*Withdrawal of gas from underground reservoir not deemed taking or producing under RCW 82.04.100: RCW 80.40.010.*

**82.04.110 "Manufacturer."** "Manufacturer" means every person who, either directly or by contracting with others for the necessary labor or mechanical services, manufactures for sale or for commercial or industrial use from his or her own materials or ingredients any articles, substances or commodities. When the owner of equipment or facilities furnishes, or sells to the customer prior to manufacture, all or a portion of the materials that become a part or whole of the manufactured article, the department shall prescribe equitable rules for determining tax liability: PROVIDED, That a person who produces aluminum master alloys is a processor for hire rather than a manufacturer, regardless of the portion

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of the aluminum provided by that person's customer: PROVIDED FURTHER, That a nonresident of this state who is the owner of materials processed for it in this state by a processor for hire shall not be deemed to be engaged in business in this state as a manufacturer because of the performance of such processing work for it in this state: PROVIDED FURTHER, That the owner of materials from which a nuclear fuel assembly is made for it by a processor for hire shall not be subject to tax under this chapter as a manufacturer of the fuel assembly.

For the purposes of this section, "aluminum master alloy" means an alloy registered with the Aluminum Association as a grain refiner or a hardener alloy using the American National Standards Institute designating system H35.3. [1997 c 453 § 1; 1971 ex.s. c 186 § 1; 1961 c 15 § 82.04.110. Prior: 1955 c 389 § 12; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective date—1997 c 453:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 453 § 2.]

**Effective date—1971 ex.s. c 186:** "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 186 § 5.]

**82.04.120 "To manufacture."** "To manufacture" embraces all activities of a commercial or industrial nature wherein labor or skill is applied, by hand or machinery, to materials so that as a result thereof a new, different or useful substance or article of tangible personal property is produced for sale or commercial or industrial use, and shall include: (1) The production or fabrication of special made or custom made articles; (2) the production or fabrication of dental appliances, devices, restorations, substitutes, or other dental laboratory products by a dental laboratory or dental technician; (3) cutting, delimiting, and measuring of felled, cut, or taken trees; and (4) crushing and/or blending of rock, sand, stone, gravel, or ore.

"To manufacture" shall not include: Conditioning of seed for use in planting; cubing hay or alfalfa; activities which consist of cutting, grading, or ice glazing seafood which has been cooked, frozen, or canned outside this state; the growing, harvesting, or producing of agricultural products; packing of agricultural products, including sorting, washing, rinsing, grading, waxing, treating with fungicide, packaging, chilling, or placing in controlled atmospheric storage; or the production of computer software if the computer software is delivered from the seller to the purchaser by means other than tangible storage media, including the delivery by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser. [2003 c 168 § 604; 1999 sp.s. c 9 § 1; 1999 c 211 § 2; 1998 c 168 § 1; 1997 c 384 § 1; 1989 c 302 § 201. Prior: 1989 c 302 § 101; 1987 c 493 § 1; 1982 2nd ex.s. c 9 § 2; 1975 1st ex.s. c 291 § 6; 1965 ex.s. c 173 § 3; 1961 c 15 § 82.04.120; prior: 1959 ex.s. c 3 § 2; 1955 c 389 § 13; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Intent—1999 sp.s. c 9:** "This act is intended to clarify that this is the intent of the legislature both retroactively and prospectively." [1999 sp.s. c 9 § 4.]

**Severability—1999 sp.s. c 9:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 sp.s. c 9 § 5.]

**Effective date—1999 sp.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 9 § 6.]

**Intent—1999 c 211 §§ 2 and 3:** "The legislature intends that sections 2 and 3 of this act be clarifying in nature and are retroactive in response to the administrative difficulties encountered in implementing the original legislation." [1999 c 211 § 4.]

**Effective date—1999 c 211 §§ 1-4:** "Sections 1 through 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 7, 1999]." [1999 c 211 § 7.]

**Finding—Intent—1999 c 211:** See note following RCW 82.08.02565.

**Effective date—1998 c 168:** "This act takes effect October 1, 1998." [1998 c 168 § 4.]

**Effective date—1997 c 384:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 384 § 3.]

**Finding—Purpose—1989 c 302:** "(1) The legislature finds that chapter 9, Laws of 1982 2nd ex. sess. was intended to extend state public utility taxation to electrical energy generated in this state for eventual distribution outside this state. The legislature further finds that chapter 9, Laws of 1982 2nd ex. sess. was held unconstitutional by the Thurston county superior court in *Washington Water Power v. State of Washington* (memorandum opinion No. 83-2-00977-1). The purpose of \*Part I of this act is to recognize the effect of that decision by correcting the relevant RCW sections to read as though the legislature had not enacted chapter 9, Laws of 1982 2nd ex. sess., and thereby make clear the effect of subsequent amendments in \*Part II of this act.

(2) The purpose of \*Part II of this act is to provide a constitutional means of replacing the revenue lost as a result of the Washington Water Power decision." [1989 c 302 § 1.]

**\*Reviser's note:** For "Part" division see 1989 c 302.

**Effective date—1982 2nd ex.s. c 9:** See note following RCW 82.16.010.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**82.04.130 "Commercial or industrial use."** "Commercial or industrial use" means the following uses of products, including byproducts, by the extractor or manufacturer thereof:

- (1) Any use as a consumer; and
- (2) The manufacturing of articles, substances or commodities. [1967 ex.s. c 149 § 5; 1961 c 15 § 82.04.130. Prior: 1955 c 389 § 14; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.140 "Business."** "Business" includes all activities engaged in with the object of gain, benefit, or advantage to the taxpayer or to another person or class, directly or indirectly. [1961 c 15 § 82.04.140. Prior: 1955 c 389 § 15; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 §

2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.150 "Engaging in business."** "Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. [1961 c 15 § 82.04.150. Prior: 1955 c 389 § 16; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.160 "Cash discount."** "Cash discount" means a deduction from the invoice price of goods or charge for services which is allowed if the bill is paid on or before a specified date. [1961 c 15 § 82.04.160. Prior: 1955 c 389 § 17; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.170 "Tuition fee."** "Tuition fee" includes library, laboratory, health service and other special fees, and amounts charged for room and board by an educational institution when the property or service for which such charges are made is furnished exclusively to the students or faculty of such institution. "Educational institution," as used in this section, means only those institutions created or generally accredited as such by the state and includes educational programs that such educational institution cosponsors with a nonprofit organization, as defined by the internal revenue code Sec. 501(c)(3), if such educational institution grants college credit for coursework successfully completed through the educational program, or an approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW, and in accordance with RCW 82.04.4332 or defined as a degree-granting institution under RCW 28B.85.010(3) and accredited by an accrediting association recognized by the United States secretary of education, and offering to students an educational program of a general academic nature or those institutions which are not operated for profit and which are privately endowed under a deed of trust to offer instruction in trade, industry, and agriculture, but not including specialty schools, business colleges, other trade schools, or similar institutions. [1993 sp.s. c 18 § 37; 1993 c 181 § 13; 1992 c 206 § 1; 1985 c 135 § 1; 1961 c 15 § 82.04.170. Prior: 1955 c 389 § 18; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Reviser's note:** This section was amended by 1993 c 181 § 13 and by 1993 sp.s. c 18 § 37, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.12.060.

**Effective dates—1992 c 206:** "This act shall take effect July 1, 1992, except sections 7 and 8 of this act which shall take effect January 1, 1993, and sections 9 through 12 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

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ernment and its existing public institutions, and shall take effect June 1, 1992." [1992 c 206 § 16.]

**82.04.180 "Successor."** (1) "Successor" means:

(a) Any person to whom a taxpayer quitting, selling out, exchanging, or disposing of a business sells or otherwise conveys, directly or indirectly, in bulk and not in the ordinary course of the taxpayer's business, more than fifty percent of the fair market value of either the (i) tangible assets or (ii) intangible assets of the taxpayer; or

(b) A surviving corporation of a statutory merger.

(2) Any person obligated to fulfill the terms of a contract shall be deemed a successor to any contractor defaulting in the performance of any contract as to which such person is a surety or guarantor. [2003 1st sp.s. c 13 § 11; 1985 c 414 § 6; 1961 c 15 § 82.04.180. Prior: 1955 c 389 § 19; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**82.04.190 "Consumer."** "Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon or (e) of satisfying the person's obligations under an extended warranty as defined in RCW 82.04.050(7), if such tangible personal property replaces or becomes an ingredient or component of property covered by the extended warranty without intervening use by such person;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290 or 82.04.2908; (b) any person who purchases, acquires, or uses any competitive telephone service, ancillary services, or telecommunications service as those terms are defined in RCW 82.04.065, other than for resale in the regular course of business; (c) any person who purchases, acquires, or uses any service defined in RCW 82.04.050(2)(a), other than for resale in the regular course of business or for the purpose of satisfying the person's obligations under an extended warranty as defined in RCW

82.04.050(7); (d) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; (e) any person who is an end user of software; and (f) any person who purchases or acquires an extended warranty as defined in RCW 82.04.050(7) other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right-of-way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person, except that consumer does not include any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, or any instrumentality thereof, if the invest-

ment project would qualify for sales and use tax deferral under chapter 82.63 RCW if undertaken by a private entity;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year. Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer";

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; and

(9) Any person who is an owner, lessee, or has the right of possession of tangible personal property that, under the terms of an extended warranty as defined in RCW 82.04.050(7), has been repaired or is replacement property, but only with respect to the sale of or charge made for the repairing of the tangible personal property or the replacement property. [2007 c 6 § 1008; 2005 c 514 § 103. Prior: 2004 c 174 § 4; 2004 c 2 § 8; 2002 c 367 § 2; prior: 1998 c 332 § 6; 1998 c 308 § 2; prior: 1996 c 173 § 2; 1996 c 148 § 4; 1996 c 112 § 2; 1995 1st sp.s. c 3 § 4; 1986 c 231 § 2; 1985 c 134 § 1; 1983 2nd ex.s. c 3 § 27; 1975 1st ex.s. c 90 § 2; 1971 ex.s. c 299 § 4; 1969 ex.s. c 255 § 4; 1967 ex.s. c 149 § 6; 1965 ex.s. c 173 § 4; 1961 c 15 § 82.04.190; prior: 1959 ex.s. c 3 § 3; 1957 c 279 § 2; 1955 c 389 § 20; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Effective dates—1998 c 308:** See note following RCW 82.04.050.

**Findings—Intent—1996 c 173:** See note following RCW 82.08.02565.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 112:** See note following RCW 82.04.050.

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Application to preexisting contracts—1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective date—1975 1st ex.s. c 90:** See note following RCW 82.04.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**Construction—Severability—1969 ex.s. c 255:** See notes following RCW 35.58.272.

**82.04.200 "In this state," "within this state."** "In this state" or "within this state" includes all federal areas lying within the exterior boundaries of the state. [1961 c 15 § 82.04.200. Prior: 1955 c 389 § 21; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.210 "Byproduct."** "Byproduct" means any additional product, other than the principal or intended product, which results from extracting or manufacturing activities and which has a market value, without regard to whether or not such additional product was an expected or intended result of the extracting or manufacturing activities. [1961 c 15 § 82.04.210. Prior: 1955 c 389 § 22; prior: 1949 c 228 § 2, part; 1945 c 249 § 1, part; 1943 c 156 § 2, part; 1941 c 178 § 2, part; 1939 c 225 § 2, part; 1937 c 227 § 2, part; 1935 c 180 § 5, part; Rem. Supp. 1949 § 8370-5, part.]

**82.04.212 "Retail store or outlet."** "Retail store or outlet" does not mean a device or apparatus through which sales are activated by coin deposits but the phrase shall include automats or business establishments retailing diversified goods primarily through the use of such devices or apparatus. [1961 c 15 § 82.04.212. Prior: 1959 c 232 § 1.]

**82.04.213 "Agricultural product," "farmer."** (1) "Agricultural product" means any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, vermiculture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035; turf; or any animal including but not limited to an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, or a bird, or insect, or the substances obtained from such an animal. "Agricultural product" does not include animals defined as pet animals under RCW 16.70.020.

(2) "Farmer" means any person engaged in the business of growing, raising, or producing, upon the person's own lands or upon the lands in which the person has a present right of possession, any agricultural product to be sold. "Farmer" does not include a person growing, raising, or producing such products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard or a slaughter or packing house; or a person in respect to the business of taking, cultivating, or raising timber. [2001 c 118 § 2; 2001 c 97 § 3; 1993 sp.s. c 25 § 302.]

**Reviser's note:** This section was amended by 2001 c 97 § 3 and by 2001 c 118 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**82.04.214 "Newspaper."** (1)(a) Until June 30, 2011, "newspaper" means:

(i) A publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling,

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glue, or any other binding of any kind, including any supplement of a printed newspaper; and

(ii) An electronic version of a printed newspaper that:

(A) Shares content with the printed newspaper; and

(B) Is prominently identified by the same name as the printed newspaper or otherwise conspicuously indicates that it is a complement to the printed newspaper.

(b) For purposes of this section, "supplement" means a printed publication, including a magazine or advertising section, that is:

(i) Labeled and identified as part of the printed newspaper; and

(ii) Circulated or distributed:

(A) As an insert or attachment to the printed newspaper; or

(B) Separate and apart from the printed newspaper so long as the distribution is within the general circulation area of the newspaper.

(2) Beginning July 1, 2011, "newspaper" means a publication issued regularly at stated intervals at least twice a month and printed on newsprint in tabloid or broadsheet format folded loosely together without stapling, glue, or any other binding of any kind, including any supplement of a printed newspaper as defined in subsection (1)(b) of this section. [2008 c 273 § 1; 1994 c 22 § 1; 1993 sp.s. c 25 § 304.]

**Effective date—2008 c 273:** "This act takes effect July 1, 2008." [2008 c 273 § 2.]

**Retroactive application—1994 c 22:** "This act shall apply retroactively to July 1, 1993." [1994 c 22 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**82.04.215 "Computer," "computer software," "custom software," "customization of prewritten computer software," "master copies," "prewritten computer software," "retained rights."** (1) "Computer" means an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.

(2) "Computer software" means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task. All software is classified as either prewritten or custom. Consistent with this definition "computer software" includes only those sets of coded instructions intended for use by an end user and specifically excludes retained rights in software and master copies of software.

(3) "Custom software" means software created for a single person.

(4) "Customization of prewritten computer software" means any alteration, modification, or development of applications using or incorporating prewritten computer software for a specific person. "Customization of prewritten computer software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of prewritten computer software does not change the underlying character or taxability of the original prewritten computer software.

(5) "Master copies" of software means copies of software from which a software developer, author, inventor, pub-

lisher, licensor, sublicensor, or distributor makes copies for sale or license.

(6) "Prewritten computer software" means computer software, including prewritten upgrades, that is not designed and developed by the author or other creator to the specifications of a specific purchaser. The combining of two or more prewritten computer software programs or prewritten portions thereof does not cause the combination to be other than prewritten computer software. Prewritten computer software includes software designed and developed by the author or other creator to the specifications of a specific purchaser when it is sold to a person other than such purchaser. Where a person modifies or enhances computer software of which such person is not the author or creator, the person shall be deemed to be the author or creator only of the person's modifications or enhancements. Prewritten computer software or a prewritten portion thereof that is modified or enhanced to any degree, where such modification or enhancement is designed and developed to the specifications of a specific purchaser, remains prewritten computer software; however where there is a reasonable, separately stated charge or an invoice or other statement of the price given to the purchaser for the modification or enhancement, the modification or enhancement shall not constitute prewritten computer software.

(7) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor. [2003 c 168 § 601; 1998 c 332 § 3.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**82.04.216 Exclusion of steam, electricity, or electrical energy from definition of certain terms.** Consistent with RCW 82.02.220, when the terms "tangible personal property," "ingredient," "component part," "incorporated into," "goods," "products," "byproducts," "materials," "consumables," and other similar terms denoting tangible items that may be used, sold, or consumed are used in this chapter, the terms do not include steam, electricity, or electrical energy. [2003 c 168 § 702.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.04.217 "Direct service industrial customer," "aluminum smelter."** (1) "Direct service industrial customer" means the same as in RCW 82.16.0495.

(2) "Aluminum smelter" means the manufacturing facility of any direct service industrial customer that processes alumina into aluminum. [2004 c 24 § 2.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**82.04.220 Business and occupation tax imposed.** There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against

value of products, gross proceeds of sales, or gross income of the business, as the case may be. [1961 c 15 § 82.04.220. Prior: 1955 c 389 § 42; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**82.04.230 Tax upon extractors.** Upon every person engaging within this state in business as an extractor, except persons taxable as an extractor under any other provision in this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, extracted for sale or for commercial or industrial use, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2006 c 300 § 5; 1993 sp.s. c 25 § 101; 1971 ex.s. c 281 § 2; 1969 ex.s. c 262 § 33; 1967 ex.s. c 149 § 7; 1961 c 15 § 82.04.230. Prior: 1955 c 389 § 43; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Severability—1993 sp.s. c 25:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 sp.s. c 25 § 1002.]

**Effective dates—1993 sp.s. c 25:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except:

(1) Sections 901 and 902 of this act take effect immediately [May 28, 1993].

(2) Sections 601 through 603 of this act take effect January 1, 1994." [1993 sp.s. c 25 § 1003.]

**Part headings, captions not law—1993 sp.s. c 25:** "Part headings and captions as used in this act constitute no part of the law." [1993 sp.s. c 25 § 1004.]

**82.04.240 Tax on manufacturers. (Contingent expiration date.)** Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2004 c 24 § 4; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective dates—1981 c 172:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.]

**Effective date—1979 ex.s. c 196:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

**82.04.240 Tax on manufacturers. (Contingent effective date; contingent expiration of subsection.)** (1) Upon every person engaging within this state in business as a manufacturer, except persons taxable as manufacturers under other provisions of this chapter; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

(2) Upon every person engaging within this state in the business of manufacturing semiconductor materials, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or, in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.275 percent. For the purposes of this subsection "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, compound semiconductors, integrated circuits, and microchips. This subsection (2) expires twelve years after \*the effective date of this act.

(3) The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state. [2003 c 149 § 3; 1998 c 312 § 3; 1993 sp.s. c 25 § 102; 1981 c 172 § 1; 1979 ex.s. c 196 § 1; 1971 ex.s. c 281 § 3; 1969 ex.s. c 262 § 34; 1967 ex.s. c 149 § 8; 1965 ex.s. c 173 § 5; 1961 c 15 § 82.04.240. Prior: 1959 c 211 § 1; 1955 c 389 § 44; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**\*Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective dates—1981 c 172:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981, except section 9 of this act shall take effect September 1, 1981, sections 7 and 8 of this act shall take effect October 1, 1981, and section 10 of this act shall take effect July 1, 1983." [1981 c 172 § 12.]

**Effective date—1979 ex.s. c 196:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 196 § 15.]

(2008 Ed.)

**82.04.2403 Manufacturer tax not applicable to cleaning fish.** The tax imposed by RCW 82.04.240 does not apply to cleaning fish. "Cleaning fish" means the removal of the head, fins, or viscera from fresh fish without further processing, other than freezing. [1994 c 167 § 1.]

**Effective date—1994 c 167:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 167 § 3.]

**82.04.2404 Manufacturers—Processors for hire—Semiconductor materials. (Expires December 1, 2018.)**

(1) Upon every person engaging within this state in the business of manufacturing or processing for hire semiconductor materials, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or, in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section "semiconductor materials" means silicon crystals, silicon ingots, raw polished semiconductor wafers, and compound semiconductor wafers.

(3) This section expires twelve years after December 1, 2006. [2006 c 84 § 2.]

**Effective date—2007 c 54 § 22; 2006 c 84 §§ 2-8:** "(1)(a) Sections 2 through 8, chapter 84, Laws of 2006 and section 22, chapter 54, Laws of 2007 are contingent upon the siting, expansion, or renovation, and commercial operation of a significant semiconductor materials fabrication facility or facilities in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the equipment and process qualifications in the new, expanded, or renovated building are completed and production for sale has begun.

(ii) "Semiconductor materials fabrication" means the manufacturing of silicon crystals, silicon ingots that are at least three hundred millimeters in diameter, raw polished semiconductor wafers that are at least three hundred millimeters in diameter, and compound semiconductor wafers that are at least three hundred millimeters in diameter.

(iii) "Significant" means that the combined investment or investments by a single person, occurring at any time before December 1, 2006, of new buildings, expansion or renovation of existing buildings, tenant improvements to buildings, and machinery and equipment in the buildings, at the commencement of commercial production, is at least three hundred fifty million dollars based on actual expenditures by the person.

(2) Except for section 1 of this act and this section, this act takes effect the first day of the month immediately following the department's determination that the contingency in subsection (1) of this section has occurred. The department shall make its determination regarding the contingency in subsection (1) of this section based on information provided to the department by affected taxpayers or representatives of affected taxpayers.

(3) The department of revenue shall provide notice of the effective date of sections 2 through 8, chapter 84, Laws of 2006 [December 1, 2006] to affected taxpayers, the legislature, the office of the code reviser, and others as deemed appropriate by the department." [2007 c 54 § 29; 2006 c 84 § 9.]

**Findings—Intent—2006 c 84:** "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. Washington state has recognized the semiconductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. In 2003 the legislature enacted comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. These tax incentives are contingent on the investment of at least one billion dollars in a new semiconductor microchip fabrication facility in this

state, which has not occurred. This investment criteria failed to recognize the significance of potential investment in the advanced semiconductor materials sector. Therefore, the legislature intends to complement existing comprehensive tax incentives for the semiconductor cluster to address activities of the advanced semiconductor materials product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing businesses and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2006 c 84 § 1.]

**82.04.250 Tax on retailers. (Expires July 1, 2011.)** (1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11) or subsection (3) of this section, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

(3) Upon every person classified by the federal aviation administration as a federal aviation regulation part 145 certificated repair station and that is engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of .2904 percent. [2008 c 81 § 5; 2006 c 177 § 5; 2003 2nd sp.s. c 1 § 2; (2003 1st sp.s. c 2 § 1 expired July 1, 2006). Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Expiration date—2008 c 81 § 5:** "Section 5 of this act expires July 1, 2011." [2008 c 81 § 19.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Expiration date—2006 c 177 § 5:** "Section 5 of this act expires July 1, 2011." [2006 c 177 § 14.]

**Effective date—2006 c 177 §§ 1-9:** "Sections 1 through 9 of this act take effect July 1, 2006." [2006 c 177 § 12.]

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Expiration date—2003 1st sp.s. c 2:** "This act expires July 1, 2006." [2003 1st sp.s. c 2 § 3.]

**Effective date—2003 1st sp.s. c 2:** "This act takes effect August 1, 2003." [2003 1st sp.s. c 2 § 4.]

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

**82.04.250 Tax on retailers. (Effective July 1, 2011.)**

(1) Upon every person engaging within this state in the business of making sales at retail, except persons taxable as retailers under other provisions of this chapter, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, except persons taxable under RCW 82.04.260(11), as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent. [2007 c 54 § 5; 2003 2nd sp.s. c 1 § 2; (2003 1st sp.s. c 2 § 1 expired July 1, 2006). Prior: 1998 c 343 § 5; 1998 c 312 § 4; 1993 sp.s. c 25 § 103; 1981 c 172 § 2; 1971 ex.s. c 281 § 4; 1971 ex.s. c 186 § 2; 1969 ex.s. c 262 § 35; 1967 ex.s. c 149 § 9; 1961 c 15 § 82.04.250; prior: 1955 c 389 § 45; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Effective date—2007 c 54 § 5:** "Section 5 of this act takes effect July 1, 2011." [2007 c 54 § 30.]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Expiration date—2003 1st sp.s. c 2:** "This act expires July 1, 2006." [2003 1st sp.s. c 2 § 3.]

**Effective date—2003 1st sp.s. c 2:** "This act takes effect August 1, 2003." [2003 1st sp.s. c 2 § 4.]

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

**82.04.255 Tax on real estate brokers.** Upon every person engaging within the state as a real estate broker; as to such persons, the amount of the tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 1.5 percent.

The measure of the tax on real estate commissions earned by the real estate broker shall be the gross commission earned by the particular real estate brokerage office including that portion of the commission paid to salesmen or associate brokers in the same office on a particular transaction: PROVIDED, HOWEVER, That where a real estate commission is divided between an originating brokerage office and a cooperating brokerage office on a particular transaction, each brokerage office shall pay the tax only upon their respective shares of said commission: AND PROVIDED FURTHER, That where the brokerage office has paid the tax as provided herein, salesmen or associate brokers within the same brokerage office shall not be required to pay a similar tax upon the

same transaction. [1997 c 7 § 1; 1996 c 1 § 1; 1993 sp.s. c 25 § 202; 1985 c 32 § 2; 1983 2nd ex.s. c 3 § 1; 1983 c 9 § 1; 1970 ex.s. c 65 § 3.]

**Savings—1997 c 7:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1997 c 7 § 6.]

**Effective date—1997 c 7:** "This act takes effect July 1, 1998." [1997 c 7 § 7.]

**Effective date—1996 c 1:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect January 1, 1996." [1996 c 1 § 5.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—1983 2nd ex.s. c 3:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1983 2nd ex.s. c 3 § 65.]

**Severability—1983 2nd ex.s. c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 2nd ex.s. c 3 § 66.]

**Effective dates—1983 2nd ex.s. c 3:** "(1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect July 1, 1983, except that:

(a) Sections 42 through 50, and 52, 53, 65, and 66 of this act shall take effect June 30, 1983;

(b) Sections 1 through 4 of this act shall take effect July 1, 1983, except as provided in subsection (2) of this section;

(c) Sections 21, 22, and 51 of this act shall take effect January 1, 1984. Section 51 of this act shall be effective for property taxes levied in 1983 and due in 1984, and thereafter; and

(d) Section 63 of this act shall take effect April 1, 1985, and shall be effective in respect to taxable activities occurring on and after April 1, 1985; and

(e) The extension under this act of the retail sales tax to certain sales of telephone service shall apply to telephone service billed on or after July 1, 1983, whether or not such service was rendered before that date.

(f) Sections 61 and 62 of this act shall take effect on the day either of the following events occurs, whichever is earlier:

(i) A temporary or permanent injunction or order becomes effective which prohibits in whole or in part the collection of taxes at the rates specified in section 6, chapter 7, Laws of 1983; or

(ii) A decision of a court in this state invalidating in whole or in part section 6, chapter 7, Laws of 1983, becomes final.

(2) The legislature finds that the amendments contained in sections 1 through 4 of this act constitute an integrated and inseparable entity and if any one or more of those sections does not become law, the remaining sections shall not take effect. If sections 1 through 4 of this act do not become law, the governor shall in that event reduce approved allotments under RCW 43.88.110 for the 1983-85 biennium by four percent." [1983 2nd ex.s. c 3 § 67.]

**Reviser's note:** (1) "Sections 42 through 50 and 52" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.49.010, 88.02.020, 88.02.030, 88.02.050, and 88.02.110 and the enactment of RCW 43.51.400, 82.49.020, 82.49.070, 88.02.070, and 88.02.080. "Section 53" consists of the enactment of a new section which appears as a footnote to RCW 88.02.020, and "sections 65 and 66" consist of the enactment of new sections which appear as footnotes to RCW 82.04.255 above.

(2) "Sections 1 through 4" consist of the 1983 2nd ex.s. c 3 §§ 1-4 amendments to RCW 82.04.255, 82.04.290, 82.04.2904, and 82.04.2901, respectively.

(3) "Sections 21, 22, and 51" consist of the 1983 2nd ex.s. c 3 amendments to RCW 82.48.010, 82.48.030, and 84.36.080, respectively.

(4) "Section 63" consists of the 1983 2nd ex.s. c 3 amendment to RCW 82.32.045.

(5) "Sections 61 and 62" consist of the 1983 2nd ex.s. c 3 §§ 61 and 62 amendments to RCW 82.04.2901 and 82.08.020, respectively. For the effective date of sections 61 and 62, see *Bond v. Burrows*, 103 Wn.2d 153 (1984).

(2008 Ed.)

**Construction—1983 c 9:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted nor any proceeding instituted under those sections." [1983 c 9 § 6.]

**Severability—1983 c 9:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 9 § 7.]

**Effective date—1983 c 9:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1983. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 9 § 8.]

**Effective date—Severability—1970 ex.s. c 65:** See notes following RCW 82.03.050.

**82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance agents, brokers, and solicitors—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (Effective until July 1, 2009.)** (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegeta-

bles manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject

to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance \*agent, insurance \*broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manufactured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of

timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard, and plywood; wood doors; wood windows; and biocomposite surface products.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent. [2008 c 296 § 1; 2008 c 81 § 4. Prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c

21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Reviser's note:** \*(1) 2007 c 117 replaced the terms "agent" and "broker" with the term "producer," effective July 1, 2009.

(2) This section was amended by 2008 c 81 § 4 and by 2008 c 296 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Retroactive application—2008 c 296:** "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective date—2007 c 48:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**Effective dates—2003 c 261:** See note following RCW 84.36.635.

**Purpose—Intent—2001 2nd sp.s. c 25:** "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

**Part headings not law—2001 2nd sp.s. c 25:** "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective date—1998 c 170:** See note following RCW 82.04.331.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 115:** "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

**Effective date—1995 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

**Effective date—1995 2nd sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Severability—1985 c 471:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

**Effective date—1985 c 471:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Severability—1982 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

**Effective date—1982 2nd ex.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

**82.04.260 Tax on manufacturers and processors of various foods and by-products—Research and development organizations—Travel agents—Certain international activities—Stevedoring and associated activities—Low-level waste disposers—Insurance producers and title insurance agents—Hospitals—Commercial airplane activities—Timber product activities—Canned salmon processors. (Effective July 1, 2009.)** (1) Upon every person engaging within this state in the business of manufacturing:

(a) Wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Beginning July 1, 2012, seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing, to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales, multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(c) Beginning July 1, 2012, dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein; or selling the same to purchasers who transport in the ordinary course of business the goods out of state; as to such persons the tax imposed shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(d) Beginning July 1, 2012, fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables, or selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured or the gross proceeds derived from such sales multiplied by the rate of 0.138 percent. Sellers must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state;

(e) Until July 1, 2009, alcohol fuel, biodiesel fuel, or biodiesel feedstock, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel, biodiesel fuel, or biodiesel feedstock manufactured, multiplied by the rate of 0.138 percent; and

(f) Alcohol fuel or wood biomass fuel, as those terms are defined in RCW 82.29A.135; as to such persons the amount of tax with respect to the business shall be equal to the value of alcohol fuel or wood biomass fuel manufactured, multiplied by the rate of 0.138 percent.

(2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.138 percent.

(3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(6) Upon every person engaging within this state in business as an international steamship agent, international cus-

toms house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(7) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.275 percent. Persons subject to taxation under this subsection shall be exempt from payment of taxes imposed by chapter 82.16 RCW for that portion of their business subject to taxation under this subsection. Stevedoring and associated activities pertinent to the conduct of goods and commodities in waterborne interstate or foreign commerce are defined as all activities of a labor, service or transportation nature whereby cargo may be loaded or unloaded to or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure; cargo may be moved to a warehouse or similar holding or storage yard or area to await further movement in import or export or may move to a consolidation freight station and be stuffed, unstuffed, containerized, separated or otherwise segregated or aggregated for delivery or loaded on any mode of transportation for delivery to its consignee. Specific activities included in this definition are: Wharfage, handling, loading, unloading, moving of cargo to a convenient place of delivery to the consignee or a convenient place for further movement to export mode; documentation services in connection with the receipt, delivery, checking, care, custody and control of cargo required in the transfer of cargo; imported automobile handling prior to delivery to consignee; terminal stevedoring and incidental vessel services, including but not limited to plugging and unplugging refrigerator service to containers, trailers, and other refrigerated cargo receptacles, and securing ship hatch covers.

(8) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(9) Upon every person engaging within this state as an insurance producer or title insurance agent licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.484 percent.

(10) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income of the business multiplied by the rate of 0.75 percent

through June 30, 1995, and 1.5 percent thereafter. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

(11)(a) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing commercial airplanes, or components of such airplanes, or making sales, at retail or wholesale, of commercial airplanes or components of such airplanes, manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of:

(i) 0.4235 percent from October 1, 2005, through the later of June 30, 2007; and

(ii) 0.2904 percent beginning July 1, 2007.

(b) Beginning July 1, 2008, upon every person who is not eligible to report under the provisions of (a) of this subsection (11) and is engaging within this state in the business of manufacturing tooling specifically designed for use in manufacturing commercial airplanes or components of such airplanes, or making sales, at retail or wholesale, of such tooling manufactured by the seller, as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured and the gross proceeds of sales of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(c) For the purposes of this subsection (11), "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(d) In addition to all other requirements under this title, a person eligible for the tax rate under this subsection (11) must report as required under RCW 82.32.545.

(e) This subsection (11) does not apply on and after July 1, 2024.

(12)(a) Until July 1, 2024, upon every person engaging within this state in the business of extracting timber or extracting for hire timber; as to such persons the amount of tax with respect to the business shall, in the case of extractors, be equal to the value of products, including byproducts, extracted, or in the case of extractors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(b) Until July 1, 2024, upon every person engaging within this state in the business of manufacturing or processing for hire: (i) Timber into timber products or wood products; or (ii) timber products into other timber products or wood products; as to such persons the amount of the tax with respect to the business shall, in the case of manufacturers, be equal to the value of products, including byproducts, manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(c) Until July 1, 2024, upon every person engaging within this state in the business of selling at wholesale: (i) Timber extracted by that person; (ii) timber products manu-

factured by that person from timber or other timber products; or (iii) wood products manufactured by that person from timber or timber products; as to such persons the amount of the tax with respect to the business shall be equal to the gross proceeds of sales of the timber, timber products, or wood products multiplied by the rate of 0.4235 percent from July 1, 2006, through June 30, 2007, and 0.2904 percent from July 1, 2007, through June 30, 2024.

(d) Until July 1, 2024, upon every person engaging within this state in the business of selling standing timber; as to such persons the amount of the tax with respect to the business shall be equal to the gross income of the business multiplied by the rate of 0.2904 percent. For purposes of this subsection (12)(d), "selling standing timber" means the sale of timber apart from the land, where the buyer is required to sever the timber within thirty months from the date of the original contract, regardless of the method of payment for the timber and whether title to the timber transfers before, upon, or after severance.

(e) For purposes of this subsection, the following definitions apply:

(i) "Biocomposite surface products" means surface material products containing, by weight or volume, more than fifty percent recycled paper and that also use nonpetroleum-based phenolic resin as a bonding agent.

(ii) "Paper and paper products" means products made of interwoven cellulosic fibers held together largely by hydrogen bonding. "Paper and paper products" includes newsprint; office, printing, fine, and pressure-sensitive papers; paper napkins, towels, and toilet tissue; kraft bag, construction, and other kraft industrial papers; paperboard, liquid packaging containers, containerboard, corrugated, and solid-fiber containers including linerboard and corrugated medium; and related types of cellulosic products containing primarily, by weight or volume, cellulosic materials. "Paper and paper products" does not include books, newspapers, magazines, periodicals, and other printed publications, advertising materials, calendars, and similar types of printed materials.

(iii) "Recycled paper" means paper and paper products having fifty percent or more of their fiber content that comes from postconsumer waste. For purposes of this subsection (12)(e)(iii), "postconsumer waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a consumer item.

(iv) "Timber" means forest trees, standing or down, on privately or publicly owned land. "Timber" does not include Christmas trees that are cultivated by agricultural methods or short-rotation hardwoods as defined in RCW 84.33.035.

(v) "Timber products" means:

(A) Logs, wood chips, sawdust, wood waste, and similar products obtained wholly from the processing of timber, short-rotation hardwoods as defined in RCW 84.33.035, or both;

(B) Pulp, including market pulp and pulp derived from recovered paper or paper products; and

(C) Recycled paper, but only when used in the manufacture of biocomposite surface products.

(vi) "Wood products" means paper and paper products; dimensional lumber; engineered wood products such as particleboard, oriented strand board, medium density fiberboard,

and plywood; wood doors; wood windows; and biocomposite surface products.

(13) Upon every person engaging within this state in inspecting, testing, labeling, and storing canned salmon owned by another person, as to such persons, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent. [2008 c 296 § 1; 2008 c 217 § 100; 2008 c 81 § 4. Prior: 2007 c 54 § 6; 2007 c 48 § 2; prior: 2006 c 354 § 4; 2006 c 300 § 1; prior: 2005 c 513 § 2; 2005 c 443 § 4; prior: 2003 2nd sp.s. c 1 § 4; 2003 2nd sp.s. c 1 § 3; 2003 c 339 § 11; 2003 c 261 § 11; 2001 2nd sp.s. c 25 § 2; prior: 1998 c 312 § 5; 1998 c 311 § 2; prior: 1998 c 170 § 4; 1996 c 148 § 2; 1996 c 115 § 1; prior: 1995 2nd sp.s. c 12 § 1; 1995 2nd sp.s. c 6 § 1; 1993 sp.s. c 25 § 104; 1993 c 492 § 304; 1991 c 272 § 15; 1990 c 21 § 2; 1987 c 139 § 1; prior: 1985 c 471 § 1; 1985 c 135 § 2; 1983 2nd ex.s. c 3 § 5; prior: 1983 1st ex.s. c 66 § 4; 1983 1st ex.s. c 55 § 4; 1982 2nd ex.s. c 13 § 1; 1982 c 10 § 16; prior: 1981 c 178 § 1; 1981 c 172 § 3; 1979 ex.s. c 196 § 2; 1975 1st ex.s. c 291 § 7; 1971 ex.s. c 281 § 5; 1971 ex.s. c 186 § 3; 1969 ex.s. c 262 § 36; 1967 ex.s. c 149 § 10; 1965 ex.s. c 173 § 6; 1961 c 15 § 82.04.260; prior: 1959 c 211 § 2; 1955 c 389 § 46; prior: 1953 c 91 § 4; 1951 2nd ex.s. c 28 § 4; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Reviser's note:** This section was amended by 2008 c 81 § 4, 2008 c 217 § 100, and by 2008 c 296 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Retroactive application—2008 c 296:** "Section 1 of this act applies retroactively to July 1, 2007, as well as prospectively." [2008 c 296 § 2.]

**Severability—Effective date—2008 c 217:** See notes following RCW 48.03.020.

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective date—2007 c 48:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 48 § 9.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**Effective dates—2003 c 261:** See note following RCW 84.36.635.

**Purpose—Intent—2001 2nd sp.s. c 25:** "The purpose of sections 2 and 3 of this act is to provide a tax rate for persons who manufacture dairy products that is commensurate to the rate imposed on certain other processors of agricultural commodities. This tax rate applies to persons who manufacture dairy products from raw materials such as fluid milk, dehydrated milk, or byproducts of milk such as cream, buttermilk, whey, butter, or casein. It is not the intent of the legislature to provide this tax rate to persons who use dairy products as an ingredient or component of their manufactured product, such as milk-based soups or pizza. It is the intent that persons who manufacture products such as milk, cheese, yogurt, ice cream, whey, or whey products be subject to this rate." [2001 2nd sp.s. c 25 § 1.]

(2008 Ed.)

**Part headings not law—2001 2nd sp.s. c 25:** "Part headings used in this act are not any part of the law." [2001 2nd sp.s. c 25 § 7.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective date—1998 c 170:** See note following RCW 82.04.331.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1996 c 115:** "This act shall take effect July 1, 1996." [1996 c 115 § 2.]

**Effective date—1995 2nd sp.s. c 12:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 12 § 2.]

**Effective date—1995 2nd sp.s. c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 6 § 2.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Severability—1985 c 471:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 471 § 17.]

**Effective date—1985 c 471:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 471 § 18.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Severability—1982 2nd ex.s. c 13:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 2nd ex.s. c 13 § 2.]

**Effective date—1982 2nd ex.s. c 13:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 13 § 3.]

**Severability—1982 c 10:** See note following RCW 6.13.080.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

**82.04.261 Surcharge on timber and wood product manufacturers, extractors, and wholesalers. (*Expires July 1, 2024.*)** (1) In addition to the taxes imposed under RCW 82.04.260(12), a surcharge is imposed on those persons who are subject to any of the taxes imposed under RCW 82.04.260(12). Except as otherwise provided in this section, the surcharge is equal to 0.052 percent. The surcharge is added to the rates provided in RCW 82.04.260(12) (a), (b), (c), and (d). The surcharge and this section expire July 1, 2024.

(2) All receipts from the surcharge imposed under this section shall be deposited into the forest and fish support account created in RCW 76.09.405.

(3)(a) The surcharge imposed under this section shall be suspended if:

(i) Receipts from the surcharge total at least eight million dollars during any fiscal biennium; or

(ii) The office of financial management certifies to the department that the federal government has appropriated at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington for any federal fiscal year.

(b)(i) The suspension of the surcharge under (a)(i) of this subsection (3) shall take effect on the first day of the calendar month that is at least thirty days after the end of the month during which the department determines that receipts from the surcharge total at least eight million dollars during the fiscal biennium. The surcharge shall be imposed again at the beginning of the following fiscal biennium.

(ii) The suspension of the surcharge under (a)(ii) of this subsection (3) shall take effect on the later of the first day of October of any federal fiscal year for which the federal government appropriates at least two million dollars for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington, or the first day of a calendar month that is at least thirty days following the date that the office of financial management makes a certification to the department under subsection (5) of this section. The surcharge shall be imposed again on the first day of the following July.

(4)(a) If, by October 1st of any federal fiscal year, the office of financial management certifies to the department that the federal government has appropriated funds for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington but the amount of the appropriation is less than two million dollars, the department shall adjust the surcharge in accordance with this subsection.

(b) The department shall adjust the surcharge by an amount that the department estimates will cause the amount of funds deposited into the forest and fish support account for the state fiscal year that begins July 1st and that includes the beginning of the federal fiscal year for which the federal appropriation is made, to be reduced by twice the amount of the federal appropriation for participation in forest and fish report-related activities by federally recognized Indian tribes located within the geographical boundaries of the state of Washington.

(c) Any adjustment in the surcharge shall take effect at the beginning of a calendar month that is at least thirty days after the date that the office of financial management makes the certification under subsection (5) of this section.

(d) The surcharge shall be imposed again at the rate provided in subsection (1) of this section on the first day of the following state fiscal year unless the surcharge is suspended under subsection (3) of this section or adjusted for that fiscal year under this subsection.

(e) Adjustments of the amount of the surcharge by the department are final and shall not be used to challenge the validity of the surcharge imposed under this section.

(f) The department shall provide timely notice to affected taxpayers of the suspension of the surcharge or an adjustment of the surcharge.

(5) The office of financial management shall make the certification to the department as to the status of federal appropriations for tribal participation in forest and fish report-related activities. [2007 c 54 § 7; 2007 c 48 § 4; 2006 c 300 § 2.]

**Reviser's note:** This section was amended by 2007 c 48 § 4 and by 2007 c 54 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Savings—2007 c 48:** "The expiration of RCW 82.04.261 does not affect any existing right acquired or liability or obligation incurred under that section or under any rule or order adopted under that section, nor does it affect any proceeding instituted under that section." [2007 c 48 § 8.]

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**Effective dates—Contingent effective date—2006 c 300:** "(1) Sections 1, 3, 4 through 6, and 8 through 12 of this act take effect July 1, 2006.

(2) Section 2 of this act takes effect July 1, 2007.

(3) Section 7 of this act takes effect if the contingency in \*section 12 of this act occurs." [2006 c 300 § 13.]

**\*Reviser's note:** See note following RCW 82.04.426.

**82.04.263 Tax on cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development.** Upon every person engaging within this state in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development; as to such persons the amount of the tax with respect to such business shall be equal to the value of the gross income of the business multiplied by the rate of 0.471 percent.

For the purposes of this chapter, "cleaning up radioactive waste and other byproducts of weapons production and nuclear research and development" means the activities of handling, storing, treating, immobilizing, stabilizing, or disposing of radioactive waste, radioactive tank waste and capsules, nonradioactive hazardous solid and liquid wastes, or spent nuclear fuel; spent nuclear fuel conditioning; removal of contamination in soils and groundwater; decontamination and decommissioning of facilities; and activities integral and necessary to the direct performance of cleanup. [1996 c 112 § 3.]

**Effective date—1996 c 112:** See note following RCW 82.04.050.

**82.04.270 Tax on wholesalers.** Upon every person engaging within this state in the business of making sales at wholesale, except persons taxable as wholesalers under other provisions of this chapter; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent. [2004 c 24 § 5; 2003 2nd sp.s. c 1 § 5; 2001 1st sp.s. c 9 § 3; (2001 1st sp.s. c 9 § 2 expired July 1, 2001); 1999 c 358 § 2. Prior: 1999 c 358 § 1; 1998 c 343 § 2; 1998 c 329 § 1; 1998 c 312 § 6; 1994 c 124 § 2; 1993 sp.s. c 25 § 105; 1981 c 172 § 4; 1971 ex.s. c 281 § 6; 1971 ex.s. c 186 § 4; 1969 ex.s. c 262 § 37; 1967 ex.s. c 149 § 11; 1961 c 15 § 82.04.270; prior: 1959 ex.s. c 5 § 3; 1955 c 389 § 47; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1,

part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective dates—2001 1st sp.s. c 9:** See note following RCW 82.04.298.

**Expiration dates—2001 1st sp.s. c 9:** See note following RCW 82.04.290.

**Effective date—1999 c 358 § 2:** "Section 2 of this act takes effect July 1, 2001." [1999 c 358 § 23.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Effective date—1998 c 329:** "This act takes effect July 1, 1998." [1998 c 329 § 2.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1971 ex.s. c 186:** See note following RCW 82.04.110.

**82.04.272 Tax on warehousing and reselling prescription drugs.** (1) Upon every person engaging within this state in the business of warehousing and reselling drugs for human use pursuant to a prescription; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription" and "drug" have the same meaning as in RCW 82.08.0281; and

(b) "Warehousing and reselling drugs for human use pursuant to a prescription" means the buying of drugs for human use pursuant to a prescription from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the state board of pharmacy. [2003 c 168 § 401; 1998 c 343 § 1.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—1998 c 343:** "This act takes effect July 1, 2001." [1998 c 343 § 6.]

**82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined.** (*Contingent expiration date.*) Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of

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the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of \*RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2006 c 300 § 6; 2004 c 24 § 6; 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c

178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**\*Reviser's note:** RCW 48.05.310 was repealed by 2007 c 117 § 39, effective July 1, 2009.

**Contingent expiration date—2006 c 300 § 6:** "Section 6 of this act expires on the date that section 7 of this act takes effect." [2006 c 300 § 14.]

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Retroactive application—1994 c 112 § 1:** "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective date—1986 c 226:** See note following RCW 82.16.010.

**Application to preexisting contracts—1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective date—1975 1st ex.s. c 90:** See note following RCW 82.04.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.04.280 Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors—Cold storage warehouse defined—Storage warehouse defined—Periodical or magazine defined. (Contingent effective date.)** Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right-of-way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire, except persons taxable as extractors for hire or processors for hire under another section of this chapter; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of \*RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt

signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under RCW 82.04.272 is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication. [2006 c 300 § 7; 2003 c 149 § 4; 1998 c 343 § 3; 1994 c 112 § 1; 1993 sp.s. c 25 § 303; 1993 sp.s. c 25 § 106; 1986 c 226 § 2; 1983 c 132 § 1; 1975 1st ex.s. c 90 § 3; 1971 ex.s. c 299 § 5; 1971 ex.s. c 281 § 7; 1970 ex.s. c 8 § 2. Prior: 1969 ex.s. c 262 § 38; 1969 ex.s. c 255 § 5; 1967 ex.s. c 149 § 13; 1963 c 168 § 1; 1961 c 15 § 82.04.280; prior: 1959 ex.s. c 5 § 4; 1959 ex.s. c 3 § 4; 1955 c 389 § 48; prior: 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 228 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**\*Reviser's note:** RCW 48.05.310 was repealed by 2007 c 117 § 39, effective July 1, 2009.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Retroactive application—1994 c 112 § 1:** "Section 1 of this act shall apply retroactively to July 1, 1993." [1994 c 112 § 5.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective date—1986 c 226:** See note following RCW 82.16.010.

**Application to preexisting contracts—1975 1st ex.s. c 90:** See note following RCW 82.12.010.

**Effective date—1975 1st ex.s. c 90:** See note following RCW 82.04.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.04.285 Tax on contests of chance.** (1) Upon every person engaging within this state in the business of operating contests of chance; as to such persons, the amount of tax with respect to the business of operating contests of chance is

equal to the gross income of the business derived from contests of chance multiplied by the rate of 1.5 percent.

(2) An additional tax is imposed on those persons subject to tax in subsection (1) of this section. The amount of the additional tax with respect to the business of operating contests of chance is equal to the gross income of the business derived from contests of chance multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this subsection (2) shall be deposited in the problem gambling account created in RCW 43.20A.892. This subsection does not apply to businesses operating contests of chance when the gross income from the operation of contests of chance is less than fifty thousand dollars per year.

(3) For the purpose of this section, "contests of chance" means any contests, games, gaming schemes, or gaming devices, other than the state lottery as defined in RCW 67.70.010, in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill of the contestants may also be a factor in the outcome. The term includes social card games, bingo, raffle, and punch-board games, and pull-tabs as defined in chapter 9.46 RCW. The term does not include race meets for the conduct of which a license must be secured from the Washington horse racing commission, or "amusement game" as defined in RCW 9.46.0201.

(4) "Gross income of the business" does not include the monetary value or actual cost of any prizes that are awarded, amounts paid to players for winning wagers, accrual of prizes for progressive jackpot contests, or repayment of amounts used to seed guaranteed progressive jackpot prizes. [2005 c 369 § 5.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.286 Tax on horse races.** (1) Upon every person engaging within this state in the business of conducting race meets for the conduct of which a license must be secured from the Washington horse racing commission; as to such persons, the amount of tax with respect to the business of parimutuel wagering is equal to the gross income of the business derived from parimutuel wagering multiplied by the rate of 0.1 percent through June 30, 2006, and 0.13 percent thereafter. The money collected under this section shall be deposited in the problem gambling account created in RCW 43.20A.892.

(2) For purposes of this section, "gross income of the business" does not include amounts paid to players for winning wagers, or taxes imposed or other distributions required under chapter 67.16 RCW.

(3) The tax imposed under this section is in addition to any tax imposed under chapter 67.16 RCW. [2005 c 369 § 6.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.290 Tax on international investment management services or other business or service activities.** (1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such

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business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2)(a) Upon every person engaging within this state in any business activity other than or in addition to an activity taxed explicitly under another section in this chapter or subsection (3) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

(b) This subsection (2) includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

(3)(a) Until July 1, 2024, upon every person engaging within this state in the business of performing aerospace product development for others, as to such persons, the amount of tax with respect to such business shall be equal to the gross income of the business multiplied by a rate of 0.9 percent.

(b) "Aerospace product development" has the meaning as provided in RCW 82.04.4461. [2008 c 81 § 6; 2005 c 369 § 8; 2004 c 174 § 2; 2003 c 343 § 2; 2001 1st sp.s. c 9 § 6; (2001 1st sp.s. c 9 § 4 expired July 1, 2001). Prior: 1998 c 343 § 4; 1998 c 331 § 2; 1998 c 312 § 8; 1998 c 308 § 5; 1998 c 308 § 4; 1997 c 7 § 2; 1996 c 1 § 2; 1995 c 229 § 3; 1993 sp.s. c 25 § 203; 1985 c 32 § 3; 1983 2nd ex.s. c 3 § 2; 1983 c 9 § 2; 1983 c 3 § 212; 1971 ex.s. c 281 § 8; 1970 ex.s. c 65 § 4; 1969 ex.s. c 262 § 39; 1967 ex.s. c 149 § 14; 1963 ex.s. c 28 § 2; 1961 c 15 § 82.04.290; prior: 1959 ex.s. c 5 § 5; 1955 c 389 § 49; prior: 1953 c 195 § 2; 1950 ex.s. c 5 § 1, part; 1949 c 228 § 1, part; 1943 c 156 § 1, part; 1941 c 178 § 1, part; 1939 c 225 § 1, part; 1937 c 227 § 1, part; 1935 c 180 § 4, part; Rem. Supp. 1949 § 8370-4, part.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Expiration dates—2001 1st sp.s. c 9:** "(1) Sections 2 and 4 of this act expire July 1, 2001.

(2) Section 5 of this act expires July 1, 2003.

(3) Section 8 of this act expires July 22, 2001." [2001 1st sp.s. c 9 § 10.]

**Effective dates—2001 1st sp.s. c 9:** See note following RCW 82.04.298.

**Effective date—1998 c 343:** See note following RCW 82.04.272.

**Effective date—1998 c 331:** See note following RCW 82.04.2907.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Effective dates—1998 c 308:** See note following RCW 82.04.050.

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**Effective date—1995 c 229:** See note following RCW 82.04.293.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—Effective date—1983 c 9:** See notes following RCW 82.04.255.

**82.04.29001 Creation and distribution of custom software—Customization of prewritten computer software—Taxable services.** (1) The creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of prewritten computer software is a service taxable under RCW 82.04.290(2). [2003 c 168 § 602; 1998 c 332 § 4.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—1998 c 332:** "The legislature finds that the creation and customization of software is an area not fully addressed in our excise tax statutes, and that certainty of tax treatment is essential to the industry and consumers. Therefore, the intent of this act is to make the tax treatment of software clear and certain for developers, programmers, and consumers." [1998 c 332 § 1.]

**Effective date—1998 c 332:** "This act takes effect July 1, 1998." [1998 c 332 § 9.]

**82.04.2905 Tax on providing day care.** Upon every person engaging within this state in the business of providing child care for periods of less than twenty-four hours; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.484 percent. [1998 c 312 § 7.]

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**82.04.2906 Tax on certain chemical dependency services.** (1) Upon every person engaging within this state in the business of providing intensive inpatient or recovery house residential treatment services for chemical dependency, certified by the department of social and health services, for which payment from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof is received as compensation for or to support those services; as to such persons the amount of tax with respect to such business shall be equal to the gross income from such services multiplied by the rate of 0.484 percent.

(2) If the persons described in subsection (1) of this section receive income from sources other than those described in subsection (1) of this section or provide services other than those named in subsection (1) of this section, that income and those services are subject to tax as otherwise provided in this chapter. [2003 c 343 § 1.]

**82.04.2907 Tax on royalties from granting intangible rights.** Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to such business shall be equal to the gross

income from royalties or charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

"Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource or licensing of canned software to the end user. [2001 c 320 § 3; 1998 c 331 § 1.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1998 c 331:** "This act takes effect July 1, 1998." [1998 c 331 § 3.]

**82.04.2908 Tax on provision of room and domiciliary care to boarding home residents.** (1) Upon every person engaging within this state in the business of providing room and domiciliary care to residents of a boarding home licensed under chapter 18.20 RCW, the amount of tax with respect to such business shall be equal to the gross income of the business, multiplied by the rate of 0.275 percent.

(2) For the purposes of this section, "domiciliary care" has the meaning provided in RCW 18.20.020. [2005 c 514 § 302; 2004 c 174 § 1.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2004 c 174:** "This act takes effect July 1, 2004." [2004 c 174 § 8.]

**82.04.2909 Tax on aluminum smelters. (Expires January 1, 2012.)** (1) Upon every person who is an aluminum smelter engaging within this state in the business of manufacturing aluminum; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of .2904 percent.

(2) Upon every person who is an aluminum smelter engaging within this state in the business of making sales at wholesale of aluminum manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the aluminum multiplied by the rate of .2904 percent.

(3) This section expires January 1, 2012. [2006 c 182 § 1; 2004 c 24 § 3.]

**Intent—2004 c 24:** "The legislature recognizes that the loss of domestic manufacturing jobs has become a national concern. Washington state has lost one out of every six manufacturing jobs since July 2000. The aluminum industry has long been an important component of Washington state's manufacturing base, providing family-wage jobs often in rural communities where unemployment rates are very high. The aluminum industry is electricity intensive and was greatly affected by the dramatic increase in electricity prices which began in 2000 and which continues to affect the Washington economy. Before the energy crisis, aluminum smelters provided about 5,000 direct jobs. Today they provide fewer than 1,000 direct jobs. For every job lost in that industry, almost three additional jobs are estimated to be lost elsewhere in the state's economy. It is the legislature's intent to preserve and restore family-wage jobs by providing tax relief to the state's aluminum industry.

The electric loads of aluminum smelters provide a unique benefit to the infrastructure of the electric power system. Under the transmission tariff of the Bonneville Power Administration, aluminum smelter loads, whether served with federal or nonfederal power, are subject to short-term interruptions that allow a higher import capability on the transmission interconnection between the northwest and California. These stability reserves allow more power to be imported in winter months, reducing the need for addi-

tional generation in the northwest, and would be used to prevent a widespread transmission collapse and blackout if there were a failure in the transmission interconnection between California and the northwest. It is the legislature's intent to retain these benefits for the people of the state." [2004 c 24 § 1.]

**Effective date—2004 c 24:** "This act takes effect July 1, 2004." [2004 c 24 § 15.]

**82.04.293 International investment management services—Definitions.** For purposes of RCW 82.04.290:

(1) A person is engaged in the business of providing international investment management services, if:

(a) Such person is engaged primarily in the business of providing investment management services; and

(b) At least ten percent of the gross income of such person is derived from providing investment management services to any of the following: (i) Persons or collective investment funds residing outside the United States; or (ii) persons or collective investment funds with at least ten percent of their investments located outside the United States.

(2) "Investment management services" means investment research, investment consulting, portfolio management, fund administration, fund distribution, investment transactions, or related investment services.

(3) "Collective investment fund" includes:

(a) A mutual fund or other regulated investment company, as defined in section 851(a) of the internal revenue code of 1986, as amended;

(b) An "investment company," as that term is used in section 3(a) of the investment company act of 1940, as well as any entity that would be an investment company for this purpose but for the exemptions contained in section 3(c)(1) or (11);

(c) An "employee benefit plan," which includes any plan, trust, commingled employee benefit trust, or custodial arrangement that is subject to the employee retirement income security act of 1974, as amended, 29 U.S.C. Sec. 1001 et seq., or that is described in sections 125, 401, 403, 408, 457, and 501(c)(9) and (17) through (23) of the internal revenue code of 1986, as amended, or a similar plan maintained by a state or local government, or a plan, trust, or custodial arrangement established to self-insure benefits required by federal, state, or local law;

(d) A fund maintained by a tax-exempt organization, as defined in section 501(c)(3) of the internal revenue code of 1986, as amended, for operating, quasi-endowment, or endowment purposes;

(e) Funds that are established for the benefit of such tax-exempt organizations, such as charitable remainder trusts, charitable lead trusts, charitable annuity trusts, or other similar trusts; or

(f) Collective investment funds similar to those described in (a) through (e) of this subsection created under the laws of a foreign jurisdiction.

(4) Investments are located outside the United States if the underlying assets in which the investment constitutes a beneficial interest reside or are created, issued or held outside the United States. [1997 c 7 § 3; 1995 c 229 § 1.]

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Effective date—1995 c 229:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov- (2008 Ed.)

ernment and its existing public institutions, and shall take effect July 1, 1995." [1995 c 229 § 4.]

**82.04.294 Tax on manufacturers or wholesalers of solar energy systems. (Expires June 30, 2014.)** (1) Beginning October 1, 2005, upon every person engaging within this state in the business of manufacturing solar energy systems using photovoltaic modules, or of manufacturing solar grade silicon to be used exclusively in components of such systems; as to such persons the amount of tax with respect to such business shall, in the case of manufacturers, be equal to the value of the product manufactured, or in the case of processors for hire, be equal to the gross income of the business, multiplied by the rate of 0.2904 percent.

(2) Beginning October 1, 2005, upon every person engaging within this state in the business of making sales at wholesale of solar energy systems using photovoltaic modules, or of solar grade silicon to be used exclusively in components of such systems, manufactured by that person; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the solar energy systems using photovoltaic modules, or of the solar grade silicon to be used exclusively in components of such systems, multiplied by the rate of 0.2904 percent.

(3) The definitions in this subsection apply throughout this section.

(a) "Module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(b) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(c) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(d) "Solar grade silicon" means high-purity silicon used exclusively in components of solar energy systems using photovoltaic modules to capture direct sunlight. "Solar grade silicon" does not include silicon used in semiconductors.

(4) This section expires June 30, 2014. [2007 c 54 § 8; 2005 c 301 § 2.]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Findings—Intent—2005 c 301:** "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of key growth industries in the state. The legislature further finds that targeting tax incentives to focus on key growth industries is an important strategy to enhance the state's business climate.

A recent report by the Washington State University energy program recognized the solar electric industry as one of the state's important growth industries. It is of great concern that businesses in this industry have been increasingly expanding and relocating their operations elsewhere. The report indicates that additional incentives for the solar electric industry are needed in recognition of the unique forces and issues involved in business decisions in this industry.

Therefore, the legislature intends to enact comprehensive tax incentives for the solar electric industry that address activities of the manufacture of these products and to encourage these industries to locate in Washington. Tax incentives for the solar electric industry are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this growth industry within our state, will create jobs, and will bring many indirect benefits to the state." [2005 c 301 § 1.]

**Effective date—2005 c 301:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 301 § 6.]

**Report to legislature—2005 c 301:** "(1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2013. The report shall measure the impacts of this act, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and any other factors the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section." [2005 c 301 § 5.]

*Annual report: RCW 82.32.620.*

**82.04.297 Internet services—Definitions.** (1) The provision of internet services is subject to tax under RCW 82.04.290(2).

(2) "Internet" means the international computer network of both federal and nonfederal interoperable packet switched data networks, including the graphical subnetwork called the world wide web.

(3) "Internet service" means a service that includes computer processing applications, provides the user with additional or restructured information, or permits the user to interact with stored information through the internet or a proprietary subscriber network. "Internet service" includes provision of internet electronic mail, access to the internet for information retrieval, and hosting of information for retrieval over the internet or the graphical subnetwork called the world wide web. [2000 c 103 § 5; 1997 c 304 § 4.]

**Findings—Severability—Effective date—1997 c 304:** See notes following RCW 35.21.717.

**82.04.298 Tax on qualified grocery distribution cooperatives.** (1) The amount of tax with respect to a qualified grocery distribution cooperative's sales of groceries or related goods for resale, excluding items subject to tax under RCW 82.04.260(4), to customer-owners of the grocery distribution cooperative is equal to the gross proceeds of sales of the grocery distribution cooperative multiplied by the rate of one and one-half percent.

(2) A qualified grocery distribution cooperative is allowed a deduction from the gross proceeds of sales of groceries or related goods for resale, excluding items subject to tax under RCW 82.04.260(4), to customer-owners of the grocery distribution cooperative that is equal to the portion of the gross proceeds of sales for resale that represents the actual cost of the merchandise sold by the grocery distribution cooperative to customer-owners.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Grocery distribution cooperative" means an entity that sells groceries and related items to customer-owners of the grocery distribution cooperative and has customer-owners, in the aggregate, who own a majority of the outstanding ownership interests of the grocery distribution cooperative or of the entity controlling the grocery distribution cooperative. "Grocery distribution cooperative" includes an entity that controls a grocery distribution cooperative.

(b) "Qualified grocery distribution cooperative" means:

(i) A grocery distribution cooperative that has been determined by a court of record of the state of Washington to be not engaged in wholesaling or making sales at wholesale,

within the meaning of RCW 82.04.270 or any similar provision of a municipal ordinance that imposes a tax on gross receipts, gross proceeds of sales, or gross income, with respect to purchases made by customer-owners, and subsequently changes its form of doing business to make sales at wholesale of groceries or related items to its customer-owners; or

(ii) A grocery distribution cooperative that has acquired substantially all of the assets of a grocery distribution cooperative described in (b)(i) of this subsection.

(c) "Customer-owner" means a person who has an ownership interest in a grocery distribution cooperative and purchases groceries and related items at wholesale from that grocery distribution cooperative.

(d) "Controlling" means holding fifty percent or more of the voting interests of an entity and having at least equal power to direct or cause the direction of the management and policies of the entity, whether through the ownership of voting securities, by contract, or otherwise. [2008 c 49 § 1; 2001 1st sp.s. c 9 § 1.]

**Effective dates—2001 1st sp.s. c 9:** "(1) Sections 1, 2, 4, and 8 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 11, 2001].

(2) Sections 3 and 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2001.

(3) Section 6 of this act takes effect July 1, 2003.

(4) Section 7 [of this act] is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 22, 2001." [2001 1st sp.s. c 9 § 9.]

**82.04.310 Exemptions—Public utilities—Electrical energy—Natural or manufactured gas.** (1) This chapter shall not apply to any person in respect to a business activity with respect to which tax liability is specifically imposed under the provisions of chapter 82.16 RCW including amounts derived from activities for which a deduction is allowed under RCW 82.16.050.

(2) This chapter does not apply to amounts received by any person for the sale of electrical energy for resale within or outside the state.

(3)(a) This chapter does not apply to amounts received by any person for the sale of natural or manufactured gas in a calendar year if that person sells within the United States a total amount of natural or manufactured gas in that calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year.

(b) For purposes of determining whether a person has sold within the United States a total amount of natural or manufactured gas in a calendar year that is no more than twenty percent of the amount of natural or manufactured gas that it consumes within the United States in the same calendar year, the following transfers of gas are not considered to be the sale of natural or manufactured gas:

(i) The transfer of any natural or manufactured gas as a result of the acquisition of another business, through merger or otherwise; or

(ii) The transfer of any natural or manufactured gas accomplished solely to comply with federal regulatory requirements imposed on the pipeline transportation of such

gas when it is shipped by a third-party manager of a person's pipeline transportation. [2007 c 58 § 1; 2000 c 245 § 2; 1989 c 302 § 202; 1961 c 15 § 82.04.310. Prior: 1959 c 197 § 15; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**Finding, purpose—1989 c 302:** See note following RCW 82.04.120.

**82.04.311 Exemptions—Tobacco settlement authority.** This chapter does not apply to income received by the tobacco settlement authority under chapter 43.340 RCW. [2002 c 365 § 14.]

**Captions not law—Severability—Effective date—2002 c 365:** See RCW 43.340.900 through 43.340.902.

**82.04.315 Exemptions—International banking facilities.** This chapter shall not apply to the gross receipts of an international banking facility.

As used in this section, an "international banking facility" means a facility represented by a set of asset and liability accounts segregated on the books and records of a commercial bank, the principal office of which is located in this state, and which is incorporated and doing business under the laws of the United States or of this state, a United States branch or agency of a foreign bank, an Edge corporation organized under Section 25(a) of the Federal Reserve Act, 12 United States Code 611-631, or an Agreement corporation having an agreement or undertaking with the Board of Governors of the Federal Reserve System under Section 25 of the Federal Reserve Act, 12 United States Code 601-604(a), that includes only international banking facility time deposits (as defined in subsection (a)(2) of Section 204.8 of Regulation D (12 CFR Part 204), as promulgated by the Board of Governors of the Federal Reserve System), and international banking facility extensions of credit (as defined in subsection (a)(3) of Section 204.8 of Regulation D). [1982 c 95 § 7.]

**Effective date—1982 c 95:** See note following RCW 30.42.070.

**82.04.317 Exemptions—Motor vehicle sales by manufacturers at wholesale auctions to dealers.** This chapter does not apply to amounts received by a motor vehicle manufacturer, as defined in RCW 19.118.021, or by a financing subsidiary of such motor vehicle manufacturer which subsidiary is at least fifty percent owned by the manufacturer, from the sale of motor vehicles at wholesale auctions to dealers licensed under chapter 46.70 RCW or dealers licensed by any other state. [1997 c 4 § 1.]

**Effective date—1997 c 4:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 1997]." [1997 c 4 § 2.]

**82.04.320 Exemptions—Insurance business.** This chapter shall not apply to any person in respect to insurance business upon which a tax based on gross premiums is paid to the state: PROVIDED, That the provisions of this section shall not exempt any person engaging in the business of representing any insurance company, whether as general or local agent, or acting as broker for such companies: PROVIDED FURTHER, That the provisions of this section shall not exempt any bonding company from tax with respect to gross

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income derived from the completion of any contract as to which it is a surety, or as to any liability as successor to the liability of the defaulting contractor. [1961 c 15 § 82.04.320. Prior: 1959 c 197 § 16; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.322 Exemptions—Health maintenance organization, health care service contractor, certified health plan.** This chapter does not apply to any health maintenance organization, health care service contractor, or certified health plan in respect to premiums or prepayments that are taxable under RCW 48.14.0201. [1993 c 492 § 303.]

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**82.04.324 Exemptions—Qualifying blood, tissue, or blood and tissue banks.** (1) This chapter does not apply to amounts received by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section:

(a) "Qualifying blood bank" means a blood bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 607 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood. "Qualifying blood bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(b) "Qualifying tissue bank" means a tissue bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 1271 as existing on June 10, 2004, and whose primary business purpose is the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, heart valve tissue, or human eye tissue. "Qualifying tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute.

(c) "Qualifying blood and tissue bank" is a bank that qualifies as an exempt organization under 26 U.S.C. 501(c)(3) as existing on June 10, 2004, is registered pursuant to 21 C.F.R., part 607 and part 1271 as existing on June 10, 2004, and whose primary business purpose is the collection, preparation, and processing of blood, and the recovery, processing, storage, labeling, packaging, or distribution of human bone tissue, ligament tissue and similar musculoskeletal tissues, skin tissue, and heart valve tissue. "Qualifying blood and tissue bank" does not include a comprehensive cancer center that is recognized as such by the national cancer institute. [2004 c 82 § 1; 1995 2nd sp.s. c 9 § 3.]

**Effective date—1995 2nd sp.s. c 9:** See note following RCW 84.36.035.

**82.04.326 Exemptions—Qualified organ procurement organizations.** This chapter does not apply to amounts

received by a qualified organ procurement organization under 42 U.S.C. Sec. 273(b) in effect as of January 1, 2001, to the extent that the amounts are exempt from federal income tax. [2002 c 113 § 1.]

**Effective date—2002 c 113:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2002]." [2002 c 113 § 4.]

**82.04.327 Exemptions—Adult family homes.** This chapter does not apply to adult family homes which are licensed as such, or which are specifically exempt from licensing, under rules of the department of social and health services. [1987 1st ex.s. c 4 § 1.]

**82.04.330 Exemptions—Sales of agricultural products.** This chapter shall not apply to any farmer that sells any agricultural product at wholesale or to any farmer who grows, raises, or produces agricultural products owned by others, such as custom feed operations. This exemption shall not apply to any person selling such products at retail or to any person selling manufactured substances or articles.

This chapter shall also not apply to any persons who participate in the federal conservation reserve program or its successor administered by the United States department of agriculture with respect to land enrolled in that program. [2001 c 118 § 3; 1993 sp.s. c 25 § 305; 1988 c 253 § 2; 1987 c 23 § 4. Prior: 1985 c 414 § 10; 1985 c 148 § 1; 1965 ex.s. c 173 § 7; 1961 c 15 § 82.04.330; prior: 959 c 197 § 17; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

*Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used: RCW 82.04.4287.*

**82.04.331 Exemptions—Wholesale sales to farmers of seed for planting, conditioning seed for planting owned by others.** (1) This chapter does not apply to amounts received by a person engaging within this state in the business of: (a) Making wholesale sales to farmers of seed conditioned for use in planting and not packaged for retail sale; or (b) conditioning seed for planting owned by others.

(2) For the purposes of this section, "seed" means seed potatoes and all other "agricultural seed" as defined in RCW 15.49.011. "Seed" does not include "flower seeds" or "vegetable seeds" as defined in RCW 15.49.011, or any other seeds or propagative portions of plants used to grow ornamental flowers or used to grow any type of bush, moss, fern, shrub, or tree. [1998 c 170 § 2.]

**Contingent effective dates—1998 c 170:** "(1) Sections 1 and 3 of this act take effect only if House Bill No. 2335 fails to become law.

(2) Section 2 of this act takes effect only if House Bill No. 2335 becomes law." [1998 c 170 § 5.] House Bill No. 2335 became 1998 c 312.

**Effective date—1998 c 170:** "This act takes effect July 1, 1998." [1998 c 170 § 6.]

**82.04.332 Exemptions—Buying and selling at wholesale unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley.** This chapter does not apply to amounts received from buying unprocessed milk, wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley, but not including any manufactured products thereof, and selling the same at wholesale. [2007 c 131 § 1; 1998 c 312 § 2.]

**Effective date—1998 c 312:** "This act takes effect July 1, 1998." [1998 c 312 § 11.]

**Savings—1998 c 312:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1998 c 312 § 10.]

**82.04.333 Exemptions—Small harvesters.** In computing tax under this chapter, a person who is a small harvester as defined in RCW 84.33.035(14) may deduct an amount not to exceed one hundred thousand dollars per tax year from the gross receipts or value of products proceeding or accruing from timber harvested by that person. A deduction under this section may not reduce the amount of tax due to less than zero. [2007 c 48 § 5; 1990 c 141 § 1.]

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**82.04.334 Exemptions—Standing timber.** This chapter does not apply to any sale of standing timber excluded from the definition of "sale" in RCW 82.45.010(3). The definitions in RCW 82.04.260(12) apply to this section. [2007 c 48 § 3.]

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**82.04.335 Exemptions—Agricultural fairs.** This chapter shall not apply to any business of any bona fide agricultural fair, if no part of the net earnings therefrom inures to the benefit of any stockholder or member of the association conducting the same: PROVIDED, That any amount paid for admission to any exhibit, grandstand, entertainment, or other feature conducted within the fair grounds by others shall be taxable under the provisions of this chapter, except as otherwise provided by law. [1965 ex.s. c 145 § 1.]

**82.04.337 Exemptions—Amounts received by hop growers or dealers for processed hops shipped outside the state.** This chapter shall not apply to amounts received by hop growers or dealers for hops which are shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. This section does not exempt a processor or warehouse from taxation under this chapter on amounts charged for processing or warehousing. [1987 c 495 § 1.]

**82.04.338 Exemptions—Hop commodity commission or hop commodity board business.** This chapter does not apply to any nonprofit organization in respect to gross income derived from business activities for a hop commodity commission or hop commodity board created by state statute or created under chapter 15.65 or 15.66 RCW if: (1) The activity is approved by a referendum conducted by the commission or board; (2) the person is specified in information

distributed by the commission or board for the referendum as a person who is to conduct the activity; and (3) the referendum is conducted in the manner prescribed by the statutes governing the commission or board for approving assessments or expenditures, or otherwise authorizing or approving activities of the commission or board. As used in this section, "nonprofit organization" means an organization that is exempt from federal income tax under 26 U.S.C. [Sec.] 501(c)(5). [1998 c 200 § 1.]

**82.04.339 Exemptions—Day care provided by churches.** This chapter shall not apply to amounts derived by a church that is exempt from property tax under RCW 84.36.020 from the provision of care for children for periods of less than twenty-four hours. [1992 c 81 § 1.]

**82.04.3395 Exemptions—Child care resource and referral services by nonprofit organizations.** This chapter does not apply to nonprofit organizations in respect to amounts derived from the provision of child care resource and referral services. [1995 2nd sp.s. c 11 § 3.]

**Effective date—1995 2nd sp.s. c 11:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 11 § 4.]

**82.04.340 Exemptions—Boxing, sparring, or wrestling matches.** This chapter shall not apply to any person in respect to the business of conducting boxing contests and sparring or wrestling matches and exhibitions for the conduct of which a license must be secured from the department of licensing. [2000 c 103 § 6; 1988 c 19 § 4; 1961 c 15 § 82.04.340. Prior: 1959 c 197 § 18; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.350 Exemptions—Racing.** Except as provided in RCW 82.04.286(1), this chapter shall not apply to any person in respect to the business of conducting race meets for the conduct of which a license must be secured from the horse racing commission. [2005 c 369 § 7; 1961 c 15 § 82.04.350. Prior: 1959 c 197 § 19; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**Findings—Intent—Severability—Effective date—2005 c 369:** See notes following RCW 43.20A.890.

**82.04.355 Exemptions—Ride sharing.** This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. [1999 c 358 § 8; 1979 c 111 § 17.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Severability—1979 c 111:** See note following RCW 46.74.010.

**82.04.360 Exemptions—Employees—Independent contractors—Booth renters.** (1) This chapter shall not apply to any person in respect to his or her employment in the

capacity of an employee or servant as distinguished from that of an independent contractor. For the purposes of this section, the definition of employee shall include those persons that are defined in section 3121(d)(3)(B) of the Internal Revenue Code of 1986, as amended through January 1, 1991.

(2) A booth renter, as defined by \*RCW 18.16.020, is an independent contractor for purposes of this chapter. [1991 c 324 § 19; 1991 c 275 § 2; 1961 c 15 § 82.04.360. Prior: 1959 c 197 § 20; prior: 1945 c 249, § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**Reviser's note:** \*(1) RCW 18.16.020 was amended by 2002 c 111 § 2, deleting the definition of "booth renter."

(2) This section was amended by 1991 c 275 § 2 and by 1991 c 324 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1991 c 324:** See RCW 18.16.910.

**Finding—Intent—1991 c 275:** "(1) The legislature finds:

(a) The existing state policy is to exempt employees from the business and occupation tax.

(b) It has been difficult to distinguish, for business and occupation tax purposes, between independent contractors and employees who are in the business of selling life insurance. The tests commonly used by the department of revenue to determine tax status have not successfully differentiated employees from independent contractors when applied to the life insurance industry.

(2) The intent of this act is to apply federal tax law and rules to distinguish between employees and independent contractors for business and occupation tax purposes, solely for the unique business of selling life insurance." [1991 c 275 § 1.]

**Effective date—1991 c 275:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 275 § 3.]

**82.04.363 Exemptions—Camp or conference center—Items sold or furnished by nonprofit organization.** This chapter does not apply to amounts received by a nonprofit organization from the sale or furnishing of the following items at a camp or conference center conducted on property exempt from property tax under RCW 84.36.030 (1), (2), or (3):

(1) Lodging, conference and meeting rooms, camping facilities, parking, and similar licenses to use real property;

(2) Food and meals;

(3) Books, tapes, and other products that are available exclusively to the participants at the camp, conference, or meeting and are not available to the public at large. [1997 c 388 § 1.]

**Effective date—1997 c 388:** "This act takes effect October 1, 1997." [1997 c 388 § 3.]

**82.04.3651 Exemptions—Amounts received by nonprofit organizations for fund-raising activities.** (1) This chapter does not apply to amounts received by nonprofit organizations, as defined in subsection (2) of this section, for fund-raising activities.

(2) As used in this section, a "nonprofit organization" means:

(a) An organization exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));

(b) A nonprofit organization that would qualify under (a) of this subsection except that it is not organized as a nonprofit corporation; or

(c) A nonprofit organization that meets all of the following criteria:

(i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

(3) As used in this section, the term "fund-raising activity" means soliciting or accepting contributions of money or other property or activities involving the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. "Fund-raising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business or the operation of a regular place of business from which services are provided or performed during regular hours such as the provision of retail, personal, or professional services. The sale of used books, used videos, used sound recordings, or similar used information products in a library, as defined in RCW 27.12.010, is not the operation of a regular place of business for the purposes of this section, if the proceeds of the sales are used to support the library. [1999 c 358 § 3; 1998 c 336 § 2.]

**Effective date—1999 c 358 §§ 1 and 3-21:** "Sections 1 and 3 through 21 of this act take effect August 1, 1999." [1999 c 358 § 22.]

**Findings—1998 c 336:** "The legislature finds that nonprofit educational, charitable, religious, scientific, and social welfare organizations provide many public benefits to the people of the state of Washington. Therefore, the legislature finds that it is in the best interests of the state of Washington to provide a limited excise tax exemption for fund-raising activities for certain nonprofit organizations." [1998 c 336 § 1.]

*Sales tax exemptions: RCW 82.08.02573.*

**82.04.367 Exemptions—Nonprofit organizations that are guarantee agencies, issue debt, or provide guarantees for student loans.** This chapter does not apply to gross income received by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that:

(1) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(2) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program. [1998 c 324 § 1; 1987 c 433 § 1.]

**82.04.368 Exemptions—Nonprofit organizations—Credit and debt services.** This chapter does not apply to nonprofit organizations in respect to amounts derived from provision of the following services:

(1) Presenting individual and community credit education programs including credit and debt counseling;

(2) Obtaining creditor cooperation allowing a debtor to repay debt in an orderly manner;

(3) Establishing and administering negotiated repayment programs for debtors; or

(4) Providing advice or assistance to a debtor with regard to subsection (1), (2), or (3) of this section. [1993 c 390 § 1.]

**82.04.370 Exemptions—Certain fraternal and beneficiary organizations.** This chapter shall not apply to fraternal benefit societies or fraternal fire insurance associations, as described in Title 48 RCW; nor to beneficiary corporations or societies organized under and existing by virtue of Title 24 RCW, if such beneficiary corporations or societies provide in their bylaws for the payment of death benefits. Exemption is limited, however, to gross income from premiums, fees, assessments, dues or other charges directly attributable to the insurance or death benefits provided by such societies, associations, or corporations. [1961 c 293 § 4; 1961 c 15 § 82.04.370. Prior: 1959 c 197 § 21; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.380 Exemptions—Certain corporations furnishing aid and relief.** This chapter shall not apply to the gross sales or the gross income received by corporations which have been incorporated under any act of the congress of the United States of America and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1961 c 15 § 82.04.380. Prior: 1959 c 197 § 22; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.385 Exemptions—Operation of sheltered workshops.** This chapter shall not apply to income received from the department of social and health services for the cost of care, maintenance, support, and training of persons with developmental disabilities at nonprofit group training homes as defined by chapter 71A.22 RCW or to the business activities of nonprofit organizations from the operation of sheltered workshops. For the purposes of this section, "the operation of sheltered workshops" means performance of business activities of any kind on or off the premises of such nonprofit organizations which are performed for the primary purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for handicapped individuals. [1988 c 176 § 915; 1988 c 13 § 1; 1972 ex.s. c 134 § 1; 1970 ex.s. c 81 § 3.]

**Reviser's note:** This section was amended by 1988 c 13 § 1 and by 1988 c 176 § 915, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1988 c 176:** See RCW 71A.10.900.

**82.04.390 Exemptions—Amounts derived from sale of real estate.** This chapter shall not apply to gross proceeds derived from the sale of real estate. This however, shall not be construed to allow a deduction of amounts received as commissions from the sale of real estate, nor as fees, handling charges, discounts, interest or similar financial charges resulting from, or relating to, real estate transactions. [1961 c 15 § 82.04.390. Prior: 1959 ex.s. c 5 § 8; 1959 c 197 § 23; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.392 Exemptions—Mortgage brokers' third-party provider services trust accounts.** This chapter shall not apply to amounts received from trust accounts to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions. [1998 c 311 § 3; 1997 c 106 § 21.]

**Intent—Retroactive application—1998 c 311 §§ 1 and 3:** See note following RCW 19.146.050.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**82.04.394 Exemptions—Amounts received by property management company for on-site personnel.** (1) This chapter does not apply to amounts received by a property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under \*RCW 18.85.310.

(2) As used in this section, "on-site personnel" means a person who meets all of the following conditions: (a) The person works primarily at the owner's property; (b) the person's duties include leasing property units, maintaining the property, collecting rents, or similar activities; and (c) under a written property management agreement: (i) The person's compensation is the ultimate obligation of the property owner and not the property manager; (ii) the property manager is liable for payment only as agent of the owner; and (iii) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner. [1998 c 338 § 2.]

**\*Reviser's note:** RCW 18.85.310 was recodified as RCW 18.85.285 pursuant to 2008 c 23 § 49, effective July 1, 2010.

**Finding—Intent—1998 c 338:** "The legislature finds that property owners often hire property management companies to manage their real property. Frequently, the property management companies also manage the personnel who perform the necessary services at the property location. In these cases, the property owners may pay the on-site personnel through the property management company. The property management company is merely acting as a conduit for the property owner's payment to the personnel at the property site.

This act is not intended to modify the taxation of amounts received by

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a property management company for purposes other than payment to on-site personnel." [1998 c 338 § 1.]

**Effective date—1998 c 338:** "This act takes effect July 1, 1998." [1998 c 338 § 3.]

**82.04.395 Exemptions—Certain materials printed in school district and educational service district printing facilities.** This chapter shall not apply to school districts and educational service districts as defined in Title 28A RCW, in respect to materials printed in the school district and educational service districts printing facilities when said materials are used solely for school district and educational service district purposes. [1979 ex.s. c 196 § 12.]

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**82.04.397 Exemptions—Certain materials printed in county, city, or town printing facilities.** This chapter does not apply to any county, city or town as defined in Title 35 RCW and Title 36 RCW, in respect to materials printed in the county, city or town printing facilities when said materials are used solely for said county, city or town purposes. [1979 ex.s. c 196 § 14.]

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**82.04.399 Exemptions—Sales of academic transcripts.** This chapter does not apply to amounts received from sales of academic transcripts by educational institutions. [1996 c 272 § 1.]

**Effective date—1996 c 272:** "This act shall take effect July 1, 1996." [1996 c 272 § 4.]

**82.04.405 Exemptions—Credit unions.** This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States. [1998 c 311 § 4; 1970 ex.s. c 101 § 3.]

**Severability—Effective date—1970 ex.s. c 101:** See notes following RCW 33.28.040.

**82.04.408 Exemptions—Housing finance commission.** This chapter does not apply to income received by the state housing finance commission under chapter 43.180 RCW. [1983 c 161 § 25.]

**Severability—Effective dates—Captions not part of law—1983 c 161:** See RCW 43.180.903 and 43.180.904.

**82.04.410 Exemptions—Hatching eggs and poultry.** This chapter shall not apply to amounts derived by persons engaged in the production and sale of hatching eggs or poultry for use in the production for sale of poultry or poultry products. [1967 ex.s. c 149 § 15; 1961 c 15 § 82.04.410. Prior: 1959 c 197 § 25; prior: 1945 c 249 § 2, part; 1943 c 156 § 4, part; 1941 c 178 § 6, part; 1939 c 225 § 5, part; 1937 c 227 § 4, part; 1935 c 180 § 11, part; Rem. Supp. 1945 § 8370-11, part.]

**82.04.415 Exemptions—Sand, gravel and rock taken from county or city pits or quarries, processing and handling costs.** This chapter shall not apply to:

(1) The cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel, and

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rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or city and such sand, gravel, or rock is either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself; or

(2) The cost of or charges for such labor and services if any such sand, gravel, or rock is sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway.

The exemption provided for in this section shall not apply to the cost of or charges for such labor and services if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1965 ex.s. c 173 § 10.]

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.04.416 Exemptions—Operation of state route No. 16.** This chapter does not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW. [1998 c 179 § 3.]

**Finding—1998 c 179:** See note following RCW 35.21.718.

**82.04.418 Exemptions—Grants by United States government to municipal corporations or political subdivisions.** The provisions of this chapter shall not apply to grants received from the state or the United States government by municipal corporations or political subdivisions of the state of Washington. [1983 1st ex.s. c 66 § 2.]

**82.04.419 Exemptions—County, city, town, school district, or fire district activity.** This chapter shall not apply to any county, city, town, school district, or fire district activity, regardless of how financed, other than a utility or enterprise activity as defined by the state auditor pursuant to RCW 35.33.111 and 36.40.220 and upon which the tax imposed pursuant to this chapter had previously applied. Nothing contained in this section shall limit the authority of the legislature to authorize the imposition of such tax prospectively upon such activities as the legislature shall specifically designate. [1983 1st ex.s. c 66 § 3.]

**82.04.4201 Exemptions—Sales/leasebacks by regional transit authorities.** This chapter does not apply to amounts received as lease payments paid by a seller/lessee to a lessor under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property used by the seller/lessee, or to the purchase amount paid by the lessee under an option to purchase at the end of the lease term. [2000 2nd sp.s. c 4 § 24.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**82.04.421 Exemptions—Out-of-state membership sales in discount programs.** (1) For the purposes of this section, "qualifying discount program" means a membership program, club, or plan that entitles the member to discounts on services or products sold by others. The term does not include any discount program which in part or in total entitles the member to discounts on services or products sold by the

seller of the membership or an affiliate of the seller of the membership. "Affiliate," for the purposes of this section, means any person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the seller.

(2) Persons selling memberships in a qualifying discount program are not subject to tax under this chapter on that portion of the membership sales where the seller delivers the membership materials to the purchaser who receives them at a point outside this state. [1997 c 408 § 1.]

**Effective date—1997 c 408:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 408 § 2.]

**82.04.422 Exemptions—Wholesale sales of motor vehicles.** (1) This chapter does not apply to amounts received by a motor vehicle dealer licensed under chapter 46.70 RCW, or a dealer licensed by any other state, for the wholesale sale of used motor vehicles at auctions to licensed dealers.

(2) This chapter does not apply to amounts derived by a new car dealer from wholesale sales of new motor vehicles to other new car dealers making sales of new motor vehicles of the same make. This exemption does not apply to amounts derived by a manufacturer, distributor, or factory branch as defined in chapter 46.70 RCW. [2004 c 81 § 1; 2001 c 258 § 1.]

**Effective date—2004 c 81:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 81 § 2.]

**Effective date—2001 c 258:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 258 § 3.]

**82.04.423 Exemptions—Sales by certain out-of-state persons to or through direct seller's representatives.** (1) This chapter shall not apply to any person in respect to gross income derived from the business of making sales at wholesale or retail if such person:

- (a) Does not own or lease real property within this state; and
- (b) Does not regularly maintain a stock of tangible personal property in this state for sale in the ordinary course of business; and
- (c) Is not a corporation incorporated under the laws of this state; and
- (d) Makes sales in this state exclusively to or through a direct seller's representative.

(2) For purposes of this section, the term "direct seller's representative" means a person who buys consumer products on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise than in a permanent retail establishment, or who sells, or solicits the sale of, consumer products in the home or otherwise than in a permanent retail establishment; and

(a) Substantially all of the remuneration paid to such person, whether or not paid in cash, for the performance of services described in this subsection is directly related to sales or

other output, including the performance of services, rather than the number of hours worked; and

(b) The services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such purposes for federal tax purposes.

(3) Nothing in this section shall be construed to imply that a person exempt from tax under this section was engaged in a business activity taxable under this chapter prior to the enactment of this section. [1983 1st ex.s. c 66 § 5.]

**Reviser's note:** The effective date of 1983 1st ex.s. c 66 is August 23, 1983.

**82.04.424 Exemptions—Certain in-state activities. (Contingent expiration date.)** (1) This chapter does not apply to a person making sales in Washington if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. For purposes of this section, persons are "affiliated persons" with respect to each other where one of the persons has an ownership interest of more than five percent, whether direct or indirect, in the other, or where an ownership interest of more than five percent, whether direct or indirect, is held in each of the persons by another person or by a group of other persons which are affiliated with respect to each other.

(2) This section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2003 c 76 § 2.]

**Intent—2003 c 76:** "It is the intent of the legislature to exempt from business and occupation tax and to relieve from the obligation to collect sales and use tax from certain sellers with very limited connections to Washington. These sellers are currently relieved from the obligation to collect sales and use tax because of the provisions of the federal internet tax freedom act. The legislature intends to continue to relieve these particular sellers from that obligation in the event that the federal internet tax freedom act is not extended. The legislature further intends that any relief from tax obligations provided by this act expire at such time as the United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers, or a court of competent jurisdiction, in a judgment not subject to review, determines that a state can impose sales and use tax collection duties on remote sellers." [2003 c 76 § 1.]

**82.04.425 Exemptions—Accommodation sales.** This chapter shall not apply to sales for resale by persons regularly engaged in the business of making sales of the type of property so sold to other persons similarly engaged in the business of selling such property where (1) the amount paid by the buyer does not exceed the amount paid by the seller to his vendor in the acquisition of the article and (2) the sale is made as an accommodation to the buyer to enable him to fill a bona fide existing order of a customer or is made within fourteen

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days to reimburse in kind a previous accommodation sale by the buyer to the seller; nor to sales by a wholly owned subsidiary of a person making sales at retail which are exempt under RCW 82.08.0262 when the parent corporation shall have paid the tax imposed under this chapter. [1980 c 37 § 78; 1965 ex.s. c 173 § 9; 1961 c 15 § 82.04.425. Prior: 1955 c 95 § 1.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.04.4251 Exemptions—Convention and tourism promotion.** This chapter does not apply to amounts received by a nonprofit corporation organized under chapter 24.03 RCW as payments or contributions from the state or any county, city, town, municipal corporation, quasi-municipal corporation, federally recognized Indian tribe, port district, or public corporation for the promotion of conventions and tourism. [2006 c 310 § 1.]

**82.04.426 Exemptions—Semiconductor microchips. (Contingent effective date; contingent expiration date.)** (1) The tax imposed by RCW 82.04.240(2) does not apply to any person in respect to the manufacturing of semiconductor microchips.

(2) For the purposes of this section:

(a) "Manufacturing semiconductor microchips" means taking raw polished semiconductor wafers and embedding integrated circuits on the wafers using processes such as masking, etching, and diffusion; and

(b) "Integrated circuit" means a set of microminiaturized, electronic circuits.

(3) This section expires nine years after \*the effective date of this act. [2003 c 149 § 2.]

**\*Contingent effective date—2006 c 300 § 7; 2003 c 149:** "(1)(a) This act and section 7, chapter 300, Laws of 2006 are contingent upon the siting and commercial operation of a significant semiconductor microchip fabrication facility in the state of Washington.

(b) For the purposes of this section:

(i) "Commercial operation" means the same as "commencement of commercial production" as used in RCW 82.08.965.

(ii) "Semiconductor microchip fabrication" means "manufacturing semiconductor microchips" as defined in RCW 82.04.426.

(iii) "Significant" means the combined investment of new buildings and new machinery and equipment in the buildings, at the commencement of commercial production, will be at least one billion dollars.

(2) This act takes effect the first day of the month in which a contract for the construction of a significant semiconductor fabrication facility is signed, as determined by the director of the department of revenue.

(3)(a) The department of revenue shall provide notice of the effective date of this act to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) If, after making a determination that a contract has been signed and this act is effective, the department discovers that commencement of commercial production did not take place within three years of the date the contract was signed, the department shall make a determination that this act is no longer effective, and all taxes that would have been otherwise due shall be deemed deferred taxes and are immediately assessed and payable from any person reporting tax under RCW 82.04.240(2) or claiming an exemption or credit under section 2 or 5 through 10 of this act. The department is not authorized to make a second determination regarding the effective date of this act." [2006 c 300 § 12; 2003 c 149 § 12.]

**Findings—Intent—2003 c 149:** "The legislature finds that the welfare of the people of the state of Washington is positively impacted through the encouragement and expansion of family wage employment in the state's manufacturing industries. The legislature further finds that targeting tax incentives to focus on key industry clusters is an important business climate strategy. The Washington competitiveness council has recognized the semi-

conductor industry, which includes the design and manufacture of semiconductor materials, as one of the state's existing key industry clusters. Businesses in this cluster in the state of Washington are facing increasing pressure to expand elsewhere. The sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature improved Washington's ability to compete with other states for manufacturing investment. However, additional incentives for the semiconductor cluster need to be put in place in recognition of the unique forces and global issues involved in business decisions that key businesses in this cluster face.

Therefore, the legislature intends to enact comprehensive tax incentives for the semiconductor cluster that address activities of the lead product industry and its suppliers and customers. Tax incentives for the semiconductor cluster are important in both retention and expansion of existing business and attraction of new businesses, all of which will strengthen this cluster. The legislature also recognizes that the semiconductor industry involves major investment that results in significant construction projects, which will create jobs and bring many indirect benefits to the state during the construction phase." [2003 c 149 § 1.]

**82.04.4261 Exemptions—Federal small business innovation research program.** This chapter does not apply to amounts received by any person for research and development under the federal small business innovation research program (114 Stat. 2763A; 15 U.S.C. Sec. 638 et seq.). [2004 c 2 § 9.]

**Effective date—2004 c 2 §§ 9 and 10:** "Sections 9 and 10 of this act take effect July 1, 2004." [2004 c 2 § 11.]

**82.04.4262 Exemptions—Federal small business technology transfer program.** This chapter does not apply to amounts received by any person for research and development under the federal small business technology transfer program (115 Stat. 263; 15 U.S.C. Sec. 638 et seq.). [2004 c 2 § 10.]

**Effective date—2004 c 2 §§ 9 and 10:** See note following RCW 82.04.4261.

**82.04.4263 Exemptions—Income received by the life sciences discovery fund authority.** This chapter does not apply to income received by the life sciences discovery fund authority under chapter 43.350 RCW. [2005 c 424 § 11.]

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**82.04.4264 Exemptions—Nonprofit boarding homes—Room and domiciliary care.** (1) This chapter does not apply to amounts received by a nonprofit boarding home licensed under chapter 18.20 RCW for providing room and domiciliary care to residents of the boarding home.

(2) As used in this section:

(a) "Domiciliary care" has the meaning provided in RCW 18.20.020.

(b) "Nonprofit boarding home" means a boarding home that is operated as a religious or charitable organization, is exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3), is incorporated under chapter 24.03 RCW, is operated as part of a nonprofit hospital, or is operated as part of a public hospital district. [2005 c 514 § 301.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4265 Exemptions—Comprehensive cancer centers.** (1) This chapter does not apply to amounts received

by a comprehensive cancer center to the extent the amounts are exempt from federal income tax.

(2) For the purposes of this section, "comprehensive cancer center" means a cancer center that has written confirmation that it is recognized by the national cancer institute as a comprehensive cancer center and that qualifies as an exempt organization under 26 U.S.C. Sec. 501(c)(3) as existing on July 1, 2006. [2005 c 514 § 401.]

**Effective date—2005 c 514 §§ 401-403:** "Sections 401 through 403 of this act take effect July 1, 2006." [2005 c 514 § 1304.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4266 Exemptions—Fruit and vegetable businesses. (Expires July 1, 2012.)** (1) This chapter shall not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing fruits or vegetables by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables; or

(b) Selling at wholesale fruits or vegetables manufactured by the seller by canning, preserving, freezing, processing, or dehydrating fresh fruits or vegetables and sold to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) This section expires July 1, 2012. [2006 c 354 § 3; 2005 c 513 § 1.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** "This act takes effect July 1, 2007, except for sections 1 through 3 of this act which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2005, and section 5, chapter 513, Laws of 2005, which takes effect April 30, 2007." [2007 c 243 § 1; 2005 c 513 § 14.]

*Annual survey:* RCW 82.32.610.

**82.04.4267 Exemptions—Operation of parking/business improvement areas.** This chapter does not apply to amounts received by a chamber of commerce or other similar business association for administering the operation of a parking and business improvement area as defined in RCW 35.87A.110. [2005 c 476 § 1.]

**82.04.4268 Exemptions—Dairy product businesses. (Expires July 1, 2012.)** (1) This chapter shall not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing dairy products; or

(b) Selling manufactured dairy products to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) "Dairy products" means dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1,

parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein.

(3) This section expires July 1, 2012. [2006 c 354 § 1.]

**Effective dates—2006 c 354:** "(1) Except as otherwise provided in this section, this act takes effect July 1, 2006.

(2) Sections 6 through 9 and 11 of this act take effect July 1, 2007.

(3) Sections 12 and 13 of this act take effect July 1, 2012." [2006 c 354 § 18.]

**82.04.4269 Exemptions—Seafood product businesses. (Expires July 1, 2012.)** (1) This chapter does not apply to the value of products or the gross proceeds of sales derived from:

(a) Manufacturing seafood products that remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; or

(b) Selling manufactured seafood products that remain in a raw, raw frozen, or raw salted state to purchasers who transport in the ordinary course of business the goods out of this state. A person taking an exemption under this subsection (1)(b) must keep and preserve records for the period required by RCW 82.32.070 establishing that the goods were transported by the purchaser in the ordinary course of business out of this state.

(2) This section expires July 1, 2012. [2006 c 354 § 2.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**82.04.427 Exemptions and credits—Pollution control facilities.** See chapter 82.34 RCW.

**82.04.4271 Deductions—Membership fees and certain service fees by nonprofit youth organization.** In computing tax due under this chapter, there may be deducted from the measure of tax all amounts received by a nonprofit youth organization:

(1) As membership fees or dues, irrespective of the fact that the payment of the membership fees or dues to the organization may entitle its members, in addition to other rights or privileges, to receive services from the organization or to use the organization's facilities; or

(2) From members of the organization for camping and recreational services provided by the organization or for the use of the organization's camping and recreational facilities.

For purposes of this section: "Nonprofit youth organization" means a nonprofit organization engaged in character building of youth which is exempt from property tax under RCW 84.36.030. [1981 c 74 § 1.]

**82.04.4272 Deductions—Direct mail delivery charges.** (1) In computing tax there may be deducted from the measure of tax, amounts derived from delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 114.]

**Effective date—2005 c 514:** "Sections 110(5), 114 through 116, 1001, 1003, 1004, 1201, 1311, and 1312 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 17, 2005]." [2005 c 514 § 1303.]

(2008 Ed.)

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.04.4281 Deductions—Investments, dividends, interest on loans.** (1) In computing tax there may be deducted from the measure of tax:

(a) Amounts derived from investments;

(b) Amounts derived as dividends or distributions from the capital account by a parent from its subsidiary entities; and

(c) Amounts derived from interest on loans between subsidiary entities and a parent entity or between subsidiaries of a common parent entity, but only if the total investment and loan income is less than five percent of gross receipts of the business annually.

(2) The following are not deductible under subsection (1)(a) of this section:

(a) Amounts received from loans, except as provided in subsection (1)(c) of this section, or the extension of credit to another, revolving credit arrangements, installment sales, the acceptance of payment over time for goods or services, or any of the foregoing that have been transferred by the originator of the same to an affiliate of the transferor; or

(b) Amounts received by a banking, lending, or security business.

(3) The definitions in this subsection apply only to this section.

(a) "Banking business" means a person engaging in business as a national or state-chartered bank, a mutual savings bank, a savings and loan association, a trust company, an alien bank, a foreign bank, a credit union, a stock savings bank, or a similar entity that is chartered under Title 30, 31, 32, or 33 RCW, or organized under Title 12 U.S.C.

(b) "Lending business" means a person engaged in the business of making secured or unsecured loans of money, or extending credit, and (i) more than one-half of the person's gross income is earned from such activities and (ii) more than one-half of the person's total expenditures are incurred in support of such activities.

(c) The terms "loan" and "extension of credit" do not include ownership of or trading in publicly traded debt instruments, or substantially equivalent instruments offered in a private placement.

(d) "Security business" means a person, other than an issuer, who is engaged in the business of effecting transactions in securities as a broker, dealer, or broker-dealer, as those terms are defined in the securities act of Washington, chapter 21.20 RCW, or the federal securities act of 1933. "Security business" does not include any company excluded from the definition of broker or dealer under the federal investment company act of 1940 or any entity that is not an investment company by reason of sections 3(c)(1) and 3(c)(3) through 3(c)(14) thereof. [2007 c 54 § 9; 2002 c 150 § 2; 1980 c 37 § 2. Formerly RCW 82.04.430(1).]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Findings—Intent—2002 c 150:** "The legislature finds that the application of the business and occupation tax deductions provided in RCW 82.04.4281 for investment income of persons deemed to be "other financial businesses" has been the subject of uncertainty, and therefore, disagreement and litigation between taxpayers and the state. The legislature further finds that the decision of the state supreme court in *Simpson Investment Co. v. Department of Revenue* could lead to a restrictive, narrow interpretation of

the deductibility of investment income for business and occupation tax purposes. As a result, the legislature directed the department of revenue to work with affected businesses to develop a revision of the statute that would provide certainty and stability for taxpayers and the state. The legislature intends, by adopting this recommended revision of the statute, to provide a positive environment for capital investment in this state, while continuing to treat similarly situated taxpayers fairly." [2002 c 150 § 1.]

**Effective date—2002 c 150:** "This act takes effect July 1, 2002." [2002 c 150 § 3.]

**Finding—Intent on application of deduction—2001 c 320:** "The legislature finds that the application of the business and occupation tax deduction provided in RCW 82.04.4281 for investment income of persons other than those engaging in banking, loan, security, or other financial businesses has been the subject of disagreement between taxpayers and the state. Decisions of the supreme court have provided some broad guidelines and principles for interpretation of the deduction provided in RCW 82.04.4281, but these decisions have not provided the certainty and clarity that is desired by taxpayers and the state. Therefore, it is the intent of the legislature to delay change in the manner or extent of taxation of the investment income until definitions or standards can be developed and enacted by the legislature." [2001 c 320 § 18.]

**Reviser's note:** 2001 c 320 § 19, which was vetoed May 15, 2001, would have implemented the intent in this section.

**Report to legislature—2001 c 320:** "The department of revenue shall report to the fiscal committees of the legislature by November 30, 2001, on the progress made in working with affected businesses on potential amendments to RCW 82.04.4281 which would clarify the application of RCW 82.04.4281 to other financial businesses." [2001 c 320 § 20.]

**Intent—1980 c 37:** "The separation of sales tax exemption, use tax exemption, and business and occupation deduction sections into shorter sections is intended to improve the readability and facilitate the future amendment of these sections. This separation shall not change the meaning of any of the exemptions or deductions involved." [1980 c 37 § 1.]

**82.04.4282 Deductions—Fees, dues, charges.** In computing tax there may be deducted from the measure of tax amounts derived from bona fide (1) initiation fees, (2) dues, (3) contributions, (4) donations, (5) tuition fees, (6) charges made by a nonprofit trade or professional organization for attending or occupying space at a trade show, convention, or educational seminar sponsored by the nonprofit trade or professional organization, which trade show, convention, or educational seminar is not open to the general public, (7) charges made for operation of privately operated kindergartens, and (8) endowment funds. This section shall not be construed to exempt any person, association, or society from tax liability upon selling tangible personal property or upon providing facilities or services for which a special charge is made to members or others. If dues are in exchange for any significant amount of goods or services rendered by the recipient thereof to members without any additional charge to the member, or if the dues are graduated upon the amount of goods or services rendered, the value of such goods or services shall not be considered as a deduction under this section. [1994 c 124 § 3; 1989 c 392 § 1; 1980 c 37 § 3. Formerly RCW 82.04.430(2).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4283 Deductions—Cash discount taken by purchaser.** In computing tax there may be deducted from the measure of tax the amount of cash discount actually taken by the purchaser. This deduction is not allowed in arriving at the taxable amount under the extractive or manufacturing classifications with respect to articles produced or manufactured, the reported values of which, for the purposes of this

tax, have been computed according to the provisions of RCW 82.04.450. [1980 c 37 § 4. Formerly RCW 82.04.430(3).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4284 Deductions—Bad debts.** (1) In computing tax there may be deducted from the measure of tax bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid.

(2) For purposes of this section, "bad debts" do not include:

- (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (b) Expenses incurred in attempting to collect debt;
- (c) Sales or use taxes payable to a seller; and
- (d) Repossessed property.

(3) If a deduction is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt must be applied under RCW 82.08.037(4) and 82.12.037, according to such rules as the department may prescribe. [2004 c 153 § 307; 1980 c 37 § 5. Formerly RCW 82.04.430(4).]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4285 Deductions—Motor vehicle fuel and special fuel taxes.** In computing tax there may be deducted from the measure of tax so much of the sale price of motor vehicle fuel as constitutes the amount of tax imposed by the state under chapters 82.36 and 82.38 RCW or the United States government, under 26 U.S.C., Subtitle D, chapters 31 and 32, upon the sale thereof. [1998 c 176 § 3; 1980 c 37 § 6. Formerly RCW 82.04.430(5).]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4286 Deductions—Nontaxable business.** In computing tax there may be deducted from the measure of tax amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 7. Formerly RCW 82.04.430(6).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4287 Deductions—Compensation for receiving, washing, etc., horticultural products for person exempt under RCW 82.04.330—Materials and supplies used.** In computing tax there may be deducted from the measure of tax amounts derived by any person as compensation for the receiving, washing, sorting, and packing of fresh perishable horticultural products and the material and supplies used therein when performed for the person exempted in RCW 82.04.330, either as agent or as independent contractor. [1980 c 37 § 8. Formerly RCW 82.04.430(7).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

*Sales and use tax exemption for materials and supplies used in packing horticultural products: RCW 82.08.0311 and 82.12.0311.*

**82.04.4289 Exemption—Compensation for patient services or attendant sales of drugs dispensed pursuant to prescription by certain nonprofit organizations.** This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of drugs for human use pursuant to a prescription furnished as an integral part of services rendered to patients by a kidney dialysis facility operated as a nonprofit corporation, a nonprofit hospice agency licensed under chapter 70.127 RCW, and nursing homes and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder. "Prescription" and "drug" have the same meaning as in RCW 82.08.0281. [2003 c 168 § 402; 1998 c 325 § 1; 1993 c 492 § 305; 1981 c 178 § 2; 1980 c 37 § 10. Formerly RCW 82.04.430(9).]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4291 Deductions—Compensation received by a political subdivision from another political subdivision for services taxable under RCW 82.04.290.** In computing tax there may be deducted from the measure of tax amounts derived by a political subdivision of the state of Washington from another political subdivision of the state of Washington as compensation for services which are within the purview of RCW 82.04.290. [1980 c 37 § 11. Formerly RCW 82.04.430(10).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4292 Deductions—Interest on investments or loans secured by mortgages or deeds of trust.** In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest received on investments or loans primarily secured by first mortgages or trust deeds on nontransient residential properties. [1980 c 37 § 12. Formerly RCW 82.04.430(11).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4293 Deductions—Interest on obligations of the state, its political subdivisions, and municipal corporations.** In computing tax there may be deducted from the measure of tax by those engaged in banking, loan, security or other financial businesses, amounts derived from interest paid on all obligations of the state of Washington, its political subdivisions, and municipal corporations organized pursuant to the laws thereof. [1980 c 37 § 13. Formerly RCW 82.04.430(12).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

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**82.04.4294 Deductions—Interest on loans to farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives.** In computing tax there may be deducted from the measure of tax amounts derived as interest on loans to bona fide farmers and ranchers, producers or harvesters of aquatic products, or their cooperatives by a lending institution which is owned exclusively by its borrowers or members and which is engaged solely in the business of making loans and providing finance-related services to bona fide farmers and ranchers, producers or harvesters of aquatic products, their cooperatives, rural residents for housing, or persons engaged in furnishing farm-related or aquatic-related services to these individuals or entities. [1980 c 37 § 14. Formerly RCW 82.04.430(13).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4295 Deductions—Manufacturing activities completed outside the United States.** In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if:

(1) Any additional processing of such articles in this state consists of minor final assembly only; and

(2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; and

(3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and

(4) The articles are sold and shipped outside the state. [1980 c 37 § 15. Formerly RCW 82.04.430(14).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4296 Deductions—Reimbursement for accommodation expenditures by funeral homes.** In computing tax there may be deducted from the measure of tax that portion of amounts received by any funeral home licensed to do business in this state which is received as reimbursements for expenditures (for goods supplied or services rendered by a person not employed by or affiliated or associated with the funeral home) and advanced by such funeral home as an accommodation to the persons paying for a funeral, so long as such expenditures and advances are billed to the persons paying for the funeral at only the exact cost thereof and are separately itemized in the billing statement delivered to such persons. [1980 c 37 § 16. Formerly RCW 82.04.430(15).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.4297 Deductions—Compensation from public entities for health or social welfare services—Exception.** In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as compensation for, or to support, health or social welfare services rendered by a health or social welfare organization or by a municipal corporation or political subdivision, except deductions are not allowed under this section for amounts that are received under an employee benefit plan. [2002 c

314 § 3; 2001 2nd sp.s. c 23 § 2; 1988 c 67 § 1; 1980 c 37 § 17. Formerly RCW 82.04.430(16).]

**Findings—Refund of taxes—Effective date—2002 c 314:** See notes following RCW 82.04.431.

**Findings—2001 2nd sp.s. c 23:** "The legislature finds that the deduction under the business and occupation tax statutes for compensation from public entities for health or social welfare services was intended to provide government with greater purchasing power when government provides financial support for the provision of health or social welfare services to benefited classes of persons. The legislature also finds that both the legislature and the United States congress have in recent years modified government-funded health care programs to encourage participation by beneficiaries in highly regulated managed care programs operated by persons who act as intermediaries between government entities and health or social welfare organizations. The legislature further finds that the objective of these changes is again to extend the purchasing power of scarce government health care resources, but that this objective would be thwarted to a significant degree if the business and occupation tax deduction were lost by health or social welfare organizations solely on account of their participation in managed care for government-funded health programs. In keeping with the original purpose of the health or social welfare deduction, it is desirable to ensure that compensation received from government sources through contractual managed care programs also be deductible." [2001 2nd sp.s. c 23 § 1.]

**Effective date—2001 2nd sp.s. c 23:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 23 § 4.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

*"Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined: RCW 82.04.431.*

**82.04.4298 Deductions—Repair, maintenance, replacement, etc., of residential structures and commonly held property—Eligible organizations.** (1) In computing tax there may be deducted from the measure of tax amounts used solely for repair, maintenance, replacement, management, or improvement of the residential structures and commonly held property, but excluding property where fees or charges are made for use by the public who are not guests accompanied by a member, which are derived by:

(a) A cooperative housing association, corporation, or partnership from a person who resides in a structure owned by the cooperative housing association, corporation, or partnership;

(b) An association of owners of property as defined in RCW 64.32.010, as now or hereafter amended, from a person who is an apartment owner as defined in RCW 64.32.010; or

(c) An association of owners of residential property from a person who is a member of the association. "Association of owners of residential property" means any organization of all the owners of residential property in a defined area who all hold the same property in common within the area.

(2) For the purposes of this section "commonly held property" includes areas required for common access such as reception areas, halls, stairways, parking, etc., and may include recreation rooms, swimming pools and small parks or recreation areas; but is not intended to include more grounds than are normally required in a residential area, or to include such extensive areas as required for golf courses, campgrounds, hiking and riding areas, boating areas, etc.

(3) To qualify for the deductions under this section:

(a) The salary or compensation paid to officers, managers, or employees must be only for actual services rendered

and at levels comparable to the salary or compensation of like positions within the county wherein the property is located;

(b) Dues, fees, or assessments in excess of amounts needed for the purposes for which the deduction is allowed must be rebated to the members of the association;

(c) Assets of the association or organization must be distributable to all members and must not inure to the benefit of any single member or group of members. [1980 c 37 § 18. Formerly RCW 82.04.430(17).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.04.431 "Health or social welfare organization" defined for RCW 82.04.4297—Conditions for exemption—"Health or social welfare services" defined.** (1) For the purposes of RCW 82.04.4297, 82.04.4311, 82.08.02915, 82.12.02915, and 82.08.997, the term "health or social welfare organization" means an organization, including any community action council, which renders health or social welfare services as defined in subsection (2) of this section, which is a not-for-profit corporation under chapter 24.03 RCW and which is managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or which is a corporation sole under chapter 24.12 RCW. Health or social welfare organization does not include a corporation providing professional services as authorized in chapter 18.100 RCW. In addition a corporation in order to be exempt under RCW 82.04.4297 shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the public service of the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified where licensing or certification is required by law or regulation;

(e) The amounts received qualifying for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes within the intent of RCW 82.04.4297 and this section.

(2) The term "health or social welfare services" includes and is limited to:

(a) Mental health, drug, or alcoholism counseling or treatment;

(b) Family counseling;

(c) Health care services;

(d) Therapeutic, diagnostic, rehabilitative, or restorative services for the care of the sick, aged, or physically, developmentally, or emotionally-disabled individuals;

(e) Activities which are for the purpose of preventing or ameliorating juvenile delinquency or child abuse, including recreational activities for those purposes;

(f) Care of orphans or foster children;

(g) Day care of children;

(h) Employment development, training, and placement;

(i) Legal services to the indigent;

(j) Weatherization assistance or minor home repair for low-income homeowners or renters;

(k) Assistance to low-income homeowners and renters to offset the cost of home heating energy, through direct benefits to eligible households or to fuel vendors on behalf of eligible households;

(l) Community services to low-income individuals, families, and groups, which are designed to have a measurable and potentially major impact on causes of poverty in communities of the state; and

(m) Temporary medical housing, as defined in RCW 82.08.997, if the housing is provided only:

(i) While the patient is receiving medical treatment at a hospital required to be licensed under RCW 70.41.090 or at an outpatient clinic associated with such hospital, including any period of recuperation or observation immediately following such medical treatment; and

(ii) By a person that does not furnish lodging or related services to the general public. [2008 c 137 § 1; 1986 c 261 § 6; 1985 c 431 § 3; 1983 1st ex.s. c 66 § 1; 1980 c 37 § 80; 1979 ex.s. c 196 § 6.]

**Effective date—2008 c 137:** See note following RCW 82.08.997.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**82.04.4311 Deductions—Compensation received under the federal medicare program by certain hospitals or health centers.** (1) A public hospital that is owned by a municipal corporation or political subdivision, or a nonprofit hospital, or a nonprofit community health center, or a network of nonprofit community health centers, that qualifies as a health and social welfare organization as defined in RCW 82.04.431, may deduct from the measure of tax amounts received as compensation for health care services covered under the federal medicare program authorized under Title XVIII of the federal social security act; medical assistance, children's health, or other program under chapter 74.09 RCW; or for the state of Washington basic health plan under chapter 70.47 RCW. The deduction authorized by this section does not apply to amounts received from patient copayments or patient deductibles.

(2) As used in this section, "community health center" means a federally qualified health center as defined in 42 U.S.C. 1396d as existing on August 1, 2005. [2005 c 86 § 1; 2002 c 314 § 2.]

**Effective date—2005 c 86:** "This act takes effect August 1, 2005." [2005 c 86 § 2.]

**Findings—2002 c 314:** "The legislature finds that the provision of health services to those people who receive federal or state subsidized health care benefits by reason of age, disability, or lack of income is a recognized, necessary, and vital governmental function. As a result, the legislature finds

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that it would be inconsistent with that governmental function to tax amounts received by a public hospital or nonprofit hospital qualifying as a health and social welfare organization, when the amounts are paid under a health service program subsidized by federal or state government. Further, the tax status of these amounts should not depend on whether the amounts are received directly from the qualifying program or through a managed health care organization under contract to manage benefits for a qualifying program. Therefore, the legislature adopts this act to provide a clear and understandable deduction for these amounts, and to provide refunds for taxes paid as specified in section 4 of this act." [2002 c 314 § 1.]

**Refund of taxes—2002 c 314:** "A public hospital owned by a municipal corporation or political subdivision, or a nonprofit hospital that qualifies as a health and social welfare organization under RCW 82.04.431, is entitled to:

(1) A refund of business and occupation tax paid between January 1, 1998, and April 2, 2002, on amounts that would be deductible under section 2 of this act; and

(2) A waiver of tax liability for accrued, but unpaid taxes that would be deductible under section 2 of this act." [2002 c 314 § 4.]

**Effective date—2002 c 314:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 2, 2002]." [2002 c 314 § 5.]

**82.04.432 Deductions—Municipal sewer service fees or charges.** In computing the tax imposed by this chapter, municipal sewerage utilities and other public corporations imposing and collecting fees or charges for sewer service may deduct from the measure of the tax, amounts paid to another municipal corporation or governmental agency for sewerage interception, treatment or disposal. [1967 ex.s. c 149 § 17.]

**82.04.4322 Deductions—Artistic or cultural organization—Compensation from United States, state, etc., for artistic or cultural exhibitions, performances, or programs.** In computing tax there may be deducted from the measure of tax amounts received from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or subdivision thereof as compensation for, or to support, artistic or cultural exhibitions, performances, or programs provided by an artistic or cultural organization for attendance or viewing by the general public. [1981 c 140 § 1.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4324 Deductions—Artistic or cultural organization—Deduction for tax under RCW 82.04.240—Value of articles for use in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs.** In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturing under RCW 82.04.240, the value of articles to the extent manufacturing activities are undertaken by an artistic or cultural organization solely for the purpose of manufacturing articles for use by the organization in displaying art objects or presenting artistic or cultural exhibitions, performances, or programs for attendance or viewing by the general public. [1981 c 140 § 2.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4326 Deductions—Artistic or cultural organizations—Tuition charges for attending artistic or cultural education programs.** In computing tax there may be

deducted from the measure of tax amounts received by artistic or cultural organizations as tuition charges collected for the privilege of attending artistic or cultural education programs. [1981 c 140 § 3.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4327 Deductions—Artistic and cultural organizations—Income from business activities.** In computing tax there may be deducted from the measure of tax those amounts received by artistic or cultural organizations which represent income derived from business activities conducted by the organization. [1985 c 471 § 6.]

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.04.4328 "Artistic or cultural organization" defined.** (1) For the purposes of RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the term "artistic or cultural organization" means an organization which is organized and operated exclusively for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (2) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, to qualify for deduction or exemption from taxation under RCW 82.04.4322, 82.04.4324, 82.04.4326, 82.04.4327, 82.08.031, and 82.12.031, the corporation shall satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the exemption is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation which also would be entitled to the exemption;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The amounts received that qualify for exemption must be used for the activities for which the exemption is granted;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The director of revenue shall have access to its books in order to determine whether the corporation is exempt from taxes.

(2) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1985 c 471 § 7; 1981 c 140 § 6.]

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**82.04.433 Deductions—Sales of fuel for consumption outside United States' waters by vessels in foreign commerce—Construction.** (1) In computing tax there may be deducted from the measure of tax amounts derived from sales of fuel for consumption outside the territorial waters of the United States, by vessels used primarily in foreign commerce.

(2) Nothing in this section shall be construed to imply that amounts which may be deducted under this section were taxable under Title 82 RCW prior to the enactment of this section. [1985 c 471 § 16.]

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**82.04.4331 Deductions—Insurance claims for state health care coverage.** In computing tax, insurers as defined by RCW 48.01.050, may deduct from the measure of tax amounts paid out for claims incurred before July 1, 1990, for covered health services under medical and dental coverage purchased under chapter 41.05 RCW. [1988 c 107 § 33.]

**Implementation—Effective dates—1988 c 107:** See RCW 41.05.901.

**82.04.4332 Deductions—Tuition fees of foreign degree-granting institutions.** An approved branch campus of a foreign degree-granting institution in compliance with chapter 28B.90 RCW is considered an educational institution for the purpose of the deduction of tuition fees provided by RCW 82.04.170 in those instances where it is recognized as an organization exempt from income taxes pursuant to 26 U.S.C. Sec. 501(c). [1993 c 181 § 10.]

**82.04.4333 Credit—Job training services—Approval.** (1) There may be credited against the tax imposed by this chapter, the value of state-approved, employer-provided or sponsored job training services designed to enhance the job-related performance of employees, for those businesses eligible for a tax deferral under chapter 82.60 RCW.

(2) The value of the state-approved, job training services provided by the employer to the employee, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to an amount equal to twenty percent of the value of the state-approved, job training services determined under subsection

(2) of this section. The total credits allowed under this section for a business shall not exceed five thousand dollars per calendar year.

(4) Prior to claiming the credit under this section, the business must obtain approval of the proposed job training service from the employment security department. The employer's request for approval must include a description of the proposed job training service, how the job training will enhance the employee's performance, and the cost of the proposed job training.

(5) This section only applies to training in respect to eligible business projects for which an application is approved on or after January 1, 1996. [1996 c 1 § 4.]

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**82.04.4334 Deductions—Sale or distribution of biodiesel or E85 motor fuels. (Expires July 1, 2015.)** (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of:

- (a) Biodiesel fuel; or
- (b) E85 motor fuel.

(2) For the purposes of this section and RCW 82.08.955 and 82.12.955, the following definitions apply:

(a) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2015. [2007 c 309 § 3; 2003 c 63 § 1.]

**Effective date—2003 c 63:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 63 § 4.]

**82.04.4335 Deductions—Sale or distribution of wood biomass fuel. (Expires July 1, 2009.)** (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, or for the distribution, of wood biomass fuel.

(2) For the purposes of this act [section], the following definitions apply:

(a) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(b) "Distribution" means any of the actions specified in RCW 82.36.020(2).

(3) This section expires July 1, 2009. [2003 c 339 § 12.]

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**82.04.4337 Deductions—Certain amounts received by boarding homes.** (1) A boarding home licensed under chapter 18.20 RCW may deduct from the measure of tax amounts received as compensation for providing adult residential care, enhanced adult residential care, or assisted living services under contract with the department of social and health services authorized by chapter 74.39A RCW to residents who are medicaid recipients.

(2) For purposes of this section, "adult residential care," "enhanced adult residential care," and "assisted living services" have the same meaning as in RCW 74.39A.009. [2004 c 174 § 7.]

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**82.04.4338 Deductions—Amounts received from sale, lease, or rental of electrification systems. (Expires July 1, 2015.)** (1) In computing tax there may be deducted from the measure of tax amounts received from the retail sale, lease, or rental of auxiliary power to heavy duty diesel vehicles through onboard or stand-alone electrification systems.

(2) The definitions in this subsection apply throughout this section and RCW 82.08.815, 82.12.815, 82.08.825, and 82.12.825 unless the context clearly requires otherwise.

(a) "Heavy duty diesel vehicles" means any diesel vehicle with a gross vehicle weight rating over fourteen thousand pounds.

(b) "Onboard electrification systems" means the equipment necessary to provide auxiliary electrical service to heavy duty diesel vehicles that are equipped with the necessary components to accept electrical power, including inverters, heat and air systems capable of being powered by electricity, and hardware to plug into an electrical outlet.

(c) "Stand-alone electrification systems" means an independent system that supplies a heavy duty diesel vehicle's needs for heating, ventilation, and air conditioning without modification to the vehicle.

(3) This section expires July 1, 2015. [2006 c 323 § 2.]

**Findings—Intent—2006 c 323:** "The legislature recognizes that the air quality around idling heavy duty diesel vehicles at truck stops can contribute to unhealthy conditions. Idling vehicles not only consume up to one billion gallons of diesel fuel a year, but also contribute to air pollution by releasing fine particles, volatile organic compounds, carbon monoxide, carbon dioxide, and nitrogen oxides. These emissions contribute to deteriorating human health conditions, including asthma, heart disease, cancer, and aggravated allergies. Idling vehicles also contribute to driver fatigue through exposure to noise, vibration, and elevated levels of carbon monoxide and other pollutants.

Washington state seeks to encourage private entities to address this source of air pollution by providing incentives to those who provide the infrastructure and services that support the use of auxiliary power through onboard or stand-alone electrification systems." [2006 c 323 § 1.]

**82.04.4339 Deductions—Grants to support salmon restoration.** In computing tax there may be deducted from the measure of tax amounts received by a nonprofit organization from the United States or any instrumentality thereof or from the state of Washington or any municipal corporation or political subdivision thereof as grants to support salmon restoration purposes. For the purposes of this section, "nonprofit organization" has the same meaning as in RCW 82.04.3651. [2004 c 241 § 1.]

**Effective date—2004 c 241:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 241 § 2.]

**82.04.434 Credit—Public safety standards and testing.** (1) There may be credited against the tax imposed by this chapter, the value of services and information relating to setting of standards and testing for public safety provided to the state of Washington, without charge, at the state's request, by a nonprofit corporation that is:

(a) Organized and operated for the purpose of setting standards and testing for public safety; and

(b) Exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

(c) Organized with no direct or indirect industry affiliation.

(2) The value of the services and information requested by the state and provided to the state, without charge, shall be determined by the allocation of the cost method using generally accepted accounting standards.

(3) The credit allowed under this section shall be limited to the amount of tax imposed by this chapter. Any unused excess credit in a reporting period may be carried forward to future reporting periods for a maximum of one year. [1991 c 13 § 1.]

**Effective date—1991 c 13:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 13 § 2.]

**82.04.440 Credit—Persons taxable on multiple activities.** (1) Every person engaged in activities that are subject to tax under two or more provisions of RCW 82.04.230 through 82.04.298, inclusive, shall be taxable under each provision applicable to those activities.

(2) Persons taxable under RCW 82.04.2909(2), 82.04.250, 82.04.270, 82.04.294(2), or 82.04.260 (1)(c), (4), (11), or (12) with respect to selling products in this state, including those persons who are also taxable under RCW 82.04.261, shall be allowed a credit against those taxes for any (a) manufacturing taxes paid with respect to the manufacturing of products so sold in this state, and/or (b) extracting taxes paid with respect to the extracting of products so sold in this state or ingredients of products so sold in this state. Extracting taxes taken as credit under subsection (3) of this section may also be taken under this subsection, if otherwise allowable under this subsection. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable as manufacturers under RCW 82.04.240 or 82.04.260 (1)(b) or (12), including those persons who are also taxable under RCW 82.04.261, shall be allowed a credit against those taxes for any extracting taxes paid with respect to extracting the ingredients of the products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the manufacturing of those products.

(4) Persons taxable under RCW 82.04.230, 82.04.240, 82.04.2909(1), 82.04.294(1), 82.04.2404, or 82.04.260 (1), (2), (4), (11), or (12), including those persons who are also

taxable under RCW 82.04.261, with respect to extracting or manufacturing products in this state shall be allowed a credit against those taxes for any (i) gross receipts taxes paid to another state with respect to the sales of the products so extracted or manufactured in this state, (ii) manufacturing taxes paid with respect to the manufacturing of products using ingredients so extracted in this state, or (iii) manufacturing taxes paid with respect to manufacturing activities completed in another state for products so manufactured in this state. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to the extraction or manufacturing of those products.

(5) For the purpose of this section:

(a) "Gross receipts tax" means a tax:

(i) Which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax; and

(ii) Which is also not, pursuant to law or custom, separately stated from the sales price.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

(c) "Manufacturing tax" means a gross receipts tax imposed on the act or privilege of engaging in business as a manufacturer, and includes (i) the taxes imposed in RCW 82.04.240, 82.04.2404, 82.04.2909(1), 82.04.260 (1), (2), (4), (11), and (12), and 82.04.294(1); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as a manufacturer; and (iii) similar gross receipts taxes paid to other states.

(d) "Extracting tax" means a gross receipts tax imposed on the act or privilege of engaging in business as an extractor, and includes (i) the tax imposed on extractors in RCW 82.04.230 and 82.04.260(12); (ii) the tax imposed under RCW 82.04.261 on persons who are engaged in business as an extractor; and (iii) similar gross receipts taxes paid to other states.

(e) "Business", "manufacturer", "extractor", and other terms used in this section have the meanings given in RCW 82.04.020 through 82.04.212, notwithstanding the use of those terms in the context of describing taxes imposed by other states. [2006 c 300 § 8; 2006 c 84 § 6; (2007 c 54 § 10 expired July 22, 2007); 2005 c 301 § 3. Prior: 2004 c 174 § 5; 2004 c 24 § 7; 2003 2nd sp.s. c 1 § 6; 1998 c 312 § 9; 1994 c 124 § 4; 1987 2nd ex.s. c 3 § 2; 1985 c 190 § 1; 1981 c 172 § 5; 1967 ex.s. c 149 § 16; 1965 ex.s. c 173 § 12; 1961 c 15 § 82.04.440; prior: 1959 c 211 § 3; 1951 1st ex.s. c 9 § 1; 1950 ex.s. c 5 § 2; 1949 c 228 § 2-A; 1943 c 156 § 3; 1941 c 178 § 3; 1939 c 225 § 3; 1937 c 227 § 3; 1935 c 180 § 6; Rem. Supp. 1949 § 8370-6.]

**Reviser's note:** This section was amended by 2006 c 84 § 6 and by 2006 c 300 § 8, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Contingent expiration date—2007 c 54 § 10:** "Section 10 of this act expires if the contingency in section 29 of this act occurs." [2007 c 54 § 31.] The contingency in section 29, chapter 54, Laws of 2007 occurred on December 1, 2006.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**Findings—Intent—Effective date—Report to legislature—2005 c 301:** See notes following RCW 82.04.294.

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**Effective date—Savings—1998 c 312:** See notes following RCW 82.04.332.

**Retroactive application—1994 c 124:** "Except as otherwise provided in section 6 of this act, section 4 of this act applies retrospectively to all tax reporting periods on or after June 23, 1987." [1994 c 124 § 7.]

**Legislative findings and intent—1987 2nd ex.s. c 3:** "The legislature finds that the invalidation of the multiple activities exemption contained in RCW 82.04.440 by the United States Supreme Court now requires adjustments to the state's business and occupation tax to achieve constitutional equality between Washington taxpayers who have conducted and will continue to conduct business in interstate and intrastate commerce. It is the intent of chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act to preserve the integrity of Washington's business and occupation tax system and impose only that financial burden upon the state necessary to establish parity in taxation between such taxpayers.

Thus, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act extends [extend] the system of credits originated in RCW 82.04.440 in 1985 to provide for equal treatment of taxpayers engaging in extracting, manufacturing or selling regardless of the location in which any of such activities occurs. It is further intended that RCW 82.04.440, as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and sections 4 through 7 of this act, shall be construed and applied in a manner that will eliminate unconstitutional discrimination between taxpayers and ensure the preservation and collection of revenues from the conduct of multiple activities in which taxpayers in this state may engage." [1994 c 124 § 5; 1987 2nd ex.s. c 3 § 1.]

**Application to prior reporting periods—1987 2nd ex.s. c 3:** "If it is determined by a court of competent jurisdiction, in a judgment not subject to review, that relief is appropriate for any tax reporting periods before August 11, 1987, in respect to RCW 82.04.440 as it existed before August 11, 1987, it is the intent of the legislature that the credits provided in RCW 82.04.440 as amended by section 2, chapter 3, Laws of 1987 2nd ex. sess. and section 4 of this act shall be applied to such reporting periods and that relief for such periods be limited to the granting of such credits." [1994 c 124 § 6; 1987 2nd ex.s. c 3 § 3.]

**Severability—1987 2nd ex.s. c 3:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 2nd ex.s. c 3 § 4.]

**Severability—1985 c 190:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 190 § 8.]

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**82.04.4451 Credit against tax due—Maximum credit—Table.** (1) In computing the tax imposed under this chapter, a credit is allowed against the amount of tax otherwise due under this chapter, as provided in this section. The maximum credit for a taxpayer for a reporting period is thirty-five dollars multiplied by the number of months in the reporting period, as determined under RCW 82.32.045.

(2) When the amount of tax otherwise due under this chapter is equal to or less than the maximum credit, a credit is allowed equal to the amount of tax otherwise due under this chapter.

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(3) When the amount of tax otherwise due under this chapter exceeds the maximum credit, a reduced credit is allowed equal to twice the maximum credit, minus the tax otherwise due under this chapter, but not less than zero.

(4) The department may prepare a tax credit table consisting of tax ranges using increments of no more than five dollars and a corresponding tax credit to be applied to those tax ranges. The table shall be prepared in such a manner that no taxpayer will owe a greater amount of tax by using the table than would be owed by performing the calculation under subsections (1) through (3) of this section. A table prepared by the department under this subsection shall be used by all taxpayers in taking the credit provided in this section. [1997 c 238 § 2; 1994 sp.s. c 2 § 1.]

**Findings—Intent—1997 c 238:** "The legislature finds that many businesses have difficulty applying the small business credit under RCW 82.04.4451. Further, the legislature appreciates the valuable time and resources small businesses expend on calculating the amount of credit based upon a statutory formula. For the purpose of tax simplification, it is the intent of this act to direct the department of revenue to create a schedule, in standard increments, to replace required calculations for the small business credit. Each taxpayer can make reference to the taxpayer's tax range on the schedule and find the amount of the taxpayer's small business credit. Further, no taxpayer will owe a greater amount of tax nor will any taxpayer be responsible for a greater amount of taxes otherwise due." [1997 c 238 § 1.]

**Effective date—1994 sp.s. c 2:** "This act shall take effect on July 1, 1994." [1994 sp.s. c 2 § 5.]

**Application to reporting periods—1994 sp.s. c 2 § 1:** "Section 1 of this act applies to the entire period of reporting periods ending after July 1, 1994." [1994 sp.s. c 2 § 6.]

**82.04.4452 Credit—Research and development spending. (Expires January 1, 2015.)** (1) In computing the tax imposed under this chapter, a credit is allowed for each person whose research and development spending during the year in which the credit is claimed exceeds 0.92 percent of the person's taxable amount during the same calendar year.

(2) The credit shall be calculated as follows:

(a) Determine the greater of the amount of qualified research and development expenditures of a person or eighty percent of amounts received by a person other than a public educational or research institution in compensation for the conduct of qualified research and development;

(b) Subtract 0.92 percent of the person's taxable amount from the amount determined under (a) of this subsection;

(c) Multiply the amount determined under (b) of this subsection by the following:

(i) For the period June 10, 2004, through December 31, 2006, the person's average tax rate for the calendar year for which the credit is claimed;

(ii) For the calendar year ending December 31, 2007, the greater of the person's average tax rate for that calendar year or 0.75 percent;

(iii) For the calendar year ending December 31, 2008, the greater of the person's average tax rate for that calendar year or 1.0 percent;

(iv) For the calendar year ending December 31, 2009, the greater of the person's average tax rate for that calendar year or 1.25 percent;

(v) For the calendar year ending December 31, 2010, and thereafter, 1.50 percent.

For purposes of calculating the credit, if a person's reporting period is less than annual, the person may use an

estimated average tax rate for the calendar year for which the credit is claimed by using the person's average tax rate for each reporting period. A person who uses an estimated average tax rate must make an adjustment to the total credit claimed for the calendar year using the person's actual average tax rate for the calendar year when the person files its last return for the calendar year for which the credit is claimed.

(3) Any person entitled to the credit provided in subsection (2) of this section as a result of qualified research and development conducted under contract may assign all or any portion of the credit to the person contracting for the performance of the qualified research and development.

(4) The credit, including any credit assigned to a person under subsection (3) of this section, shall be claimed against taxes due for the same calendar year in which the qualified research and development expenditures are incurred. The credit, including any credit assigned to a person under subsection (3) of this section, for each calendar year shall not exceed the lesser of two million dollars or the amount of tax otherwise due under this chapter for the calendar year.

(5) For any person claiming the credit, including any credit assigned to a person under subsection (3) of this section, whose research and development spending during the calendar year in which the credit is claimed fails to exceed 0.92 percent of the person's taxable amount during the same calendar year or who is otherwise ineligible, the department shall declare the taxes against which the credit was claimed to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid. Any credit assigned to a person under subsection (3) of this section that is disallowed as a result of this section may be claimed by the person who performed the qualified research and development subject to the limitations set forth in subsection (4) of this section.

(6)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) A person claiming the credit shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a credit is claimed. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of the tax credit claimed, the qualified research and development expenditures during the calendar year for which the credit is claimed, the taxable amount during the calendar year for which the credit is claimed, the number of new products or research projects by general classification, the number of trademarks, patents, and copyrights associated with the research and development activities for which a credit was claimed, and whether the credit has been assigned under subsection (3) of this section and who assigned the credit. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the tax credit program, to be submitted at the same time as the survey.

(d)(i) All information collected under this subsection, except the amount of the tax credit claimed, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit claimed is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in this subsection (6)(d). If the amount of the tax credit as reported on the survey is different than the amount actually claimed on the taxpayer's tax returns or otherwise allowed by the department, the amount actually claimed or allowed may be disclosed.

(ii) Persons for whom the actual amount of the tax credit claimed on the taxpayer's returns or otherwise allowed by the department is less than ten thousand dollars during the period covered by the survey may request the department to treat the tax credit amount as confidential under RCW 82.32.330.

(e) If a person fails to file a complete annual survey required under this subsection with the department by the due date or any extension under RCW 82.32.590, the person entitled to the credit provided in subsection (2) of this section is not eligible to claim or assign the credit provided in subsection (2) of this section in the year the person failed to timely file a complete survey.

(7) The department shall use the information from subsection (6) of this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(8) The department shall use the information from subsection (6) of this section to study the tax credit program authorized under this section. The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(9) For the purpose of this section:

(a) "Average tax rate" means a person's total tax liability under this chapter for the calendar year for which the credit is claimed divided by the taxpayer's total taxable amount under this chapter for the calendar year for which the credit is claimed.

(b) "Qualified research and development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined under

rules adopted by the department, benefits, supplies, and computer expenses, directly incurred in qualified research and development by a person claiming the credit provided in this section. The term does not include amounts paid to a person other than a public educational or research institution to conduct qualified research and development. Nor does the term include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(c) "Qualified research and development" shall have the same meaning as in RCW 82.63.010.

(d) "Research and development spending" means qualified research and development expenditures plus eighty percent of amounts paid to a person other than a public educational or research institution to conduct qualified research and development.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's combined excise tax returns for the calendar year for which the credit is claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(10) This section expires January 1, 2015. [2005 c 514 § 1003; 2004 c 2 § 2; 2000 c 103 § 7; 1997 c 7 § 4; 1994 sp.s. c 5 § 2.]

**Retroactive application—2005 c 514 § 1003:** "Section 1003 of this act applies retroactively to June 10, 2004." [2005 c 514 § 1311.]

**Interest and penalties from additional tax under section 1003(9)(a), chapter 514, Laws of 2005—2005 c 514:** "(1) A person who owes additional tax as a result of section 1003(9)(a), chapter 514, Laws of 2005 is liable for interest, but not penalties as provided in RCW 82.32.090 (1) and (2), if the entire additional tax liability is paid in full to the department of revenue before January 1, 2006. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the additional tax is repaid.

(2) Persons who fail to repay the full amount of additional tax owed as a result of section 1003(9)(a), chapter 514, Laws of 2005 before January 1, 2006, are subject to all applicable penalties and interest as provided in chapter 82.32 RCW on the additional tax owing after December 31, 2005.

(3) This section expires December 31, 2010." [2005 c 514 § 1004.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Savings—Effective date—1997 c 7:** See notes following RCW 82.04.255.

**Findings—Effective date—1994 sp.s. c 5:** See RCW 82.63.005 and 82.63.900.

*Additional reporting requirements: RCW 82.32.590 and 82.32.600.*

**82.04.44525 Credit—New employment for international service activities in eligible areas—Designation of census tracts for eligibility—Records—Tax due upon ineligibility—Interest assessment—Information from employment security department.** (1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after July 1, 1998, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four sub-

sequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on July 1, 1998. Credit is authorized for new employees hired for new positions created after July 1, 1998. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.31C.020; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.31C.030 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290 (2) or (3), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet service as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an admin-

istrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, non-profit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW

43.31C.020, may designate a contiguous group of census tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.31C.030. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section. [2008 c 81 § 9; 1998 c 313 § 2.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Intent—Findings—1998 c 313:** "It is the intent of the legislature to attract and retain businesses that provide professional services and insurance services to international customers. To that end, the legislature finds that an incentive measured by a business's growth in jobs is a meaningful method of attracting and retaining such businesses. Therefore, the incentive in this act is specifically targeted at "net new jobs." In addition, to further the impact and benefit of this program, this incentive is limited to those urban areas of the state, both in eastern Washington and western Washington, that are characterized by unemployment and poverty. The legislature finds that providing this targeted incentive will be of benefit to the state as a whole." [1998 c 313 § 1.]

**Effective date—1998 c 313:** "This act takes effect July 1, 1998." [1998 c 313 § 4.]

**82.04.4461 Credit—Preproduction development expenditures. (Expires July 1, 2024.)** (1)(a)(i) In computing the tax imposed under this chapter, a credit is allowed for each person for qualified aerospace product development. For a person who is a manufacturer or processor for hire of commercial airplanes or components of such airplanes, credit may be earned for expenditures occurring after December 1, 2003. For all other persons, credit may be earned only for expenditures occurring after June 30, 2008.

(ii) For purposes of this subsection, "commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(b) Before July 1, 2005, any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2005. These carryover credits may be used

at any time thereafter, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified aerospace product development expenditures of a person, multiplied by the rate of 1.5 percent.

(3) Except as provided in subsection (1)(b) of this section the credit shall be taken against taxes due for the same calendar year in which the qualified aerospace product development expenditures are incurred. Credit earned on or after July 1, 2005, may not be carried over. The credit for each calendar year shall not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) Any person claiming the credit shall file a form prescribed by the department that shall include the amount of the credit claimed, an estimate of the anticipated aerospace product development expenditures during the calendar year for which the credit is claimed, an estimate of the taxable amount during the calendar year for which the credit is claimed, and such additional information as the department may prescribe.

(5) The definitions in this subsection apply throughout this section.

(a) "Aerospace product" has the meaning given in RCW 82.08.975.

(b) "Aerospace product development" means research, design, and engineering activities performed in relation to the development of an aerospace product or of a product line, model, or model derivative of an aerospace product, including prototype development, testing, and certification. The term includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products and models into new products or new models, or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities, however the term does include tool design and engineering design for the manufacturing process. The term does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(c) "Qualified aerospace product development" means aerospace product development performed within this state.

(d) "Qualified aerospace product development expenditures" means operating expenses, including wages, compensation of a proprietor or a partner in a partnership as determined by the department, benefits, supplies, and computer expenses, directly incurred in qualified aerospace product development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state and any of its departments and institutions, other than a public educational or research institution to conduct qualified aerospace product development. The term does not include capital costs and overhead, such as expenses for land, structures, or depreciable property.

(e) "Taxable amount" means the taxable amount subject to the tax imposed in this chapter required to be reported on the person's tax returns during the year in which the credit is

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claimed, less any taxable amount for which a credit is allowed under RCW 82.04.440.

(6) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(7) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452.

(8) This section expires July 1, 2024. [2008 c 81 § 7; 2007 c 54 § 11; 2003 2nd sp.s. c 1 § 7.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Finding—2003 2nd sp.s. c 1:** "The legislature finds that the people of the state have benefited from the presence of the aerospace industry in Washington state. The aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, and support staff working directly in the industry throughout the state. The suppliers and vendors that support the aerospace industry in turn provide a range of jobs. The legislature declares that it is in the public interest to encourage the continued presence of this industry through the provision of tax incentives. The comprehensive tax incentives in this act address the cost of doing business in Washington state compared to locations in other states." [2003 2nd sp.s. c 1 § 1.]

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**82.04.4463 Credit—Property and leasehold taxes paid on property used for manufacture of commercial airplanes. (Expires July 1, 2024.)** (1) In computing the tax imposed under this chapter, a credit is allowed for property taxes and leasehold excise taxes paid during the calendar year.

(2) The credit is equal to:

(a)(i)(A) Property taxes paid on buildings, and land upon which the buildings are located, constructed after December 1, 2003, and used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(B) Leasehold excise taxes paid with respect to buildings constructed after January 1, 2006, the land upon which the buildings are located, or both, if the buildings are used exclusively in manufacturing commercial airplanes or components of such airplanes; and

(C) Property taxes or leasehold excise taxes paid on, or with respect to, buildings constructed after June 30, 2008, the land upon which the buildings are located, or both, and used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(i)(A) and (B) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); or

(ii) Property taxes attributable to an increase in assessed value due to the renovation or expansion, after: (A) December 1, 2003, of a building used exclusively in manufacturing commercial airplanes or components of such airplanes; and (B) June 30, 2008, of buildings used exclusively for aerospace product development or in providing aerospace services, by persons not within the scope of (a)(ii)(A) of this subsection (2) and are: (I) Engaged in manufacturing tooling specifically designed for use in manufacturing commercial airplanes or their components; or (II) taxable under RCW 82.04.290(3) or 82.04.250(3); and

(b) An amount equal to:

(i)(A) Property taxes paid, by persons taxable under RCW 82.04.260(11)(a), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after December 1, 2003;

(B) Property taxes paid, by persons taxable under RCW 82.04.260(11)(b), on machinery and equipment exempt under RCW 82.08.02565 or 82.12.02565 and acquired after June 30, 2008; or

(C) Property taxes paid, by persons taxable under RCW 82.04.0250(3) [82.04.250(3)] or 82.04.290(3), on computer hardware, computer peripherals, and software exempt under RCW 82.08.975 or 82.12.975 and acquired after June 30, 2008.

(ii) For purposes of determining the amount eligible for credit under (i)(A) and (B) of this subsection (2)(b), the amount of property taxes paid is multiplied by a fraction.

(I) The numerator of the fraction is the total taxable amount subject to the tax imposed under RCW 82.04.260(11)(a) or (b) on the applicable business activities of manufacturing commercial airplanes, components of such airplanes, or tooling specifically designed for use in the manufacturing of commercial airplanes or components of such airplanes.

(II) The denominator of the fraction is the total taxable amount subject to the tax imposed under all manufacturing classifications in chapter 82.04 RCW.

(III) For purposes of both the numerator and denominator of the fraction, the total taxable amount refers to the total taxable amount required to be reported on the person's returns for the calendar year before the calendar year in which the credit under this section is earned. The department may provide for an alternative method for calculating the numerator in cases where the tax rate provided in RCW 82.04.260(11) for manufacturing was not in effect during the full calendar year before the calendar year in which the credit under this section is earned.

(IV) No credit is available under (b)(i)(A) or (B) of this subsection (2) if either the numerator or the denominator of the fraction is zero. If the fraction is greater than or equal to nine-tenths, then the fraction is rounded to one.

(V) As used in (III) of this subsection (2)(b)(ii)(C), "returns" means the tax returns for which the tax imposed under this chapter is reported to the department.

(3) The definitions in this subsection apply throughout this section, unless the context clearly indicates otherwise.

(a) "Aerospace product development" has the same meaning as provided in RCW 82.04.4461.

(b) "Aerospace services" has the same meaning given in RCW 82.08.975.

(c) "Commercial airplane" and "component" have the same meanings as provided in RCW 82.32.550.

(4) A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year, but may not be carried over a second year. No refunds may be granted for credits under this section.

(5) In addition to all other requirements under this title, a person taking the credit under this section must report as required under RCW 82.32.545.

(6) This section expires July 1, 2024. [2008 c 81 § 8; 2006 c 177 § 10; 2005 c 514 § 501; 2003 2nd sp.s. c 1 § 15.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Effective date—2006 c 177 §§ 10 and 11:** "Sections 10 and 11 of this act take effect January 1, 2007." [2006 c 177 § 13.]

**Application—2006 c 177 § 10:** "Section 10 of this act applies with respect to leasehold excise taxes paid on or after January 1, 2007." [2006 c 177 § 11.]

**Effective date—2005 c 514 §§ 501 and 1002:** "Sections 501 and 1002 of this act take effect January 1, 2006." [2005 c 514 § 1305.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**82.04.447 Credit—Natural or manufactured gas purchased by direct service industrial customers—Reports.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001, and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter to a direct service industrial customer who purchases natural or manufactured gas from a gas distribution business subject to the public utility tax under chapter 82.16 RCW. The credit is equal to the value of natural or manufactured gas purchased from a gas distribution business and used to generate electricity at the facility multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. This credit may be used each reporting period for sixty months following the first month natural or manufactured gas was purchased from a gas distribution business by a direct service industrial customer who constructs a facility.

(3) Application for credit shall be made by the direct service industrial consumer before the first purchase of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first purchase of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4) Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of purchase of natural or manufactured gas to generate electricity at a facility is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer will certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first purchase of gas occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) The direct service industrial customer shall begin paying the credit that is disallowed and is to be paid in the sixth calendar year following the calendar year in which the month following the month of first purchase of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(8) A person claiming this credit shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility. [2001 c 214 § 9.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**82.04.448 Credit—Manufacturing semiconductor materials. (Contingent effective date; contingent expiration date.)** (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under RCW 82.04.240(2) for persons engaged in the business of manufacturing semiconductor materials. For the purposes of this section "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2)(a) The credit under this section shall equal three thousand dollars for each employment position used in manufacturing production that takes place in a new building exempt from sales and use tax under RCW 82.08.965 and 82.12.965. A credit is earned for the calendar year a person fills a position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to eight years. Those positions that are not filled for the entire year are eligible for fifty percent of the credit if filled less than six months, and the entire credit if filled more than six months.

(b) To qualify for the credit, the manufacturing activity of the person must be conducted at a new building that qualifies for the exemption from sales and use tax under RCW 82.08.965 and 82.12.965.

(c) In those situations where a production building in existence on \*the effective date of this section will be phased out of operation, during which time employment at the new building at the same site is increased, the person is eligible for credit for employment at the existing building and new building, with the limitation that the combined eligible employment not exceed full employment at the new building. "Full employment" has the same meaning as in RCW 82.08.965. The credit may not be earned until the commencement of commercial production, as that term is used in RCW 82.08.965.

(3) No application is necessary for the tax credit. The person is subject to all of the requirements of chapter 82.32 RCW. In no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(4) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed shall be immediately due. The department shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be retroactive to the date the

tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(5) A person taking the credit under this section must report under RCW 82.32.535.

(6) Credits may be taken after twelve years after \*the effective date of this act, for those buildings at which commercial production began before twelve years after \*the effective date of this act, subject to all of the eligibility criteria and limitations of this section.

(7) This section expires twelve years after \*the effective date of this act. [2003 c 149 § 9.]

\*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

**82.04.4481 Credit—Property taxes paid by aluminum smelter.** (1) In computing the tax imposed under this chapter, a credit is allowed for all property taxes paid during the calendar year on property owned by a direct service industrial customer and reasonably necessary for the purposes of an aluminum smelter.

(2) A person taking the credit under this section is subject to all the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year. Credits carried over must be applied to tax liability before new credits. No refunds may be granted for credits under this section.

(3) Credits may not be claimed under this section for property taxes levied for collection in 2012 and thereafter. [2006 c 182 § 2; 2004 c 24 § 8.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

**82.04.4482 Credit—Sales of electricity or gas to an aluminum smelter.** (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale under this chapter.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process. [2004 c 24 § 9.]

Intent—Effective date—2004 c 24: See notes following RCW 82.04.2909.

**82.04.4483 Credit—Programming or manufacturing software in rural counties.** (*Expires January 1, 2011.*) (1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of manufacturing computer software or programming, as those terms are defined in this section.

(2) A person who partially or totally relocates a business from one rural county to another rural county is eligible for

any new qualifying employment positions created as a result of the relocation but is not eligible to receive credit for the jobs moved from one county to the other.

(3)(a) To qualify for the credit, the qualifying activity of the person must be conducted in a rural county and the new qualified employment position must be located in the rural county.

(b) If an activity is conducted both from a rural county and outside of a rural county, the credit is available if at least ninety percent of the qualifying activity is conducted within a rural county. If the qualifying activity is a service taxable activity, the place where the work is performed is the place at which the activity is conducted.

(4)(a) The credit under this section shall equal one thousand dollars for each new qualified employment position created after January 1, 2004, in an eligible area. A credit is earned for the calendar year the person is hired to fill the position. Additionally a credit is earned for each year the position is maintained over the subsequent consecutive years, up to four years. The county must meet the definition of a rural county at the time the position is filled. If the county does not have a rural county status the following year or years, the position is still eligible for the remaining years if all other conditions are met.

(b) Participants who claimed credit under \*RCW 82.04.4456 for qualified employment positions created before December 31, 2003, are eligible to earn credit for each year the position is maintained over the subsequent consecutive years, for up to four years, which four years include any years claimed under \*RCW 82.04.4456. Those persons who did not receive a credit under \*RCW 82.04.4456 before December 31, 2003, are not eligible to earn credit for qualified employment positions created before December 31, 2003.

(c) Credit is authorized for new employees hired for new qualified employment positions created on or after January 1, 2004. New qualified employment positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire. A business that is a sole proprietorship without any employees is equivalent to one employee position and this type of business is eligible to receive credit for one position.

(d) If a position is filled before July 1st, the position is eligible for the full yearly credit for that calendar year. If it is filled after June 30th, the position is eligible for half of the credit for that calendar year.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes information relating to description of qualifying activity conducted in the rural county and outside the rural county by the person as well as detailed records on positions and employees.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been claimed shall be immediately due. The department shall assess interest, but not penalties, on the taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to

the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. A person is not eligible to receive a credit under this section if the person is receiving credit for the same position under chapter 82.62 RCW or RCW 82.04.44525 or is taking a credit under this chapter for information technology help desk services conducted from a rural county. No refunds may be granted for credits under this section.

(8) Transfer of ownership does not affect credit eligibility. However, the successive credits are available to the successor for remaining periods in the five years only if the eligibility conditions of this section are met.

(9) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Number of positions for which credit is being claimed, type of position for which credit is being claimed, type of activity in which the person is engaged in the county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(10) As used in this section:

(a) "Computer software" has the meaning as defined in RCW 82.04.215 after June 30, 2004, and includes "software" as defined in RCW 82.04.215 before July 1, 2004.

(b) "Manufacturing" means the same as "to manufacture" under RCW 82.04.120. Manufacturing includes the activities of both manufacturers and processors for hire.

(c) "Programming" means the activities that involve the creation or modification of computer software, as that term is defined in this chapter, and that are taxable as a service under RCW 82.04.290(2) or as a retail sale under RCW 82.04.050.

(d) "Qualifying activity" means manufacturing of computer software or programming.

(e) "Qualified employment position" means a permanent full-time position doing programming of computer software or manufacturing of computer software. This excludes administrative, professional, service, executive, and other similar positions. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee. Full-time means a position for at least thirty-five hours a week.

(f) "Rural county" means the same as in RCW 82.14.370.

(11) No credit may be taken or accrued under this section on or after January 1, 2011.

(12) This section expires January 1, 2011. [2004 c 25 § 1.]

\*Reviser's note: RCW 82.04.4456 expired December 31, 2003.

**Effective date—2004 c 25:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect April 1, 2004." [2004 c 25 § 8.]

**82.04.4484 Credit—Information technology help desk services in rural counties. (Expires January 1, 2011.)**

(1) Subject to the limits and provisions of this section, a credit is authorized against the tax otherwise due under this chapter for persons engaged in a rural county in the business of providing information technology help desk services to third parties.

(2) To qualify for the credit, the help desk services must be conducted from a rural county.

(3) The amount of the tax credit for persons engaged in the activity of providing information technology help desk services in rural counties shall be equal to one hundred percent of the amount of tax due under this chapter that is attributable to providing the services from the rural county. In order to qualify for the credit under this subsection, the county must meet the definition of rural county at the time the person begins to conduct qualifying business in the county.

(4) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. These records include information relating to description of activity engaged in a rural county by the person.

(5) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used is immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(6) The credit under this section may be used against any tax due under this chapter, but in no case may a credit earned during one calendar year be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds may be granted for credits under this section.

(7) Transfer of ownership does not affect credit eligibility. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(8) A person taking tax credits under this section shall make an annual report to the department. The report shall be in a letter form and shall include the following information: Type of activity in which the person is engaged in the county, number of employees in the rural county, how long the person has been located in the county, and taxpayer name and registration number. The report must be filed by January 30th of each year for which credit was claimed during the previous year. Failure to file a report will not result in the loss of eligibility under this section. However, the department, through its research division, shall contact taxpayers who have not filed the report and obtain the data from the taxpayer or assist the taxpayer in the filing of the report, so that the data and information necessary to measure the program's effectiveness is maintained.

(9) As used in this section:

(a) "Information technology help desk services" means the following services performed using electronic and telephonic communication:

- (i) Software and hardware maintenance;
- (ii) Software and hardware diagnostics and troubleshooting;
- (iii) Software and hardware installation;
- (iv) Software and hardware repair;
- (v) Software and hardware information and training; and
- (vi) Software and hardware upgrade.

(b) "Rural county" means the same as in RCW 82.14.370.

(10) This section expires January 1, 2011. [2004 c 25 § 2.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**82.04.4485 Credit—Mechanical lifting devices purchased by hospitals.** (1) In computing the tax imposed under this chapter, a hospital may take a credit for the cost of purchasing mechanical lifting devices and other equipment that are primarily used to minimize patient handling by health care providers, consistent with a safe patient handling program developed and implemented by the hospital in compliance with RCW 70.41.390. The credit is equal to one hundred percent of the cost of the mechanical lifting devices or other equipment.

(2) No application is necessary for the credit, however, a hospital taking a credit under this section must maintain records, as required by the department, necessary to verify eligibility for the credit under this section. The hospital is subject to all of the requirements of chapter 82.32 RCW. A credit earned during one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No refunds shall be granted for credits under this section.

(3) The maximum credit that may be earned under this section for each hospital is limited to one thousand dollars for each acute care available inpatient bed.

(4) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this section to exceed ten million dollars. If the ten million dollar limitation is reached, the department shall notify hospitals that the annual statewide limit has been met. In addition, the department shall provide written notice to any hospital that has claimed tax credits after the ten million dollar limitation in this subsection has been met. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department shall not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(5) Credit may not be claimed under this section for the acquisition of mechanical lifting devices and other equipment if the acquisition occurred before June 7, 2006.

(6) Credit may not be claimed under this section for any acquisition of mechanical lifting devices and other equipment that occurs after December 30, 2010.

(7) The department shall issue an annual report on the amount of credits claimed by hospitals under this section, with the first report due on July 1, 2008.

(8) For the purposes of this section, "hospital" has the meaning provided in RCW 70.41.020. [2006 c 165 § 5.]

**Findings—2006 c 165:** See note following RCW 70.41.390.

**82.04.4486 Credit—Syrup taxes paid by buyer.** (1) In computing the tax imposed under this chapter, a credit is allowed to a buyer of syrup to be used by the buyer in making carbonated beverages that are sold by the buyer if the tax imposed by RCW 82.64.020 has been paid in respect to the syrup. The amount of the credit shall be equal to twenty-five percent from July 1, 2006, through June 30, 2007, fifty percent from July 1, 2007, through June 30, 2008, seventy-five percent from July 1, 2008, through June 30, 2009, and one hundred percent after June 30, 2009, of the taxes imposed under RCW 82.64.020 in respect to the syrup purchased by the buyer.

(2) Credit under this section shall be earned, and claimed against taxes due under this chapter, for the tax reporting period in which the syrup was purchased by the person claiming credit under this section. The credit shall not exceed the tax otherwise due under this chapter for the tax reporting period. Unused credit may be carried over and used in subsequent tax reporting periods, except that no credit may be claimed more than twelve months from the end of the tax reporting period in which the credit was earned. No refunds shall be granted for credits under this section.

(3) No credit is available under this section for taxes paid under RCW 82.64.020 before July 1, 2006.

(4) For the purposes of this section, "carbonated beverage," "previously taxed syrup," and "syrup" have the same meanings as provided in RCW 82.64.010. [2006 c 245 § 1.]

**Effective date—2006 c 245:** "This act takes effect July 1, 2006." [2006 c 245 § 2.]

**82.04.4489 Credit—Motion picture competitiveness program.** (1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to a Washington motion picture competitiveness program.

(2) The person must make the contribution before claiming a credit authorized under this section. Credits earned under this section may be claimed against taxes due for the calendar year in which the contribution is made. The amount of credit claimed for a reporting period shall not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than one million dollars of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(3) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of one million dollars or an amount equal to one hundred percent of the contributions made by the person to a program during the calendar year.

(4) Except as provided under subsection (5) of this section, a tax credit claimed under this section may not be carried over to another year.

(5) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried over and claimed against the person's tax liability for the next succeeding calendar year. Any credit remaining unused in the next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year; and any credit not used in that second succeeding calendar year may be carried over and claimed against the person's tax liability for the third succeeding calendar year, but may not be carried over for any calendar year thereafter.

(6) Credits are available on a first in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section during any calendar year to exceed three million five hundred thousand dollars. If this limitation is reached, the department shall notify all Washington motion picture competitiveness programs that the annual statewide limit has been met. In addition, the department shall provide written notice to any person who has claimed tax credits in excess of the three million five hundred thousand dollar limitation in this subsection. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department shall not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(7) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(8) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(9) A Washington motion picture competitiveness program shall provide to the department, upon request, such information needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(10) The department shall not allow any credit under this section before July 1, 2006.

(11) For the purposes of this section, "Washington motion picture competitiveness program" or "program" means an organization established pursuant to chapter 43.365 RCW.

(12) No credit may be earned for contributions made on or after July 1, 2011. [2008 c 85 § 3; 2006 c 247 § 5.]

**82.04.449 Credit—Washington customized employment training program.** In computing the tax imposed under this chapter, a credit is allowed for participants in the Washington customized employment training program created in RCW 28B.67.020. The credit allowed under this section is equal to fifty percent of the value of a participant's payments to the employment training finance account created

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in RCW 28B.67.030. If a participant in the program does not meet the qualifications in RCW 28B.67.020(2)(b)(ii), the participant must remit to the department the value of any credits taken plus interest. The credit earned by a participant in one calendar year may be carried over to be credited against taxes incurred in a subsequent calendar year. No credit may be allowed for repayment of training allowances received from the Washington customized employment training program on or after July 1, 2016. [2006 c 112 § 5.]

**Severability—2006 c 112:** See RCW 28B.67.901.

**82.04.4491 Credit—Alternative power generation devices. (Expires June 30, 2011.)** (1) In computing the tax imposed under this chapter, a credit is allowed for the purchase of an alternative power generation device and labor and services for the installation of the device, by an eligible person. The credit is equal to the lesser of fifty percent of the cost of the alternative power generation device or twenty-five thousand dollars.

(2) The amount of the credit provided in subsection (1) of this section may not exceed the tax otherwise due under this chapter for the tax reporting period.

(3) The total amount of credits taken under this section in any biennium may not exceed seven hundred fifty thousand dollars.

(4) The definitions in this subsection apply throughout this section:

(a) "Alternative power generation device" means a device capable of providing electrical power for gasoline service station pumps during periods when regular electrical power is lost including, but not limited to, portable generators, standby generators, emergency generators, or other power generation devices. "Alternative power generation device" also includes wiring necessary to make the device capable of providing electrical power to the gasoline service station pumps.

(b) "Eligible person" means a person selling motor vehicle or special fuel from a gasoline service station, or other facility, with at least four fuel pumps.

(5) This section expires June 30, 2011. [2008 c 223 § 1.]

**Effective date—2008 c 223:** "This act takes effect July 1, 2008." [2008 c 223 § 2.]

**82.04.4492 Credit—Polysilicon manufacturers. (Contingency, see note following this section. Expires July 1, 2024.)** (1)(a) In computing the tax imposed under this chapter, a manufacturer of polysilicon may claim a credit for its qualified preproduction development expenditures occurring after January 1, 2008.

(b) Any credits earned under this section must be accrued and carried forward and may not be used until July 1, 2009, and until a polysilicon manufacturer expends five hundred million dollars on a polysilicon manufacturing plant located in a county along the boundary line between Washington and Oregon with a population greater than fifty thousand but less than one hundred thousand. A polysilicon manufacturer may not claim a credit under this section in excess of one million dollars in any calendar year. Carryover credits may be used at any time after June 30, 2009, and may be carried over until used. Refunds may not be granted in the place of a credit.

(2) The credit is equal to the amount of qualified preproduction development expenditures, multiplied by the rate of seven and one-half percent.

(3) Credit earned on or after July 1, 2009, may be carried over until used. The credit claimed against taxes due for each calendar year must not exceed the amount of tax otherwise due under this chapter for the calendar year. Refunds may not be granted in the place of a credit.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Preproduction development" means: (A) Research, design, and engineering activities performed in relation to the development of a product or product line; (B) the design and engineering of the facility in which the product or product line will be manufactured; and (C) training of production employees where the training is directly related to the manufacturing of the product or product line.

(ii) The term "preproduction development" includes the discovery of technological information, the translating of technological information into new or improved products, processes, techniques, formulas, or inventions, and the adaptation of existing products into new products or derivatives of products or models. The term does not include manufacturing activities or other production-oriented activities other than tool design and engineering design for the manufacturing process and the training identified in (a)(i)(C) of this subsection (4). The term also does not include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(b)(i) Except as provided in (ii) of this subsection (4)(b), "qualified preproduction development" means preproduction development performed in the field of polysilicon manufacturing in a county along the boundary line between Washington and Oregon with a population greater than fifty thousand but less than one hundred thousand.

(ii) "Qualified preproduction development" also includes preproduction development as defined in (a)(i)(B) of this subsection (4) occurring outside of this state in relation to a polysilicon manufacturing facility located, or to be located, in a county along the boundary line between Washington and Oregon with a population greater than fifty thousand but less than one hundred thousand.

(c) "Qualified preproduction development expenditures" means operating expenses including wages, benefits, supplies, and computer expenses directly incurred in qualified preproduction development by a person claiming the credit provided in this section. The term does not include amounts paid to a person or to the state or any of its departments or institutions, other than a public educational or research institution, to conduct preproduction development in the field of polysilicon manufacturing. The term also does not include capital costs and overhead, such as expenses for land, structures, or depreciable property. For purposes of this subsection (4)(c), capital costs do not include costs incurred for the design and engineering of a manufacturing facility as provided in (a)(i)(B) of this subsection (4).

(5) In addition to all other requirements under this title, a person claiming the credit under this section must report as

required under RCW 82.32.545 and provide such additional information as the department may prescribe.

(6) Credit may not be claimed for expenditures for which a credit is claimed under RCW 82.04.4452.

(7) This section expires July 1, 2024. [2008 c 283 § 1.]

**Contingency—2008 c 283:** "If a port in a county along the boundary line between Washington and Oregon with a population greater than fifty thousand but less than one hundred thousand and a polysilicon manufacturer do not sign a memorandum of understanding to site a polysilicon manufacturing plant that is expected to cost at least five hundred million dollars by October 1, 2008, this act is null and void." [2008 c 283 § 3.]

**82.04.4493 Credit—Energy efficient commercial equipment. (Expires July 1, 2010.)** (1) In computing the tax imposed under this chapter, a credit is allowed in an amount equal to eight and eight-tenths percent multiplied by the purchase price, as defined in RCW 82.12.010, of the following items:

(a) Commercial freezers and refrigerators meeting consortium for energy efficiency tier 2 specifications dated January 1, 2006;

(b) High efficiency commercial clothes washers meeting consortium for energy efficiency specifications dated November 14, 2007;

(c) Commercial ice makers meeting consortium for energy efficiency specifications dated January 1, 2006;

(d) Commercial full-sized gas convection ovens with interior measurements of six cubic feet or larger;

(e) Commercial deep fat fryers which are rated energy star as of August 2003;

(f) Commercial hot food holding cabinets which are rated energy star as of August 2003; and

(g) Commercial electric and gas steam cookers, also known as compartment cookers, which are rated energy star as of August 2003.

(2) A person may not take the credit under this section if the person's gross income of the business in the prior calendar year exceeded seven hundred fifty thousand dollars.

(3) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year. Credit may not be claimed against taxes due for any tax reporting period ending before the credit was earned. No refunds shall be granted for credits under this section.

(4) Credits are available on a first-in-time basis. The department shall disallow any credits, or portion thereof, that would cause the total amount of credits claimed statewide under this section in any year to exceed seven hundred fifty thousand dollars. If the seven hundred fifty thousand dollar limitation is reached, the department shall provide written notice to any person that has claimed tax credits after the seven hundred fifty thousand dollar limitation in this subsection has been met. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(5) The department of community, trade, and economic development must prepare and deliver a report to the legisla-

ture no later than December 30, 2010, assessing the overall energy and cost saving impacts of this section.

(6) Credit may not be claimed under this section for the purchase of an item, listed in subsection (1) of this section, before July 1, 2008.

(7) Credit may not be claimed under this section for the purchase of an item, listed in subsection (1) of this section, after June 30, 2010.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a)(i) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that: (A) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and (B) may be configured with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(ii) "Commercial refrigerators and freezers" does not include: (A) Products with eighty-five cubic feet or more of internal volume; (B) walk-in refrigerators or freezers; (C) consumer products that are federally regulated pursuant to Title 42 U.S.C. Sec. 6291 et seq.; (D) products without doors; or (E) freezers specifically designed for ice cream.

(b) "Commercial clothes washer" means a soft mount horizontal or vertical-axis clothes washer that: (i) Has a clothes container compartment no greater than three and one-half cubic feet in the case of a horizontal-axis product or no greater than four cubic feet in the case of a vertical-axis product; and (ii) is designed for use by more than one household, such as in multifamily housing, apartments, or coin laundries.

(c) "Commercial hot food holding cabinet" means an appliance that is designed to hold hot food at a specified temperature, which has been cooked using a separate appliance.

(d) "Commercial ice maker" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice. It may also include integrated components for storing or dispensing ice, or both.

(e) "Commercial open, deep-fat fryer" means an appliance, including a cooking vessel, in which oil is placed to such a depth that the cooking food is essentially supported by displacement of the cooking fluid rather than by the bottom of the vessel. Heat is delivered to the cooking fluid by means of an immersed electric element or band-wrapped vessel (electric fryers), or by heat transfer from gas burners through either the walls of the fryer or through tubes passing through the cooking fluid (gas fryers).

(f) "Consortium" means the consortium for energy efficiency, a United States nonprofit public benefits corporation that promotes the manufacture and purchase of energy efficient products and services. The consortium's members include utilities, statewide and regional market transformation administrators, environmental groups, research organizations, and state energy offices in the United States and Canada.

(g) "Energy star" is an energy efficient product that meets the federal environmental protection agency's and fed-

eral department of energy's criteria for use of the energy star trademark label, or is in the upper twenty-five percent of efficiency for all similar products as designated by the federal energy management program. Energy star is a voluntary labeling program designed to identify and promote energy efficient products to reduce greenhouse gas emissions.

(h) "Steam cooker" means a device with one or more food steaming compartments, in which the energy in the steam is transferred to the food by direct contact. Models may include countertop models, wall-mounted models, and floor models mounted on a stand, pedestal, or cabinet-style base. [2008 c 284 § 2.]

**Findings—Intent—2008 c 284:** "The legislature finds that improving energy efficiency is key to achieving the state's goals to reduce greenhouse gas emissions to 1990 levels by 2020. The legislature further finds that increased energy efficiency saves Washington businesses money, which in turn helps the state and local economy, as energy bill savings can be spent on local goods and services. Washington state and federal appliance standards passed since 2005 will produce about eighty thousand metric tons of greenhouse gas emissions savings toward Washington's 2020 target. However, there are a large number of commercial devices on the market that are not subject to those standards. In addition, there are many new products on the market that are much more energy efficient than required by such standards, but because they may be more expensive than standard models, they represent only a small percentage of sales. Most commercial equipment, once purchased, will be in use for ten to fifteen years; therefore, the more energy efficient they are, the greater the energy and cost savings and reductions in climate pollution.

Thus, the legislature intends to enact tax incentives as a means to encourage Washington businesses to purchase certain high efficiency appliances and equipment and to maximize the energy savings opportunity available through increased and sustained market share of those appliances and equipment." [2008 c 284 § 1.]

**Effective date—2008 c 284:** "This act takes effect July 1, 2008." [2008 c 284 § 3.]

**Expiration date—2008 c 284:** "This act expires July 1, 2010." [2008 c 284 § 4.]

**82.04.450 Value of products, how determined.** (1) The value of products, including byproducts, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or byproducts by the seller, except:

(a) Where such products, including byproducts, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of such products: PROVIDED, That the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases

in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values. [1983 1st ex.s. c 55 § 3; 1975 1st ex.s. c 278 § 42; 1961 c 15 § 82.04.450. Prior: 1949 c 228 § 3; 1941 c 178 § 4; 1935 c 180 § 7; Rem. Supp. 1949 § 8370-7.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.04.460 Business within and without state—Apportionment.** (1) Any person rendering services taxable under RCW 82.04.290 or 82.04.2908 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290 or 82.04.2908, apportion to this state that portion of the person's gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of the taxpayer's total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

(2) Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010 (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.

(3) The department shall by rule provide a method or methods of apportioning or allocating gross income derived from sales of telephone services taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services. [2004 c 174 § 6; 1985 c 7 § 154; 1983 2nd ex.s. c 3 § 28; 1975 1st ex.s. c 291 § 9; 1961 c 15 § 82.04.460. Prior: 1941 c 178 § 5; 1939 c 225 § 4; Rem. Supp. 1941 § 8370-8a.]

**Effective date—2004 c 174:** See note following RCW 82.04.2908.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective dates—Severability—1975 1st ex.s. c 291:** See notes following RCW 82.04.050.

**82.04.470 Resale certificate—Burden of proof—Tax liability—Rules—Resale certificate defined.** (1) Unless a seller has taken from the buyer a resale certificate, the burden of proving that a sale of tangible personal property, or of services, was not a sale at retail shall be upon the person who made it.

(2) If a seller does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the seller shall remain liable for the tax as provided in RCW 82.08.050, unless the seller can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of sales tax.

(3) The department may provide by rule for suggested forms for resale certificates or equivalent documents containing the information that will be accepted as resale certificates. The department shall provide by rule the categories of items or services that must be specified on resale certificates and the business classifications that may use a blanket resale certificate.

(4) As used in this section, "resale certificate" means documentation provided by a buyer to a seller stating that the purchase is for resale in the regular course of business, or that the buyer is exempt from retail sales tax, and containing the following information:

- (a) The name and address of the buyer;
- (b) The uniform business identifier or revenue registration number of the buyer, if the buyer is required to be registered;
- (c) The type of business engaged in;
- (d) The categories of items or services to be purchased for resale or that are exempt, unless the buyer presents a blanket resale certificate;
- (e) The date on which the certificate was provided;
- (f) A statement that the items or services purchased either: (i) Are purchased for resale in the regular course of business; or (ii) are exempt from tax pursuant to statute;
- (g) A statement that the buyer acknowledges that the buyer is solely responsible for purchasing within the categories specified on the certificate and that misuse of the resale or exemption privilege claimed on the certificate subjects the buyer to a penalty of fifty percent of the tax due, in addition to the tax, interest, and any other penalties imposed by law;
- (h) The name of the individual authorized to sign the certificate, printed in a legible fashion;
- (i) The signature of the authorized individual; and
- (j) The name of the seller.

(5) Subsection (4)(h), (i), and (j) of this section does not apply if the certificate is provided in a format other than paper. If the certificate is provided in a format other than paper, the name of the individual providing the certificate must be included in the certificate. [2007 c 6 § 1201; 2003 c 168 § 204; 1993 sp.s. c 25 § 701; 1983 2nd ex.s. c 3 § 29; 1975 1st ex.s. c 278 § 43; 1961 c 15 § 82.04.470. Prior: 1935 c 180 § 9; RRS § 8370-9.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

Resale certificates: RCW 82.08.130 and 82.32.291.

**82.04.480 Sales in own name—Sales as agent.** Every consignee, bailee, factor, or auctioneer having either actual or constructive possession of tangible personal property, or having possession of the documents of title thereto, with power to sell such tangible personal property in his or its own name and actually so selling, shall be deemed the seller of such tangible personal property within the meaning of this chapter; and further, the consignor, bailor, principal, or owner shall be deemed a seller of such property to the consignee, bailee, factor, or auctioneer.

The burden shall be upon the taxpayer in every case to establish the fact that he is not engaged in the business of selling tangible personal property but is acting merely as broker or agent in promoting sales for a principal. Such claim will be allowed only when the taxpayer's accounting records are kept in such manner as the department of revenue shall by general regulation provide. [1975 1st ex.s. c 278 § 44; 1961 c 15 § 82.04.480. Prior: 1935 c 180 § 10; RRS § 8370-10.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.04.500 Tax part of operating overhead.** It is not the intention of this chapter that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall constitute a part of the operating overhead of such persons. [1961 c 15 § 82.04.500. Prior: 1935 c 180 § 14; RRS § 8370-14.]

**82.04.510 General administrative provisions invoked.** All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. Taxpayers submitting monthly estimates of taxes due under this chapter shall be subject to the provisions of chapter 82.32 RCW if they fail to remit ninety percent of the taxes actually collected or due for the reporting period. [1961 c 15 § 82.04.510. Prior: 1959 c 197 § 28; 1935 c 180 § 15; RRS § 8370-15.]

**82.04.520 Administrative provisions for motor vehicle sales by courtesy dealers.** (1) In the payment of the tax imposed by this chapter on new motor vehicles sold to Washington customers that are delivered to the customer through courtesy dealers located in this state, the courtesy dealer is deemed to be the agent for the selling dealer in reporting and paying the tax imposed by this chapter, unless the selling dealer is already registered and reporting and remitting taxes under this chapter. It is the duty of each courtesy dealer to pay the tax imposed by this chapter to the department when the courtesy dealer files its tax return. Each courtesy dealer who acts as the agent for the selling dealer in reporting, paying, and remitting the tax imposed by this chapter must at the time of paying and remitting its own taxes imposed by this chapter pay the tax due on the transaction under this section.

(2) The tax paid by the courtesy dealer on behalf of the selling dealer shall constitute a debt from the selling dealer to the courtesy dealer, and the courtesy dealer is authorized to

withhold payment to the selling dealer out of the proceeds of the sale an amount equal to the tax imposed by this chapter. Amounts withheld by the courtesy dealer are deemed to be held in trust by the courtesy dealer until paid to the department, and any courtesy dealer who appropriates or converts the amount withheld to the courtesy dealer's own use or to any use other than the payment of the tax to the extent that the money withheld is not available for payment on the due date is guilty of a gross misdemeanor.

(3) This section is construed as cumulative of other methods prescribed in chapters 82.04 through 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter.

(4) As used in this section, "courtesy dealer" means any licensed new motor vehicle dealer authorized to prepare or deliver a new motor vehicle to a customer in this state. "Selling dealer" means a motor vehicle dealer not licensed to prepare or deliver a new motor vehicle to a customer in this state. [2001 c 258 § 2.]

**Effective date—2001 c 258:** See note following RCW 82.04.422.

**82.04.530 Telecommunications service providers—Calculation of gross proceeds.** (*Contingency, see note following this section.*) For purposes of this chapter, a telecommunications service provider other than a mobile telecommunications service provider must calculate gross proceeds of sales in a manner consistent with the sourcing rules provided in RCW 82.32.520. The department may adopt rules to implement this section, including rules that provide a formula method of determining gross proceeds that reasonably approximates the taxable activity of a telephone business. [2007 c 54 § 13; 2007 c 6 § 1022; 2004 c 153 § 410; 2002 c 67 § 3.]

**Reviser's note:** This section was amended by 2007 c 6 § 1022 and by 2007 c 54 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—2007 c 54:** "In July 2000, congress passed the mobile telecommunications sourcing act (P.L. 106-252). The act addresses the problem of determining the situs of a cellular telephone call for tax purposes. In 2002, the legislature passed Senate Bill No. 6539 (chapter 67, Laws of 2002), which addressed the sourcing of mobile telecommunications for state business and occupation tax, state and local retail sales taxes, city utility taxes, and state and county telephone access line taxes. Section 18, chapter 67, Laws of 2002 provided that the act is null and void if the federal mobile telecommunications sourcing act is substantially impaired or limited as a result of a court decision that is no longer subject to appeal. The legislature finds that the contingent null and void clause in section 18, chapter 67, Laws of 2002 has resulted in the necessity of codifying two versions of a number of statutes to incorporate contingent expiration and effective dates. The legislature recognizes that this adds complexity to the tax code and makes tax administration more difficult. The legislature further finds that there is little or no likelihood that the federal mobile telecommunications sourcing act will be substantially impaired or limited as a result of a court decision. Therefore, the legislature intends in section 2 of this act to simplify Washington's tax code and tax administration by eliminating the contingent null and void clause in section 18, chapter 67, Laws of 2002." [2007 c 54 § 1.]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Finding—2002 c 67:** "The legislature finds that the United States congress has enacted the mobile telecommunications sourcing act for the purpose of establishing uniform nationwide sourcing rules for state and local taxation of mobile telecommunications services. The legislature desires to adopt implementing legislation governing taxation by the state and by affected local taxing jurisdictions within the state. The legislature recognizes that the federal act is intended to provide a clarification of sourcing rules that is revenue-neutral among the states, and that the clarifications required by the federal act are likely in fact to be revenue-neutral at the state level. The legislature also desires to take advantage of a provision of the federal act that allows a state with a generally applicable business and occupation tax, such as this state, to make certain of the uniform sourcing rules elective for such tax." [2002 c 67 § 1.]

**\*Contingency—Court judgment—2002 c 67.**

**\*Reviser's note:** This section was repealed by 2007 c 54 § 2 without cognizance of its amendment by 2007 c 6 § 1701. It has been decodified for publication purposes under RCW 1.12.025.

For complete text of the amendment, see the 2007 c 6 § 1701 session law.

**Effective date—2002 c 67:** "This act takes effect August 1, 2002." [2002 c 67 § 19.]

**82.04.535 Gross proceeds of sales calculation for mobile telecommunications service provider. (Contingency, see note following RCW 82.04.530.)** (1) Unless a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must calculate gross proceeds of sales by reporting all sales to, or sales between carriers for, customers with a place of primary use within this state, regardless of where the mobile telecommunications services originate, are received, or are billed, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126.

(2) A mobile telecommunications service provider may elect to calculate gross proceeds of sales by including all charges for mobile telecommunications services provided to all consumers, whether the consumers are the mobile telecommunications service provider's customers or not, if the services originate from or are received on telecommunications equipment or apparatus in this state and are billed to a person in this state.

(3) If a mobile telecommunications service provider elects to be taxed under subsection (2) of this section, the mobile telecommunications service provider must provide written notice of the election before August 1, 2002, or before the beginning date of any tax year thereafter in which it wishes to change its reporting and make this election.

(4) The department may provide, by rule, for formulary reporting as necessary to implement this section. [2002 c 67 § 4.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.04.540 Professional employer organizations—Taxable under RCW 82.04.290(2)—Deduction.** (1) The provision of professional employer services by a professional employer organization is taxable under RCW 82.04.290(2).

(2) A professional employer organization is allowed a deduction from the gross income of the business derived from performing professional employer services that is equal to the portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers' compensation, payroll taxes, withholding, or other assessments paid

to or on behalf of a covered employee by the professional employer organization under a professional employer agreement.

(3) For the purposes of this section, the following definitions apply:

(a) "Client" means any person who enters into a professional employer agreement with a professional employer organization. For purposes of this subsection (3)(a), "person" has the same meaning as "buyer" in RCW 82.08.010.

(b) "Coemployer" means either a professional employer organization or a client.

(c) "Coemployment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific one, wherein the rights, duties, and obligations of an employer which arise out of an employment relationship have been allocated between coemployers pursuant to a professional employer agreement and applicable state law. In such a coemployment relationship:

(i) The professional employer organization is entitled to enforce only such employer rights and is subject to only those obligations specifically allocated to the professional employer organization by the professional employer agreement or applicable state law;

(ii) The client is entitled to enforce those rights and obligated to provide and perform those employer obligations allocated to such client by the professional employer agreement and applicable state law; and

(iii) The client is entitled to enforce any right and obligated to perform any obligation of an employer not specifically allocated to the professional employer organization by the professional employer agreement or applicable state law.

(d) "Covered employee" means an individual having a coemployment relationship with a professional employer organization and a client who meets all of the following criteria: (i) The individual has received written notice of coemployment with the professional employer organization, and (ii) the individual's coemployment relationship is pursuant to a professional employer agreement. Individuals who are officers, directors, shareholders, partners, and managers of the client are covered employees to the extent the professional employer organization and the client have expressly agreed in the professional employer agreement that such individuals would be covered employees and provided such individuals meet the criteria of this subsection and act as operational managers or perform day-to-day operational services for the client.

(e) "Professional employer agreement" means a written contract by and between a client and a professional employer organization that provides:

(i) For the coemployment of covered employees; and  
(ii) For the allocation of employer rights and obligations between the client and the professional employer organization with respect to the covered employees.

(f) "Professional employer organization" means any person engaged in the business of providing professional employer services. The following shall not be deemed to be professional employer organizations or the providing of professional employer services for purposes of this section:

(i) Arrangements wherein a person, whose principal business activity is not entering into professional employer arrangements and which does not hold itself out as a profes-

sional employer organization, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the Internal Revenue Code of 1986, as amended;

(ii) Independent contractor arrangements by which a person assumes responsibility for the product produced or service performed by such person or his or her agents and retains and exercises primary direction and control over the work performed by the individuals whose services are supplied under such arrangements; or

(iii) Providing staffing services.

(g) "Professional employer services" means the service of entering into a coemployment relationship with a client in which all or a majority of the employees providing services to a client or to a division or work unit of a client are covered employees.

(h) "Staffing services" means services consisting of a person:

(i) Recruiting and hiring its own employees;

(ii) Finding other organizations that need the services of those employees;

(iii) Assigning those employees on a temporary basis to perform work at or services for the other organizations to support or supplement the other organizations' workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the customer; and

(iv) Customarily attempting to reassign the employees to other organizations when they finish each assignment. [2006 c 301 § 1.]

**Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301:** See notes following RCW 82.32.710.

**82.04.600 Exemptions—Materials printed in county, city, town, school district, educational service district, library or library district.** This chapter does not apply to any county as defined in Title 36 RCW, any city or town as defined in Title 35 RCW, any school district or educational service district as defined in Title 28A RCW, or any library or library district as defined in Title 27 RCW, in respect to materials printed in the county, city, town, school district, educational district, library or library district facilities when the materials are used solely for county, city, town, school district, educational district, library, or library district purposes. [1979 ex.s. c 266 § 8.]

**82.04.601 Exemptions—Affixing stamp services for cigarette sales.** This chapter does not apply to compensation allowed under RCW 82.24.295 for wholesalers and retailers for their services in affixing the stamps required under chapter 82.24 RCW. For purposes of this section, "wholesaler," "retailer," and "stamp" have the same meaning as in chapter 82.24 RCW. [2007 c 221 § 5.]

**82.04.610 Exemptions—Import or export commerce.**

(1) This chapter does not apply to the sale of tangible personal property in import or export commerce.

(2) Tangible personal property is in import commerce while the property is in the process of import transportation. Except as provided in (a) through (c) of this subsection, prop-

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erty is in the process of import transportation from the time the property begins its transportation at a point outside of the United States until the time that the property is delivered to the buyer in this state. Property is also in the process of import transportation if it is merely flowing through this state on its way to a destination in some other state or country. However, property is no longer in the process of import transportation when the property is:

(a) Put to actual use in any state, territory, or possession of the United States for any purpose;

(b) Resold by the importer or any other person after the property has arrived in this state or any other state, territory, or possession of the United States, regardless of whether the property is in its original unbroken package or container; or

(c) Processed, handled, or otherwise stopped in transit for a business purpose other than shipping needs, if the processing, handling or other stoppage of transit occurs within the United States, including any of its possessions or territories, or the territorial waters of this state or any other state, regardless of whether the processing, handling, or other stoppage of transit occurs within a foreign trade zone.

(3)(a) Tangible personal property is in export commerce when the seller delivers the property to:

(i) The buyer at a destination in a foreign country;

(ii) A carrier consigned to and for transportation to a destination in a foreign country;

(iii) The buyer at shipside or aboard the buyer's vessel or other vehicle of transportation under circumstances where it is clear that the process of exportation of the property has begun; or

(iv) The buyer in this state if the property is capable of being transported to a foreign destination under its own power, the seller files a shipper's export declaration with respect to the property listing the seller as the exporter, and the buyer immediately transports the property directly to a destination in a foreign country. This subsection (3)(a)(iv) does not apply to sales of motor vehicles as defined in RCW 46.04.320.

(b) The exemption under this subsection (3) applies with respect to property delivered to the buyer in this state if, at the time of delivery, there is a certainty of export, and the process of export has begun. The process of exportation will not be deemed to have begun if the property is merely in storage awaiting shipment, even though there is reasonable certainty that the property will be exported. The intention to export, as evidenced for example, by financial and contractual relationships does not indicate certainty of export. The process of exportation begins when the property starts its final and certain continuous movement to a destination in a foreign country.

(4) Persons claiming an exemption under this section must keep and maintain records for the period required by RCW 82.32.070 establishing their right to the exemption. [2007 c 477 § 2.]

**Intent—Purpose—2007 c 477:** "Because of the uncertainty regarding the constitutional limitations on the taxation of import and export sales of tangible personal property, the legislature recognizes the need to provide clarity in the taxation of imports and exports. It is the legislature's intent to provide a statutory tax exemption for the sale of tangible personal property in import or export commerce, which is not dependent on future interpretation of the constitutional limitations on the taxation of imports and exports by the courts. The sole purpose of the legislature in enacting RCW

82.04.610 and 82.08.990 is to codify current department practice in the taxation of import and export sales of tangible personal property consistent with WAC 458-20-193C. It is not the intent of the legislature in enacting RCW 82.04.610 and 82.08.990 to eliminate, narrow, or expand existing exemptions under WAC 458-20-193C." [2007 c 477 § 1.]

**82.04.615 Exemptions—Certain limited purpose public corporations, commissions, and authorities.** This chapter does not apply to public corporations, commissions, or authorities created under RCW 35.21.660 or 35.21.730 for amounts derived from sales of tangible personal property and services to:

- (1) A limited liability company in which the corporation, commission, or authority is the managing member;
- (2) A limited partnership in which the corporation, commission, or authority is the general partner; or
- (3) A single asset entity required under any federal, state, or local governmental housing assistance program, which is controlled directly or indirectly by the corporation, commission, or authority. [2007 c 381 § 1.]

**82.04.620 Exemptions—Certain prescription drugs.** In computing tax there may be deducted from the measure of tax imposed by RCW 82.04.290(2) amounts received by physicians or clinics for drugs for infusion or injection by licensed physicians or their agents for human use pursuant to a prescription, but only if the amounts: (1) Are separately stated on invoices or other billing statements; (2) do not exceed the then current federal rate; and (3) are covered or required under a health care service program subsidized by the federal or state government. The federal rate means the rate at or below which the federal government or its agents reimburse providers for prescription drugs administered to patients as provided for in the medicare, part B, drugs average sales price information resource as published by the United States department of health and human services, or any successor index thereto. [2007 c 447 § 1.]

**Effective date—2007 c 447:** "This act takes effect October 1, 2007." [2007 c 447 § 2.]

**82.04.625 Exemptions—Custom farming services. (Expires December 31, 2020.)** (1) This chapter does not apply to any:

- (a) Person performing custom farming services for a farmer, when the person performing the custom farming services is: (i) An eligible farmer; or (ii) at least fifty percent owned by an eligible farmer; or
- (b) Person performing farm management services, contract labor services, services provided with respect to animals that are agricultural products, or any combination of these services, for a farmer or for a person performing custom farming services, when the person performing the farm management services, contract labor services, services with respect to animals, or any combination of these services, and the farmer or person performing custom farming services are related.

(2) The definitions in this subsection apply throughout this section.

(a) "Custom farming services" means the performance of specific farming operations through the use of any farm machinery or equipment, farm implement, or draft animal,

together with an operator, when: (i) The specific farming operation consists of activities directly related to the growing, raising, or producing of any agricultural product to be sold or consumed by a farmer; and (ii) the performance of the specific farming operation is for, and under a contract with, or the direction or supervision of, a farmer. "Custom farming services" does not include the custom application of fertilizers, chemicals, or biologicals.

For the purposes of this subsection (2)(a), "specific farming operation" includes specific planting, cultivating, or harvesting activities, or similar specific farming operations. The term does not include veterinary services as defined in RCW 18.92.010; farrier, boarding, training, or appraisal services; artificial insemination or stud services, agricultural consulting services; packing or processing of agricultural products; or pumping or other waste disposal services.

(b) "Eligible farmer" means a person who is eligible for an exemption certificate under RCW 82.08.855 at the time that the custom farming services are rendered, regardless of whether the person has applied for an exemption certificate under RCW 82.08.855.

(c) "Farm management services" means the consultative decisions made for the operations of the farm including, but not limited to, determining which crops to plant, the choice and timing of application of fertilizers and chemicals, the horticultural practices to apply, the marketing of crops and livestock, and the care and feeding of animals.

(d) "Related" means having any of the relationships specifically described in section 267(b) (1), (2), and (4) through (13) of the internal revenue code, as amended or renumbered as of January 1, 2007. [2007 c 334 § 1.]

**Effective date—2007 c 334:** "This act takes effect August 1, 2007." [2007 c 334 § 3.]

**Expiration date—2007 c 334:** "This act expires December 31, 2020." [2007 c 334 § 4.]

**82.04.627 Exemptions—Commercial airplane parts.** (1) Except as provided in subsection (2) of this section, for purposes of the taxes imposed under this chapter on the sale of parts to the manufacturer of a commercial airplane, the sale is deemed to take place at the site of the final testing or inspection as required by:

(a) An approved production inspection system under federal aviation regulation part 21, subpart F; or

(b) A quality control system for which a production certificate has been issued under federal aviation regulation part 21, subpart G.

(2) This section does not apply to:

(a) Sales of the types of parts listed in federal aviation regulation part 21, section 303(b)(2) through (4) or parts for which certification or approval under federal aviation regulation part 21 is not required; or

(b) Sales of parts in respect to which final testing or inspection as required by the approved production inspection system or quality control system takes place in this state.

(3) "Commercial airplane" has the same meaning given in RCW 82.32.550. [2008 c 81 § 15.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**82.04.629 Exemptions—Honey bee products.** (*Expires July 1, 2013.*) (1) This chapter does not apply to amounts derived from the wholesale sale of honey bee products by an eligible apiarist who owns or keeps bee colonies and who does not qualify for an exemption under RCW 82.04.330 in respect to such sales.

(2) The exemption provided in subsection (1) of this section does not apply to any person selling such products at retail or to any person selling manufactured substances or articles.

(3) The definitions in this subsection apply to this section.

(a) "Bee colony" means a natural group of honey bees containing seven thousand or more workers and one or more queens, housed in a man-made hive with movable frames, and operated as a beekeeping unit.

(b) "Eligible apiarist" means a person who owns or keeps one or more bee colonies and who grows, raises, or produces honey bee products for sale at wholesale and is registered under RCW 15.60.021.

(c) "Honey bee products" means queen honey bees, packaged honey bees, honey, pollen, bees wax, propolis, or other substances obtained from honey bees. "Honey bee products" does not include manufactured substances or articles. [2008 c 314 § 2.]

**Finding—Intent—2008 c 314:** "The legislature finds that recent occurrences of colony collapse disorder and the resulting loss of bee hives will have an economic impact on the state's agricultural sector. The legislature intends to provide temporary business and occupation tax relief for Washington's apiarists." [2008 c 314 § 1.]

**Effective date—2008 c 314:** "This act takes effect July 1, 2008." [2008 c 314 § 6.]

**Expiration date—2008 c 314:** "This act expires July 1, 2013." [2008 c 314 § 7.]

**82.04.630 Exemptions—Bee pollination services.** (*Expires July 1, 2013.*) (1) This chapter does not apply to amounts received by an eligible apiarist, as defined in RCW 82.04.629, for providing bee pollination services to a farmer using a bee colony owned or kept by the person providing the pollination services.

(2) The definitions in RCW 82.04.213 apply to this section. [2008 c 314 § 3.]

**Finding—Intent—Effective date—Expiration date—2008 c 314:** See notes following RCW 82.04.629.

**82.04.900 Construction—1961 c 15.** RCW 82.04.440 shall have retrospective effect to August 1, 1950, as well as have prospective effect. [1961 c 15 § 82.04.900. Prior: 1951 1st ex.s. c 9 § 15.]

## Chapter 82.08 RCW RETAIL SALES TAX

### Sections

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82.08.0282	Exemptions—Sales of returnable containers for beverages and foods.	82.08.805	Exemptions—Tangible personal property used at an aluminum smelter.
82.08.0283	Exemptions—Certain medical items.	82.08.806	Exemptions—Sale of computer equipment parts and services to printer or publisher.
82.08.0285	Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges.	82.08.807	Exemptions—Direct mail delivery charges.
82.08.0287	Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles.	82.08.808	Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers.
82.08.02875	Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center.	82.08.809	Exemptions—Vehicles using clean alternative fuels.
82.08.0288	Exemptions—Lease of certain irrigation equipment.	82.08.810	Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation.
82.08.0289	Exemptions—Telephone, telecommunications, and ancillary services.	82.08.811	Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
82.08.0291	Exemptions—Sales of amusement and recreation services or personal services by nonprofit youth organization—Local government physical fitness classes.	82.08.813	Exemptions—High gas mileage vehicles.
82.08.02915	Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis.	82.08.815	Exemptions—Property and services related to electrification systems to power heavy duty diesel vehicles.
82.08.02917	Youth in crisis—Definition—Limited purpose.	82.08.820	Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions.
82.08.0293	Exemptions—Sales of food and food ingredients.	82.08.825	Exemptions—Property and services that enable heavy duty diesel vehicles to operate with onboard electrification systems.
82.08.0294	Exemptions—Sales of feed for cultivating or raising fish for sale.	82.08.830	Exemptions—Sales at camp or conference center by nonprofit organization.
82.08.0296	Exemptions—Sales of feed consumed by livestock at a public livestock market.	82.08.832	Exemptions—Sales of gun safes.
82.08.0297	Exemptions—Sales of food purchased with food stamps.	82.08.834	Exemptions—Sales/leasebacks by regional transit authorities.
82.08.0298	Exemptions—Sales of diesel fuel for use in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.	82.08.835	Exemptions—Solar hot water systems.
82.08.0299	Exemptions—Emergency lodging for homeless persons—Conditions.	82.08.841	Exemptions—Farming equipment—Hay sheds.
82.08.031	Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.	82.08.850	Exemptions—Conifer seed.
82.08.0311	Exemptions—Sales of materials and supplies used in packing horticultural products.	82.08.855	Exemptions—Replacement parts for qualifying farm machinery and equipment.
82.08.0315	Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate.	82.08.865	Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.
82.08.0316	Exemptions—Sales of cigarettes by Indian retailers.	82.08.870	Exemptions—Motorcycles for training programs.
82.08.032	Exemption—Sales, rental, or lease of used park model trailers.	82.08.880	Exemptions—Animal pharmaceuticals.
82.08.033	Exemptions—Sales of used mobile homes or rental or lease of mobile homes.	82.08.890	Exemptions—Livestock nutrient management equipment and facilities.
82.08.034	Exemptions—Sales of used floating homes or rental or lease of used floating homes.	82.08.900	Exemptions—Anaerobic digesters.
82.08.035	Exemption for pollution control facilities.	82.08.910	Exemptions—Propane or natural gas to heat chicken structures.
82.08.036	Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.	82.08.920	Exemptions—Chicken bedding materials.
82.08.037	Credits and refunds for bad debts.	82.08.925	Exemptions—Dietary supplements.
82.08.040	Consignee, factor, bailee, auctioneer deemed seller.	82.08.935	Exemptions—Disposable devices used to deliver prescription drugs for human use.
82.08.050	Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection.	82.08.940	Exemptions—Over-the-counter drugs for human use.
82.08.054	Computation of tax due.	82.08.945	Exemptions—Kidney dialysis devices.
82.08.055	Advertisement of price.	82.08.950	Exemptions—Steam, electricity, electrical energy.
82.08.060	Collection of tax—Methods and schedules.	82.08.955	Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel blend or E85 motor fuel.
82.08.064	Tax rate changes.	82.08.960	Sales of machinery, equipment, vehicles, and services related to wood biomass fuel blend.
82.08.066	Deemed location for mobile telecommunications services.	82.08.965	Exemptions—Semiconductor materials manufacturing.
82.08.080	Vending machine and other sales.	82.08.9651	Exemptions—Gases and chemicals used in production of semiconductor materials.
82.08.090	Installment sales and leases.	82.08.970	Exemptions—Gases and chemicals used to manufacture semiconductor materials.
82.08.100	Cash receipts taxpayers—Bad debts.	82.08.975	Exemptions—Computer parts and software related to the manufacture of commercial airplanes.
82.08.110	Sales from vehicles.	82.08.980	Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes.
82.08.120	Refunding or rebating of tax by seller prohibited—Penalty.	82.08.985	Exemptions—Insulin.
82.08.130	Resale certificate—Purchase and resale—Rules.	82.08.990	Exemptions—Import or export commerce.
82.08.140	Administration.	82.08.995	Exemptions—Certain limited purpose public corporations, commissions, and authorities.
82.08.145	Delivery charges.	82.08.997	Exemptions—Temporary medical housing.
		82.08.998	Exemptions—Weatherization of a residence.

*Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.*

*Community college capital improvements bond redemption fund of 1972—  
Tax receipts: RCW 28B.56.100.*

*Credit for retail sales or use taxes paid to other jurisdictions with respect to  
property used: RCW 82.12.035.*

*Direct pay permits: RCW 82.32.087.*

*Excise tax on real estate transfers: Chapters 82.45 and 82.46 RCW.*

*Local sales tax: Chapter 82.14 RCW.*

**82.08.010 Definitions.** For the purposes of this chapter:

(1)(a) "Selling price" includes "sales price." "Sales price" means the total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, or services defined as a "retail sale" under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, all taxes imposed on the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

When tangible personal property is rented or leased under circumstances that the consideration paid does not represent a reasonable rental for the use of the articles so rented or leased, the "selling price" shall be determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department may prescribe;

(b) "Selling price" or "sales price" does not include: Discounts, including cash, term, or coupons that are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale; interest, financing, and carrying charges from credit extended on the sale of tangible personal property, extended warranties, or services, if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser; and any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale, or similar document given to the purchaser;

(c) "Selling price" or "sales price" includes consideration received by the seller from a third party if:

(i) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

(ii) The seller has an obligation to pass the price reduction or discount through to the purchaser;

(iii) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

(iv) One of the criteria in this subsection (1)(c)(iv) is met:

(A) The purchaser presents a coupon, certificate, or other documentation to the seller to claim a price reduction or discount where the coupon, certificate, or documentation is authorized, distributed, or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate, or documentation is presented;

(B) The purchaser identifies himself or herself to the seller as a member of a group or organization entitled to a price reduction or discount, however a "preferred customer" card that is available to any patron does not constitute membership in such a group; or

(C) The price reduction or discount is identified as a third party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate, or other documentation presented by the purchaser;

(2)(a) "Seller" means every person, including the state and its departments and institutions, making sales at retail or retail sales to a buyer, purchaser, or consumer, whether as agent, broker, or principal, except "seller" does not mean:

(i) The state and its departments and institutions when making sales to the state and its departments and institutions; or

(ii) A professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale at retail that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the seller and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(3) "Buyer," "purchaser," and "consumer" include, without limiting the scope hereof, every individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise, municipal corporation, quasi municipal corporation, and also the state, its departments and institutions and all political subdivisions thereof, irrespective of the nature of the activities engaged in or functions performed, and also the United States or any instrumentality thereof;

(4) "Delivery charges" means charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including, but not limited to, transportation, shipping, postage, handling, crating, and packing;

(5) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address;

(6) The meaning attributed in chapter 82.04 RCW to the terms "tax year," "taxable year," "person," "company," "sale," "sale at retail," "retail sale," "sale at wholesale," "wholesale," "business," "engaging in business," "cash discount," "successor," "consumer," "in this state" and "within

this state" shall apply equally to the provisions of this chapter;

(7) For the purposes of the taxes imposed under this chapter and under chapter 82.12 RCW, "tangible personal property" means personal property that can be seen, weighed, measured, felt, or touched, or that is in any other manner perceptible to the senses. Tangible personal property includes electricity, water, gas, steam, and prewritten computer software;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7). [2007 c 6 § 1302; (2007 c 6 § 1301 expired July 1, 2008); 2006 c 301 § 2; 2005 c 514 § 110; 2004 c 153 § 406; 2003 c 168 § 101; 1985 c 38 § 3; 1985 c 2 § 2 (Initiative Measure No. 464, approved November 6, 1984); 1983 1st ex.s. c 55 § 1; 1967 ex.s. c 149 § 18; 1963 c 244 § 1; 1961 c 15 § 82.08.010. Prior: (i) 1945 c 249 § 4; 1943 c 156 § 6; 1941 c 178 § 8; 1939 c 225 § 7; 1935 c 180 § 17; Rem. Supp. 1945 § 8370-17. (ii) 1935 c 180 § 20; RRS § 8370-20.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Expiration date—2007 c 6 § 1301:** "Section 1301 of this act expires July 1, 2008." [2007 c 6 § 1706.]

**Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301:** See notes following RCW 82.32.710.

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—2003 c 168:** "Sections 101 through 104, 201 through 216, 401 through 412, 501, 502, 601 through 604, 701 through 704, 801, 901, and 902 of this act take effect July 1, 2004. Sections 301 through 305 of this act take effect January 1, 2004." [2003 c 168 § 903.]

**Part headings not law—2003 c 168:** "Part headings used in this act are not any part of the law." [2003 c 168 § 901.]

**Purpose—1985 c 2:** "The purpose of this initiative is to reduce the amount on which sales tax is paid by excluding the trade-in value of certain property from the amount taxable." [1985 c 2 § 1 (Initiative Measure No. 464, approved November 6, 1984).]

**Effective dates—1983 1st ex.s. c 55:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983, except that section 12 of this act shall take effect January 1, 1984, and shall be effective for property taxes levied in 1983, and due in 1984, and thereafter." [1983 1st ex.s. c 55 § 13.]

**82.08.011 Retail car rental—Definition.** For purposes of this chapter, "retail car rental" means renting a rental car, as defined in RCW 46.04.465, to a consumer. [1992 c 194 § 2.]

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**82.08.020 Tax imposed—Retail sales—Retail car rental.** (1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(3) Beginning July 1, 2003, there is levied and collected an additional tax of three-tenths of one percent of the selling price on each retail sale of a motor vehicle in this state, other than retail car rentals taxed under subsection (2) of this section. The revenue collected under this subsection shall be deposited in the multimodal transportation account created in RCW 47.66.070.

(4) For purposes of subsection (3) of this section, "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(5) Beginning on December 8, 2005, 0.16 percent of the taxes collected under subsection (1) of this section shall be dedicated to funding comprehensive performance audits required under RCW 43.09.470. The revenue identified in this subsection shall be deposited in the performance audits of government account created in RCW 43.09.475.

(6) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

(7) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020. [2006 c 1 § 3 (Initiative Measure No. 900, approved November 8, 2005); 2003 c 361 § 301; 2000 2nd sp.s. c 4 § 1; 1998 c 321 § 36 (Referendum Bill No. 49, approved November 3, 1998); 1992 c 194 § 9; 1985 c 32 § 1. Prior: 1983 2nd ex.s. c 3 § 62; 1983 2nd ex.s. c 3 § 41; 1983 c 7 § 6; 1982 1st ex.s. c 35 § 1; 1981 2nd ex.s. c 8 § 1; 1977 ex.s. c 324 § 2; 1975-'76 2nd ex.s. c 130 § 1; 1971 ex.s. c 281 § 9; 1969 ex.s. c 262 § 31; 1967 ex.s. c 149 § 19; 1965 ex.s. c 173 § 13; 1961 c 293 § 6; 1961 c 15 § 82.08.020; prior: 1959 ex.s. c 3 § 5; 1955 ex.s. c 10 § 2; 1949 c 228 § 4; 1943 c 156 § 5; 1941 c 76 § 2; 1939 c 225 § 10; 1935 c 180 § 16; Rem. Supp. 1949 § 8370-16.]

**Short title—Effective date—2006 c 1 (Initiative Measure No. 900):** See RCW 43.09.471.

**Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900):** See notes following RCW 43.09.470.

**Effective dates—2003 c 361:** "Sections 301 through 602 of this act take effect July 1, 2003, and sections 201 and 202 of this act take effect August 1, 2003." [2003 c 361 § 703.]

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Application—2000 2nd sp.s. c 4 § 1:** "Section 1 of this act applies to taxes collected on and after December 31, 1999." [2000 2nd sp.s. c 4 § 34.]

**Effective date—2000 2nd sp.s. c 4 §§ 1-3, 20:** "Sections 1 through 3 and 20 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 2, 2000]." [2000 2nd sp.s. c 4 § 35.]

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 35.58.410.

**Legislative intent—1992 c 194:** "The legislature intends to exempt rental cars from state and local motor vehicle excise taxes, and to impose additional sales and use taxes in lieu thereof. These additional sales and use taxes are intended to provide as much revenue to the funds currently receiving motor vehicle excise tax revenue, including the transportation funds and the general fund, as each fund would have received if the motor vehicle excise tax exemptions had not been enacted. Revenues from these additional

sales and use taxes are intended to be distributed in the same manner as the motor vehicle excise tax revenues they replace." [1992 c 194 § 4.]

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—1983 c 7:** "This act shall not be construed as affecting any existing right acquired, or liability or obligation incurred under the sections amended in this act, nor any rule, regulation, or order adopted, nor any proceeding instituted, under those sections." [1983 c 7 § 34.]

**Severability—1983 c 7:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 7 § 35.]

**Effective dates—1983 c 7:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect March 1, 1983, except as follows:

(1) Sections 9 through 22, and 25 through 31 of this act shall take effect June 30, 1983.

(2) Sections 23 and 24 of this act shall take effect January 1, 1984, for taxes first due in 1984 and thereafter.

The department of revenue and the department of licensing shall immediately take necessary steps to ensure that all sections of this act are properly implemented on their effective dates. The additional taxes and tax rate changes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1983 c 7 § 37.]

**Severability—1982 1st ex.s. c 35:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 35 § 47.]

**Effective dates—Expiration date—1982 1st ex.s. c 35:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, except that sections 28, 29, and 30 of this act shall take effect on May 1, 1982, sections 33 and 34 of this act shall take effect on July 1, 1983, and sections 35 through 38 of this act shall take effect on January 1, 1983.

Sections 28 and 29 of this act shall expire on July 1, 1983. The additional taxes imposed under this act shall take effect on the dates designated in this act notwithstanding the date this act becomes law under Article III, section 12 of the state Constitution." [1982 1st ex.s. c 35 § 48.]

**Effective date—1975-'76 2nd ex.s. c 130:** "This 1976 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That the provisions of this 1976 amendatory act shall be null and void in the event chapter . . . (\*Substitute Senate Bill No. 2778), Laws of 1975-'76 2nd ex. sess. is approved and becomes law." [1975-'76 2nd ex.s. c 130 § 4.]

**\*Reviser's note:** "Substitute Senate Bill No. 2778" failed to become law.

*High capacity transportation systems—Sales and use tax: RCW 81.104.170. Manufacturers, study: 1994 c 66.*

**82.08.0201 Rental cars—Estimate of tax revenue.** Before January 1, 1994, and January 1 of each odd-numbered year thereafter:

The department of licensing, with the assistance of the department of revenue, shall provide the office of financial management and the fiscal committees of the legislature with an updated estimate of the amount of revenue attributable to the taxes imposed in RCW 82.08.020(2), and the amount of revenue not collected as a result of \*RCW 82.44.023. [1992 c 194 § 10.]

**\*Reviser's note:** RCW 82.44.023 was repealed by 2006 c 318 § 10.

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**82.08.0202 Retail sales of linen and uniform supply services.** For purposes of this chapter, a retail sale of linen and uniform supply services is deemed to occur at the place of delivery to the customer. "Linen and uniform supply services" means the activity of providing customers with a supply of clean linen, towels, uniforms, gowns, protective apparel, clean room apparel, mats, rugs, and similar items, whether ownership of the item is in the person operating the linen and uniform supply service or in the customer. The term includes supply services operating their own cleaning establishments as well as those contracting with other laundry or dry cleaning businesses. [2001 c 186 § 2.]

**Finding—Purpose—2001 c 186:** "The legislature finds that because of the mixed retailing nature of linen and uniform supply services, they have been incorrectly sited for tax purposes. As a result, some companies that perform some activities related to this activity outside the state of Washington have not been required to collect retail sales taxes upon linen and uniform supply services provided to Washington customers. The activity has aspects of both the rental of tangible personal property and retail services related to tangible personal property. This error in tax treatment provides an incentive for businesses to locate some of their functions out of state. In-state businesses cannot compete if their out-of-state competitors are not required to collect sales tax for services provided to the same customers.

The purpose of this act is to clarify the taxable situs and nature of linen and uniform supply services." [2001 c 186 § 1.]

**Effective date—2001 c 186:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 186 § 4.]

**82.08.0203 Exemptions—Trail grooming services.** The tax levied by RCW 82.08.020 does not apply to sales of trail grooming services to the state of Washington or non-profit corporations organized under chapter 24.03 RCW. For the purposes of this section, "trail grooming" means the activity of snow compacting, snow redistribution, or snow removal on state-owned or privately owned trails. [2008 c 260 § 1.]

**82.08.0204 Exemptions—Honey bees. (Expires July 1, 2013.)** The tax levied by RCW 82.08.020 does not apply to the sale of honey bees to an eligible apiarist, as defined in RCW 82.04.629. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. [2008 c 314 § 4.]

**Finding—Intent—Effective date—Expiration date—2008 c 314:** See notes following RCW 82.04.629.

**82.08.0205 Exemptions—Waste vegetable oil. (1)** The tax levied by RCW 82.08.020 does not apply to sales of waste vegetable oil that is used by a person in the production of biodiesel for personal use.

(2) This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(3) For the purposes of this section, the following definitions apply:

(a) "Waste vegetable oil" means used cooking oil gathered from restaurants or commercial food processors; and

(b) "Personal use" means the person does not engage in the business of selling biodiesel at wholesale or retail. [2008 c 237 § 2.]

**Effective date—2008 c 237:** "This act takes effect July 1, 2008." [2008 c 237 § 4.]

**82.08.0206 Exemptions—Working families—Eligible low-income persons.** (1) A working families' tax exemption, in the form of a remittance tax due under this chapter and chapter 82.12 RCW, is provided to eligible low-income persons for sales taxes paid under this chapter after January 1, 2008.

(2) For purposes of the exemption in this section, an eligible low-income person is:

(a) An individual, or an individual and that individual's spouse if they file a federal joint income tax return;

(b) [An individual who] Who is eligible for, and is granted, the credit provided in Title 26 U.S.C. Sec. 32; and

(c) [An individual who] Who properly files a federal income tax return as a Washington resident, and has been a resident of the state of Washington more than one hundred eighty days of the year for which the exemption is claimed.

(3) For remittances made in 2009 and 2010, the working families' tax exemption for the prior year is a retail sales tax exemption equal to the greater of five percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 in the most recent year for which data is available or twenty-five dollars. For 2011 and thereafter, the working families' tax exemption for the prior year is equal to the greater of ten percent of the credit granted as a result of Title 26 U.S.C. Sec. 32 in the most recent year for which data is available or fifty dollars.

(4) For any fiscal period, the working families' tax exemption authorized under this section shall be approved by the legislature in the state omnibus appropriations act before persons may claim the exemption during the fiscal period.

(5) The working families' tax exemption shall be administered as provided in this subsection.

(a) An eligible low-income person claiming an exemption under this section must pay the tax imposed under chapters 82.08, 82.12, and 82.14 RCW in the year for which the exemption is claimed. The eligible low-income person may then apply to the department for the remittance as calculated under subsection (3) of this section.

(b) Application shall be made to the department in a form and manner determined by the department, but the department must provide alternative filing methods for applicants who do not have access to electronic filing.

(c) Application for the exemption remittance under this section must be made in the year following the year for which the federal return was filed, but in no case may any remittance be provided for any period before January 1, 2008. The department may use the best available data to process the exemption remittance. The department shall begin accepting applications October 1, 2009.

(d) The department shall review the application and determine eligibility for the working families' tax exemption based on information provided by the applicant and through audit and other administrative records, including, when it deems it necessary, verification through internal revenue service data.

(e) The department shall remit the exempted amounts to eligible low-income persons who submitted applications. Remittances may be made by electronic funds transfer or other means.

(f) The department may, in conjunction with other agencies or organizations, design and implement a public information campaign to inform potentially eligible persons of the existence of and requirements for this exemption.

(g) The department may contact persons who appear to be eligible low-income persons as a result of information received from the internal revenue service under such conditions and requirements as the internal revenue service may by law require.

(6) The provisions of chapter 82.32 RCW apply to the exemption in this section.

(7) The department may adopt rules necessary to implement this section.

(8) The department shall limit its costs for the exemption program to the initial start-up costs to implement the program. The state omnibus appropriations act shall specify funding to be used for the ongoing administrative costs of the program. These ongoing administrative costs include, but are not limited to, costs for: The processing of internet and mail applications, verification of application claims, compliance and collections, additional full-time employees at the department's call center, processing warrants, updating printed materials and web information, media advertising, and support and maintenance of computer systems. [2008 c 325 § 2.]

**Findings—Intent—2008 c 325:** "The legislature finds that many Washington families do not earn enough annually to keep pace with increasing health care, child care, and work-related expenses. Because the state relies so heavily on sales tax revenue, families in Washington with the lowest incomes pay proportionately four or five times as much in state taxes as the most affluent households. The legislature finds that higher-income families are able to recover some of the sales and use taxes that they pay to support state and local government through the federal income tax deduction for sales and use taxes, but that lower-income people, who are not able to itemize, receive no benefit. Therefore, it is the intent of the legislature to provide a sales and use tax exemption, in the form of a remittance, to lower-income working families in Washington, and to use the federal earned income tax credit as a proxy for the amount of sales tax paid." [2008 c 325 § 1.]

**82.08.02061 Exemptions—Working families—Report to legislature.** The department must assess the implementation of the working families' tax exemption in a report to the legislature to identify administrative or resource issues that require legislative action. The department must submit the report to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2012. [2008 c 325 § 3.]

**Findings—Intent—2008 c 325:** See note following RCW 82.08.0206.

**82.08.0251 Exemptions—Casual and isolated sales.** The tax levied by RCW 82.08.020 shall not apply to casual and isolated sales of property or service, unless made by a person who is engaged in a business activity taxable under chapters 82.04 or 82.16 RCW: PROVIDED, That the exemption provided by this section shall not be construed as providing any exemption from the tax imposed by chapter 82.12 RCW. [1980 c 37 § 19. Formerly RCW 82.08.030(1).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0252 Exemptions—Sales by persons taxable under chapter 82.16 RCW.** The tax levied by RCW 82.08.020 shall not apply to sales made by persons in the course of business activities with respect to which tax liability is specifically imposed under chapter 82.16 RCW, when

the gross proceeds from such sales must be included in the measure of the tax imposed under said chapter. [1980 c 37 § 20. Formerly RCW 82.08.030(2).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02525 Exemptions—Sale of copied public records by state and local agencies.** The tax levied by RCW 82.08.020 shall not apply to the sale of public records by state and local agencies, as the terms are defined in RCW 42.17.020, that are copied under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [1996 c 63 § 1.]

**Effective date—1996 c 63:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1996." [1996 c 63 § 3.]

**82.08.0253 Exemptions—Sale and distribution of newspapers.** The tax levied by RCW 82.08.020 shall not apply to the distribution and newsstand sale of newspapers. [1980 c 37 § 21. Formerly RCW 82.08.030(3).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02535 Exemptions—Sales and distribution of magazines or periodicals by subscription for fund-raising.** The tax levied by RCW 82.08.020 shall not apply to the sales and distribution of magazines or periodicals by subscription for the purposes of fund-raising by (1) educational institutions as defined in RCW 82.04.170, or (2) nonprofit organizations engaged in activities primarily for the benefit of boys and girls nineteen years and younger. [1995 2nd sp.s. c 8 § 1.]

**Effective date—1995 2nd sp.s. c 8:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 8 § 2.]

**82.08.02537 Exemptions—Sales of academic transcripts.** The tax levied by RCW 82.08.020 shall not apply to sales of academic transcripts by educational institutions. [1996 c 272 § 2.]

**Effective date—1996 c 272:** See note following RCW 82.04.399.

**82.08.0254 Exemptions—Nontaxable sales.** The tax levied by RCW 82.08.020 shall not apply to sales which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1980 c 37 § 22. Formerly RCW 82.08.030(4).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0255 Exemptions—Sales of motor vehicle and special fuel—Conditions—Credit or refund of special fuel used outside this state in interstate commerce.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicle and special fuel if:

(a) The fuel is purchased for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW.

(2) Any person who has paid the tax imposed by RCW 82.08.020 on the sale of special fuel delivered in this state shall be entitled to a credit or refund of such tax with respect to fuel subsequently established to have been actually transported and used outside this state by persons engaged in interstate commerce. The tax shall be claimed as a credit or refunded through the tax reports required under RCW 82.38.150. [2007 c 223 § 9; 2005 c 443 § 5; 1998 c 176 § 4. Prior: 1983 1st ex.s. c 35 § 2; 1983 c 108 § 1; 1980 c 147 § 1; 1980 c 37 § 23. Formerly RCW 82.08.030(5).]

**Effective date—2007 c 223:** See note following RCW 36.57A.220.

**Finding—Intent—2005 c 443:** "The legislature finds that a number of tax exemptions, deductions, credits, and other preferences have outlived their usefulness. State records show no taxpayers have claimed relief under these tax preferences in recent years. The intent of this act is to update and simplify the tax statutes by repealing these outdated tax preferences." [2005 c 443 § 1.]

**Effective date—2005 c 443:** "This act takes effect July 1, 2006." [2005 c 443 § 8.]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Intent—1983 1st ex.s. c 35:** "It is the intent of the legislature that special fuel purchased in Washington upon which the special fuel tax has been paid, regardless of whether or not the tax is subsequently refunded or credited in whole or in part, should not be subject to the sales and use tax if the special fuel is transported and used outside the state by persons engaged in interstate commerce." [1983 1st ex.s. c 35 § 1.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

*Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers: RCW 82.08.865.*

**82.08.0256 Exemptions—Sale of the operating property of a public utility to the state or a political subdivision.** The tax levied by RCW 82.08.020 shall not apply to sales (including transfers of title through decree of appropriation) heretofore or hereafter made of the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, to the state or a political subdivision thereof for use in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10) or (11). [1980 c 37 § 24. Formerly RCW 82.08.030(6).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02565 Exemptions—Sales of machinery and equipment for manufacturing, research and development, or a testing operation—Labor and services for installation—Exemption certificate—Rules.** (1) The tax levied by RCW 82.08.020 shall not apply to sales to a manu-

facturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to sales to a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment, but only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department by rule. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02565:

(a) "Machinery and equipment" means industrial fixtures, devices, and support facilities, and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts. "Machinery and equipment" includes pollution control equipment installed and used in a manufacturing operation, testing operation, or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation, testing operation, or research and development operation.

(b) "Machinery and equipment" does not include:

(i) Hand-powered tools;  
(ii) Property with a useful life of less than one year;  
(iii) Buildings, other than machinery and equipment that is permanently affixed to or becomes a physical part of a building; and

(iv) Building fixtures that are not integral to the manufacturing operation, testing operation, or research and development operation that are permanently affixed to and become a physical part of a building, such as utility systems for heating, ventilation, air conditioning, communications, plumbing, or electrical.

(c) Machinery and equipment is "used directly" in a manufacturing operation, testing operation, or research and development operation if the machinery and equipment:

(i) Acts upon or interacts with an item of tangible personal property;

(ii) Conveys, transports, handles, or temporarily stores an item of tangible personal property at the manufacturing site or testing site;

(iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property at the site or away from the site;

(iv) Provides physical support for or access to tangible personal property;

(v) Produces power for, or lubricates machinery and equipment;

(vi) Produces another item of tangible personal property for use in the manufacturing operation, testing operation, or research and development operation;

(vii) Places tangible personal property in the container, package, or wrapping in which the tangible personal property is normally sold or transported; or

(viii) Is integral to research and development as defined in RCW 82.63.010.

(d) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. A manufacturing operation begins at the point where the raw materials enter the manufacturing site

and ends at the point where the processed material leaves the manufacturing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

(g) "Testing" means activities performed to establish or determine the properties, qualities, and limitations of tangible personal property.

(h) "Testing operation" means the testing of tangible personal property for a manufacturer or processor for hire. A testing operation begins at the point where the tangible personal property enters the testing site and ends at the point where the tangible personal property leaves the testing site. The term also includes that portion of a cogeneration project that is used to generate power for consumption within the site of which the cogeneration project is an integral part. The term does not include the production of electricity by a light and power business as defined in RCW 82.16.010 or the preparation of food products on the premises of a person selling food products at retail. [1999 c 211 § 5; 1999 c 211 § 3; 1998 c 330 § 1. Prior: 1996 c 247 § 2; 1996 c 173 § 3; 1995 1st sp.s. c 3 § 2.]

**Finding—Intent—1999 c 211:** "The legislature finds that the application of the manufacturer's machinery and equipment sales and use tax exemption has, in some instances, been difficult and confusing for taxpayers, and included difficult reporting and recordkeeping requirements. In this act, it is the intent of the legislature to make clear its intent for the application of the exemption, and to extend the exemption to the purchase and use of machinery and equipment for businesses that perform testing of manufactured goods for manufacturers or processors for hire." [1999 c 211 § 1.]

**Intent—1999 c 211 §§ 2 and 3:** See note following RCW 82.04.120.

**Effective date—1999 c 211 §§ 1-4:** See note following RCW 82.04.120.

**Findings—Intent—1996 c 247:** See note following RCW 82.08.02566.

**Findings—Intent—1996 c 173:** "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to allow a sales tax exemption for labor and service charges for repairing, cleaning, altering, or improving machinery and equipment, and a sales and use tax exemption for repair and replacement parts with a useful life of one year or more." [1996 c 173 § 1.]

**Findings—1995 1st sp.s. c 3:** "The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in our state's private sector;

(2) The state's private sector must be encouraged to commit to contin-

uous improvement of process, products, and services and to deliver high-quality, high-value products through technological innovations and high-performance work organizations;

(3) The state's opportunities for increased economic dealings with other states and nations of the world are dependent on supporting and attracting a diverse, stable, and competitive economic base of private sector employers;

(4) The state's current policy of applying its sales and use taxes to machinery, equipment, and installation labor used in manufacturing, research and development, and other activities has placed our state's private sector at a competitive disadvantage with other states and serves as a significant disincentive to the continuous improvement of products, technology, and modernization necessary for the preservation, stabilization, and expansion of employment and to ensure a stable economy; and

(5) It is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses, that the state of Washington provide tax incentives to entities making a commitment to sites and operations in this state." [1995 1st sp.s. c 3 § 1.]

**Effective date—1995 1st sp.s. c 3:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 3 § 16.]

**82.08.02566 Exemptions—Sales of tangible personal property incorporated in prototype for parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or to sales of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply to sales to any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.12.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 208; 1997 c 302 § 1; 1996 c 247 § 4.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—1997 c 302:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 302 § 3.]

**Findings—Intent—1996 c 247:** "The legislature finds that the health, safety, and welfare of the people of the state of Washington are heavily dependent upon the continued encouragement, development, and expansion of opportunities for family wage employment in the state's manufacturing industries.

The legislature also finds that sales and use tax exemptions for manufacturing machinery and equipment enacted by the 1995 legislature have improved Washington's ability to compete with other states for manufacturing investment, but that additional incentives for manufacturers need to be adopted to solidify and enhance the state's competitive position.

The legislature intends to accomplish this by extending the current manufacturing machinery and equipment exemptions to include machinery and equipment used for research and development with potential manufacturing applications." [1996 c 247 § 1.]

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**82.08.02567 Exemptions—Sales related to machinery and equipment used in generating electricity. (Expires June 30, 2009.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using fuel cells, wind, sun, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred watts of electricity and provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02567:

(a) "Landfill gas" means biomass fuel of the type qualified for federal tax credits under 26 U.S.C. Sec. 29 collected from a landfill. "Landfill" means a landfill as defined under RCW 70.95.030;

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using fuel cells, wind, sun, or landfill gas as the principal source of power;

(c) "Machinery and equipment" does not include: (i) Hand-powered tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

(d) Machinery and equipment is "used directly" in generating electricity with fuel cells or by wind energy, solar energy, or landfill gas power if it provides any part of the process that captures the energy of the wind, sun, or landfill gas, converts that energy to electricity, and stores, transforms, or transmits that electricity for entry into or operation in parallel with electric transmission and distribution systems;

(e) "Fuel cell" means an electrochemical reaction that generates electricity by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(3) This section expires June 30, 2009. [2004 c 152 § 1; 2001 c 213 § 1; 1999 c 358 § 4; 1998 c 309 § 1; 1996 c 166 § 1.]

**Effective date—2001 c 213:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 213 § 3.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Effective date—1998 c 309:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 3, 1998]." [1998 c 309 § 3.]

**Effective date—1996 c 166:** "This act shall take effect July 1, 1996." [1996 c 166 § 3.]

**82.08.02568 Exemptions—Sales of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.** The tax levied by RCW 82.08.020 shall not apply to sales of

carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 1.]

**Effective date—1996 c 170:** "This act shall take effect July 1, 1996." [1996 c 170 § 3.]

**82.08.02569 Exemptions—Sales of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.** The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property to a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 1.]

**Effective date—1996 c 113:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 113 § 3.]

**82.08.0257 Exemptions—Auction sales of tangible personal property used in farming.** The tax levied by RCW 82.08.020 shall not apply to auction sales made by or through auctioneers of tangible personal property (including household goods) which have been used in conducting a farm activity, when the seller thereof is a farmer and the sale is held or conducted upon a farm and not otherwise. [1980 c 37 § 25. Formerly RCW 82.08.030(7).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02573 Exemptions—Sales by a nonprofit organization for fund-raising activities.** The tax levied by RCW 82.08.020 does not apply to a sale made by a nonprofit organization if the gross income from the sale is exempt under RCW 82.04.3651. [1998 c 336 § 3.]

**Findings—1998 c 336:** See note following RCW 82.04.3651.

**82.08.0258 Exemptions—Sales to federal corporations providing aid and relief.** The tax levied by RCW 82.08.020 shall not apply to sales to corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same. [1980 c 37 § 26. Formerly RCW 82.08.030(8).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0259 Exemptions—Sales of livestock.** The tax levied by RCW 82.08.020 shall not apply to sales of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm. [2001 c 118 § 4; 1980 c 37 § 27. Formerly RCW 82.08.030(9).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.026 Exemptions—Sales of natural or manufactured gas.** The tax levied by RCW 82.08.020 shall not apply to sales of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 8; 1989 c 384 § 4.]

**Intent—Effective date—1989 c 384:** See notes following RCW 82.12.022.

**82.08.0261 Exemptions—Sales of personal property for use connected with private or common carriers in interstate or foreign commerce.** The tax levied by RCW 82.08.020 shall not apply to sales of tangible personal property (other than the type referred to in RCW 82.08.0262) for use by the purchaser in connection with the business of operating as a private or common carrier by air, rail, or water in interstate or foreign commerce: PROVIDED, That any actual use of such property in this state shall, at the time of such actual use, be subject to the tax imposed by chapter 82.12 RCW. [1980 c 37 § 28. Formerly RCW 82.08.030(10).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0262 Exemptions—Sales of airplanes, locomotives, railroad cars, or watercraft for use in interstate or foreign commerce or outside the territorial waters of the state or airplanes sold to United States government—Components thereof and of motor vehicles or trailers used for constructing, repairing, cleaning, etc.—Labor and services for constructing, repairing, cleaning, etc.** The tax levied by RCW 82.08.020 shall not apply to sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state or airplanes sold to the United States government; also sales of tangible personal property which becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving. [1998 c 311 § 5; 1994 c 43 § 1; 1980 c 37 § 29. Formerly RCW 82.08.030(11).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0263 Exemptions—Sales of motor vehicles and trailers for use in transporting persons or property in interstate or foreign commerce.** The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: PROVIDED, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency. [1998 c 311 § 6; 1995 c 63 § 1; 1980 c 37 § 30. Formerly RCW 82.08.030(12).]

**Effective date—1995 c 63:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 63 § 3.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0264 Exemptions—Sales of motor vehicles, trailers, or campers to nonresidents for use outside the state.** (1) The tax levied by RCW 82.08.020 does not apply to sales of motor vehicles, trailers, or campers to nonresidents of this state for use outside of this state, even when delivery is made within this state, but only if:

(a) The motor vehicles, trailers, or campers will be taken from the point of delivery in this state directly to a point outside this state under the authority of a vehicle trip permit issued by the department of licensing pursuant to the provisions of RCW 46.16.160, or any agency of another state that has authority to issue similar permits; or

(b) The motor vehicles, trailers, or campers will be registered and licensed immediately under the laws of the state of the buyer's residence, will not be used in this state more than three months, and will not be required to be registered and licensed under the laws of this state.

(2) For the purposes of this section, the seller of a motor vehicle, trailer, or camper is not required to collect and shall not be found liable for the tax levied by RCW 82.08.020 on the sale if the tax is not collected and the seller retains the following documents, which must be made available upon request of the department:

(a) A copy of the buyer's currently valid out-of-state driver's license or other official picture identification issued by a jurisdiction other than Washington state;

(b) A copy of any one of the following documents, on which there is an out-of-state address for the buyer:

(i) A current residential rental agreement;

(ii) A property tax statement from the current or previous year;

(iii) A utility bill, dated within the previous two months;

(iv) A state income tax return from the previous year;

(v) A voter registration card;

(vi) A current credit report; or

(vii) Any other document determined by the department to be acceptable;

(c) A witnessed declaration in the form designated by the department, signed by the buyer, and stating that the buyer's purchase meets the requirements of this section; and

(d) A seller's certification, in the form designated by the department, that either a vehicle trip permit was issued or the vehicle was immediately registered and licensed in another state as required under subsection (1) of this section.

(3) If the department has information indicating the buyer is a Washington resident, or if the addresses for the buyer shown on the documentation provided under subsection (2) of this section are not the same, the department may contact the buyer to verify the buyer's eligibility for the exemption provided under this section. This subsection does not prevent the department from contacting a buyer as a result of information obtained from a source other than the seller's records.

(4)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently

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procured identification to a seller, in order to purchase a motor vehicle, trailer, or camper without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(5)(a) Any seller that makes sales without collecting the tax to a person who does not provide the documents required under subsection (2) of this section, and any seller who fails to retain the documents required under subsection (2) of this section for the period prescribed by RCW 82.32.070, is personally liable for the amount of tax due.

(b) Any seller that makes sales without collecting the retail sales tax under this section and who has actual knowledge that the buyer's documentation required by subsection (2) of this section is fraudulent is guilty of a misdemeanor and, in addition, is liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the buyer and the seller are liable for any penalties and interest assessable under chapter 82.32 RCW.

(6) For purposes of this section, the term "buyer" does not include cosigners or financial guarantors, unless those parties are listed as a registered owner on the vehicle title. [2007 c 135 § 1; 1980 c 37 § 31. Formerly RCW 82.08.030(13).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0265 Exemptions—Sales to nonresidents of tangible personal property which becomes a component of property of the nonresident by installing, repairing, etc.—Labor and services for installing, repairing, etc.** The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of tangible personal property which becomes a component part of any machinery or other article of personal property belonging to such nonresident, in the course of installing, repairing, cleaning, altering, or improving the same and also sales of or charges made for labor and services rendered in respect to any installing, repairing, cleaning, altering, or improving, of personal property of or for a nonresident, but this section shall apply only when the seller agrees to, and does, deliver the property to the purchaser at a point outside this state, or delivers the property to a common or bona fide private carrier consigned to the purchaser at a point outside this state. [1980 c 37 § 32. Formerly RCW 82.08.030(14).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0266 Exemptions—Sales of watercraft to nonresidents for use outside the state.** The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of watercraft requiring coast guard registration or registration by the state of principal use according to the Federal Boating Act of 1958, even though delivery be made within this state, but only when (1) the watercraft will not be used within this state for more than

forty-five days and (2) an appropriate exemption certificate supported by identification ascertaining residence as required by the department of revenue and signed by the purchaser or his agent establishing the fact that the purchaser is a nonresident and that the watercraft is for use outside of this state, a copy of which shall be retained by the dealer. [1999 c 358 § 5; 1980 c 37 § 33. Formerly RCW 82.08.030(15).]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02665 Exemptions—Sales of watercraft, vessels to residents of foreign countries.** The tax levied by RCW 82.08.020 does not apply to sales of vessels to residents of foreign countries for use outside of this state, even though delivery is made within this state, but only if (1) the vessel will not be used within this state for more than forty-five days and (2) an appropriate exemption certificate supported by identification as required by the department of revenue and signed by the purchaser or the purchaser's agent establishes the fact that the purchaser is a resident of a foreign country and that the vessel is for use outside of this state. A copy of the exemption certificate is to be retained by the dealer.

As used in this section, "vessel" means every watercraft used or capable of being used as a means of transportation on the water, other than a seaplane. [1999 c 358 § 6; 1993 c 119 § 1.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**82.08.0267 Exemptions—Sales of poultry for producing poultry and poultry products for sale.** The tax levied by RCW 82.08.020 shall not apply to sales of poultry for use in the production for sale of poultry or poultry products. [1980 c 37 § 34. Formerly RCW 82.08.030(16).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0268 Exemptions—Sales of machinery and implements, and related parts and labor, for farming to nonresidents for use outside the state.** The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state for use outside of this state of:

- (1) Machinery and implements for use in conducting a farming activity;
- (2) Parts for machinery and implements for use in conducting a farming activity; and
- (3) Labor and services for the repair of machinery, implements, and parts for use in conducting a farming activity,

when such machinery, implements, and parts will be transported immediately outside the state. As proof of exemption, an affidavit or certification in such form as the department of revenue shall require shall be retained as a business record of the seller. [1998 c 167 § 1; 1980 c 37 § 35. Formerly RCW 82.08.030(17).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0269 Exemptions—Sales for use in states, territories, and possessions of the United States which are not contiguous to any other state.** The tax levied by RCW

82.08.020 shall not apply to sales for use in states, territories and possessions of the United States which are not contiguous to any other state, but only when, as a necessary incident to the contract of sale, the seller delivers the subject matter of the sale to the purchaser or his designated agent at the usual receiving terminal of the carrier selected to transport the goods, under such circumstances that it is reasonably certain that the goods will be transported directly to a destination in such noncontiguous states, territories and possessions. [1980 c 37 § 36. Formerly RCW 82.08.030(18).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0271 Exemptions—Sales to municipal corporations, the state, and political subdivisions of tangible personal property, labor and services on watershed protection and flood prevention contracts.** The tax levied by RCW 82.08.020 shall not apply to sales to municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services rendered in respect to contracts for watershed protection and/or flood prevention. This exemption shall be limited to that portion of the selling price which is reimbursed by the United States government according to the provisions of the Watershed Protection and Flood Prevention Act, Public Laws 566, as amended. [1980 c 37 § 37. Formerly RCW 82.08.030(19).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0272 Exemptions—Sales of semen for artificial insemination of livestock.** The tax levied by RCW 82.08.020 shall not apply to sales of semen for use in the artificial insemination of livestock. [1980 c 37 § 38. Formerly RCW 82.08.030(20).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0273 Exemptions—Sales to nonresidents of tangible personal property for use outside the state—Proof of nonresident status—Penalties.** (1) The tax levied by RCW 82.08.020 shall not apply to sales to nonresidents of this state of tangible personal property for use outside this state when the purchaser (a) is a bona fide resident of a state or possession or Province of Canada other than the state of Washington and such state, possession, or Province of Canada does not impose a retail sales tax or use tax of three percent or more or, if imposing such a tax, permits Washington residents exemption from otherwise taxable sales by reason of their residence, and (b) agrees, when requested, to grant the department of revenue access to such records and other forms of verification at his or her place of residence to assure that such purchases are not first used substantially in the state of Washington.

(2) Notwithstanding anything to the contrary in this chapter, if parts or other tangible personal property are installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a separate charge for the tangible personal property, the tax levied by RCW 82.08.020 does not apply to the separately stated charge to a nonresident purchaser for the tangible personal property but only if the separately stated charge does not exceed either the seller's current

publicly stated retail price for the tangible personal property or, if no separately stated retail price is available, the seller's cost for the tangible personal property. However, the exemption provided by this section does not apply if tangible personal property is installed by the seller during the course of repairing, cleaning, altering, or improving motor vehicles, trailers, or campers and the seller makes a single nonitemized charge for providing the tangible personal property and service. All of the requirements in subsections (1) and (3) through (6) of this section apply to this subsection.

(3)(a) Any person claiming exemption from retail sales tax under the provisions of this section must display proof of his or her current nonresident status as provided in this section.

(b) Acceptable proof of a nonresident person's status shall include one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card which has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (3)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(4) Nothing in this section requires the vendor to make tax exempt retail sales to nonresidents. A vendor may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the vendor chooses to make a sale to a nonresident without collecting the sales tax, the vendor shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (3)(b) of this section, and maintain records for each nontaxable sale which shall show the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(5)(a) Any person making fraudulent statements, which includes the offer of fraudulent identification or fraudulently procured identification to a vendor, in order to purchase goods without paying retail sales tax is guilty of perjury under chapter 9A.72 RCW.

(b) Any person making tax exempt purchases under this section by displaying proof of identification not his or her own, or counterfeit identification, with intent to violate the provisions of this section, is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one hundred dollars or the tax due on such purchases.

(6)(a) Any vendor who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any vendor who fails to maintain records of sales to nonresidents as provided in this section, shall be personally liable for the amount of tax due.

(b) Any vendor who makes sales without collecting the retail sales tax under this section and who has actual knowledge that the purchaser's proof of identification establishing out-of-state residency is fraudulent is guilty of a misdemeanor and, in addition, shall be liable for the tax and subject to a penalty equal to the greater of one thousand dollars or the tax due on such sales. In addition, both the purchaser and the vendor shall be liable for any penalties and interest assessable

under chapter 82.32 RCW. [2007 c 135 § 2; 2003 c 53 § 399; 1993 c 444 § 1; 1988 c 96 § 1; 1982 1st ex.s. c 5 § 1; 1980 c 37 § 39. Formerly RCW 82.08.030(21).]

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

**Effective date—1988 c 96:** "This act shall take effect July 1, 1989." [1988 c 96 § 2.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0274 Exemptions—Sales of form lumber to person engaged in constructing, repairing, etc., structures for consumers.** The tax levied by RCW 82.08.020 shall not apply to sales of form lumber to any person engaged in the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: PROVIDED, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 40. Formerly RCW 82.08.030(22).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02745 Exemptions—Charges for labor and services or sales of tangible personal property related to agricultural employee housing—Exemption certificate—Rules.** (1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered by any person in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures used as agricultural employee housing, or to sales of tangible personal property that becomes an ingredient or component of the buildings or other structures during the course of the constructing, repairing, decorating, or improving the buildings or other structures. The exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department by rule.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) For purposes of this section and RCW 82.12.02685:

(a) "Agricultural employee" or "employee" has the same meaning as given in RCW 19.30.010;

(b) "Agricultural employer" or "employer" has the same meaning as given in RCW 19.30.010; and

(c) "Agricultural employee housing" means all facilities provided by an agricultural employer, housing authority, local government, state or federal agency, nonprofit community or neighborhood-based organization that is exempt from income tax under section 501(c) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)), or for-profit provider of housing for housing agricultural employees on a year-round or seasonal basis, including bathing, food handling, hand washing, laundry, and toilet facilities, single-family and multifamily dwelling units and dormitories, and includes labor camps under RCW 70.114A.110. "Agricultural employee housing" does not include housing regularly provided on a commercial basis to the general public. "Agricultural employee housing" does not include housing provided by a housing authority unless at least eighty percent of the occupants are agricultural employees whose adjusted income is less than fifty percent of median family income, adjusted for household size, for the county where the housing is provided. [2007 c 54 § 14; 1997 c 438 § 1; 1996 c 117 § 1.]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective date—1997 c 438:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 438 § 3.]

**Effective date—1996 c 117:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1996]." [1996 c 117 § 3.]

**82.08.0275 Exemptions—Sales of and labor and service charges for mining, sorting, crushing, etc., of sand, gravel, and rock from county or city quarry for public road purposes.** The tax levied by RCW 82.08.020 shall not apply to sales of, cost of, or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling of sand, gravel and rock when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to sales of, cost of, or charges made for such labor and services, if the sand, gravel, or rock is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 41. Formerly RCW 82.08.030(23).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0277 Exemptions—Sales of pollen.** The tax levied by RCW 82.08.020 shall not apply to sales of pollen. [1980 c 37 § 43. Formerly RCW 82.08.030(25).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0278 Exemptions—Sales between political subdivisions resulting from annexation or incorporation.** The tax levied by RCW 82.08.020 shall not apply to sales to one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 44. Formerly RCW 82.08.030(26).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0279 Exemptions—Renting or leasing of motor vehicles and trailers to a nonresident for use in the transportation of persons or property across state boundaries.** The tax levied by RCW 82.08.020 shall not apply to the renting or leasing of motor vehicles and trailers to a nonresident of this state for use exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and for purposes of this exemption the term "nonresident" shall apply to a renter or lessee who has one or more places of business in this state as well as in one or more other states but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained and operated from the renter's or lessee's place of business in another state. [1980 c 37 § 45. Formerly RCW 82.08.030(27).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.02795 Exemptions—Sales to free hospitals.** (1) The tax levied by RCW 82.08.020 shall not apply to sales to free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 1.]

**Effective date—1993 c 205:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 6, 1993]." [1993 c 205 § 3.]

**82.08.02805 Exemptions—Sales to qualifying blood, tissue, or blood and tissue banks.** (1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) For the purposes of this section, the following definitions apply:

(a) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) The definitions in RCW 82.04.324 apply to this section. [2004 c 82 § 2; 1995 2nd sp.s. c 9 § 4.]

**Effective date—1995 2nd sp.s. c 9:** See note following RCW 84.36.035.

**82.08.02806 Exemptions—Sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing.** The tax levied by RCW 82.08.020 shall not apply to sales of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 1.]

**Effective date—1996 c 141:** "This act shall take effect July 1, 1996." [1996 c 141 § 3.]

**82.08.02807 Exemptions—Sales to organ procurement organization.** The tax levied by RCW 82.08.020 shall not apply to the sales of medical supplies, chemicals, or materials to an organ procurement organization exempt under RCW 82.04.326. The definitions of medical supplies, chemicals, and materials in \*RCW 82.04.324 apply to this section. This exemption does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [2002 c 113 § 2.]

**\*Reviser's note:** RCW 82.04.324 was amended by 2004 c 82 § 1, deleting the definitions of "medical supplies," "chemicals," and "materials."

**Effective date—2002 c 113:** See note following RCW 82.04.326.

**82.08.0281 Exemptions—Sales of prescription drugs.**

(1) The tax levied by RCW 82.08.020 shall not apply to sales of drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(2) The tax levied by RCW 82.08.020 shall not apply to sales of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The tax levied by RCW 82.08.020 shall not apply to sales of drugs and devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(2008 Ed.)

(4) The definitions in this subsection apply throughout this section.

(a) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of this state to prescribe.

(b) "Drug" means a compound, substance, or preparation, and any component of a compound, substance, or preparation, other than food and food ingredients, dietary supplements, or alcoholic beverages:

(i) Recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; or

(ii) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

(iii) Intended to affect the structure or any function of the body.

(c) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug required by 21 C.F.R. Sec. 201.66, as amended or renumbered on January 1, 2003. The label includes:

(i) A "drug facts" panel; or

(ii) A statement of the "active ingredient(s)" with a list of those ingredients contained in the compound, substance, or preparation. [2004 c 153 § 108; 2003 c 168 § 403; 1993 sp.s. c 25 § 308; 1980 c 37 § 46. Formerly RCW 82.08.030(28).]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Finding—1993 sp.s. c 25:** "The legislature finds that prevention is a significant element in the reduction of health care costs. The legislature further finds that taxing some physician prescriptions and not others is unfair to patients. It is, therefore, the intent of the legislature to remove the taxes from prescriptions issued for family planning purposes." [1993 sp.s. c 25 § 307.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0282 Exemptions—Sales of returnable containers for beverages and foods.** The tax levied by RCW 82.08.020 shall not apply to sales of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 47. Formerly RCW 82.08.030(29).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0283 Exemptions—Certain medical items.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen

systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(3) The exemption in subsection (1) of this section shall not apply to sales of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) The definitions in this subsection apply throughout this section.

(a) "Prosthetic device" means a replacement, corrective, or supportive device, including repair and replacement parts for a prosthetic device, worn on or in the body to:

- (i) Artificially replace a missing portion of the body;
- (ii) Prevent or correct a physical deformity or malfunction; or
- (iii) Support a weak or deformed portion of the body.

(b) "Durable medical equipment" means equipment, including repair and replacement parts for durable medical equipment that:

- (i) Can withstand repeated use;
- (ii) Is primarily and customarily used to serve a medical purpose;
- (iii) Generally is not useful to a person in the absence of illness or injury; and
- (iv) Is not worn in or on the body.

(c) "Mobility enhancing equipment" means equipment, including repair and replacement parts for mobility enhancing equipment that:

- (i) Is primarily and customarily used to provide or increase the ability to move from one place to another and that is appropriate for use either in a home or a motor vehicle;
- (ii) Is not generally used by persons with normal mobility; and
- (iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.

(d) The terms "durable medical equipment" and "mobility enhancing equipment" are mutually exclusive. [2007 c 6 § 1101; 2004 c 153 § 101; 2003 c 168 § 409; 2001 c 75 § 1; 1998 c 168 § 2; 1997 c 224 § 1; 1996 c 162 § 1; 1991 c 250 § 2; 1986 c 255 § 1; 1980 c 86 § 1; 1980 c 37 § 48. Formerly RCW 82.08.030(30).]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—2001 c 75:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 2001]." [2001 c 75 § 3.]

**Effective date—1998 c 168:** See note following RCW 82.04.120.

**Effective date—1997 c 224:** "This act takes effect October 1, 1998." [1997 c 224 § 3.]

**Effective date—1996 c 162:** "This act shall take effect July 1, 1996." [1996 c 162 § 3.]

**Finding—Intent—1991 c 250:** "(1) The legislature finds:  
(a) The existing state policy is to exempt medical oxygen from sales and use tax.

(b) The technology for supplying medical oxygen has changed substantially in recent years. Many consumers of medical oxygen purchase or rent equipment that supplies oxygen rather than purchasing oxygen in gaseous form.

(2) The intent of this act is to bring sales and rental of individual oxygen systems within the existing exemption for medical oxygen, without expanding the essence of the original policy decision that medical oxygen should be exempt from sales and use tax." [1991 c 250 § 1.]

**Effective date—1986 c 255:** "This act shall take effect July 1, 1986." [1986 c 255 § 3.]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0285 Exemptions—Sales of ferry vessels to the state or local governmental units—Components thereof—Labor and service charges.** The tax levied by RCW 82.08.020 shall not apply to sales of ferry vessels to the state of Washington or to a local governmental unit in the state of Washington for use in transporting pedestrians, vehicles, and goods within or outside the territorial waters of the state; also sales of tangible personal property which becomes a component part of such ferry vessels; also sales of or charges made for labor and services rendered in respect to constructing or improving such ferry vessels. [1980 c 37 § 50. Formerly RCW 82.08.030(32).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.08.0287 Exemptions—Sales of passenger motor vehicles as ride-sharing vehicles.** The tax imposed by this chapter shall not apply to sales of passenger motor vehicles which are to be used for commuter ride sharing or ride sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning from the date of purchase.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their

commute trip reduction program. [2001 c 320 § 4; 1996 c 244 § 4; 1995 c 274 § 2; 1993 c 488 § 2; 1980 c 166 § 1.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Finding—1993 c 488:** "The legislature finds that ride sharing and vanpools are the fastest growing transportation choice because of their flexibility and cost-effectiveness. Ride sharing and vanpools represent an effective means for local jurisdictions, transit agencies, and the private sector to assist in addressing the requirements of the Commute Trip Reduction Act, the Growth Management Act, the Americans with Disabilities Act, and the Clean Air Act." [1993 c 488 § 1.]

**Annual recertification rule—Report—1993 c 488:** "The department shall adopt by rule a process requiring annual recertification upon renewal for vehicles registered under RCW 46.16.023 to discourage abuse of tax exemptions under RCW 82.08.0287, 82.12.0282, and 82.44.015. The department of licensing in consultation with the department of transportation shall submit a report to the legislative transportation committee and the house and senate standing committees on transportation by July 1, 1996, assessing the effectiveness of the department of licensing at limiting tax exemptions to bona fide ride-sharing vehicles." [1993 c 488 § 6.]

**Severability—1980 c 166:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 166 § 4.]

*Ride-sharing vehicles—Special plates: RCW 46.16.023.*

**82.08.02875 Exemptions—Vehicle parking charges subject to tax at stadium and exhibition center.** The tax levied by RCW 82.08.020 does not apply to vehicle parking charges that are subject to tax under RCW 36.38.040. [1997 c 220 § 203 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**82.08.0288 Exemptions—Lease of certain irrigation equipment.** The tax levied by RCW 82.08.020 shall not apply to the lease of irrigation equipment if:

- (1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;
- (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;
- (3) The irrigation equipment is attached to the land in whole or in part; and
- (4) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [1983 1st ex.s. c 55 § 5.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.08.0289 Exemptions—Telephone, telecommunications, and ancillary services. (Contingency, see note following RCW 82.04.530.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of:

- (a) Local service;
  - (b) Coin-operated telephone service; and
  - (c) Mobile telecommunications services, including any toll service, provided to a customer whose place of primary use is outside this state.
- (2) The definitions in RCW 82.04.065, as well as the definitions in this subsection, apply to this section.

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(a) "Local service" means ancillary services and telecommunications service, as those terms are defined in RCW 82.04.065, other than toll service, provided to an individual subscribing to a residential class of telephone service.

(b) "Toll service" does not include customer access line charges for access to a toll calling network.

(c) "Coin-operated telephone service" means a telecommunications service paid for by inserting money into a telephone accepting direct deposits of money to operate. [2007 c 6 § 1006; 2007 c 6 § 1005; 2002 c 67 § 6; 1983 2nd ex.s. c 3 § 30.]

**Reviser's note:** This section was amended by 2007 c 6 § 1005 and by 2007 c 6 § 1006, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Contingent effective date—2007 c 6 §§ 1003, 1006, 1014, and 1018:** See note following RCW 82.04.065.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.08.0291 Exemptions—Sales of amusement and recreation services or personal services by nonprofit youth organization—Local government physical fitness classes.** The tax imposed by RCW 82.08.020 shall not apply to the sale of amusement and recreation services, or personal services specified in RCW 82.04.050(3)(g), by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization; nor shall the tax apply to physical fitness classes provided by a local government. [2000 c 103 § 8; 1994 c 85 § 1; 1981 c 74 § 2.]

**Effective date—1994 c 85:** "This act shall take effect July 1, 1994." [1994 c 85 § 2.]

**82.08.02915 Exemptions—Sales used by health or social welfare organizations for alternative housing for youth in crisis.** The tax levied by RCW 82.08.020 shall not apply to sales to health or social welfare organizations, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. [1998 c 183 § 1; 1997 c 386 § 56; 1995 c 346 § 1.]

**Effective date—1997 c 386 §§ 56, 57:** "Sections 56 and 57 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 386 § 71.]

**Effective date—1995 c 346:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 13, 1995]." [1995 c 346 § 4.]

**82.08.02917 Youth in crisis—Definition—Limited purpose.** For the purposes of RCW 82.08.02915 and 82.12.02915, "youth in crisis" means any youth under eighteen years of age who is either: Homeless; a runaway from the home of a parent, guardian, or legal custodian; abused; neglected; abandoned by a parent, guardian, or legal custo-

dian; or suffering from a substance abuse or mental disorder. [1995 c 346 § 3.]

**Effective date—1995 c 346:** See note following RCW 82.08.02915.

**82.08.0293 Exemptions—Sales of food and food ingredients.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of food and food ingredients. "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include:

(a) "Alcoholic beverages," which means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume; and

(b) "Tobacco," which means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements.

(a) "Prepared food" means:

(i) Food sold in a heated state or heated by the seller;

(ii) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food; or

(iii) Two or more food ingredients mixed or combined by the seller for sale as a single item, except:

(A) Food that is only cut, repackaged, or pasteurized by the seller; or

(B) Raw eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the federal food and drug administration in chapter 3, part 401.11 of The Food Code, published by the food and drug administration, as amended or renumbered as of January 1, 2003, so as to prevent foodborne illness.

(b) "Prepared food" does not include the following food or food ingredients, if the food or food ingredients are sold without eating utensils provided by the seller:

(i) Food sold by a seller whose proper primary North American industry classification system (NAICS) classification is manufacturing in sector 311, except subsector 3118 (bakeries), as provided in the "North American industry classification system—United States, 2002";

(ii) Food sold in an unheated state by weight or volume as a single item; or

(iii) Bakery items. The term "bakery items" includes bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, or tortillas.

(c) "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain: Milk or milk products; soy, rice, or similar milk substitutes; or greater than fifty percent of vegetable or fruit juice by volume.

(d) "Dietary supplement" means any product, other than tobacco, intended to supplement the diet that:

(i) Contains one or more of the following dietary ingredients:

(A) A vitamin;

(B) A mineral;

(C) An herb or other botanical;

(D) An amino acid;

(E) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or

(F) A concentrate, metabolite, constituent, extract, or combination of any ingredient described in this subsection;

(ii) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and

(iii) Is required to be labeled as a dietary supplement, identifiable by the "supplement facts" box found on the label as required pursuant to 21 C.F.R. Sec. 101.36, as amended or renumbered as of January 1, 2003.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients that are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) That are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW.

(4)(a) Subsection (1) of this section notwithstanding, the retail sale of food and food ingredients is subject to sales tax under RCW 82.08.020 if the food and food ingredients are sold through a vending machine, and in this case the selling price for purposes of RCW 82.08.020 is fifty-seven percent of the gross receipts.

(b) This subsection (4) does not apply to hot prepared food and food ingredients, other than food and food ingredients which are heated after they have been dispensed from the vending machine.

(c) For tax collected under this subsection (4), the requirements that the tax be collected from the buyer and that the amount of tax be stated as a separate item are waived. [2004 c 153 § 201; 2003 c 168 § 301; 1988 c 103 § 1; 1986 c 182 § 1; 1985 c 104 § 1; 1982 1st ex.s. c 35 § 33.]

**Retroactive effective date—Effective date—2004 c 153:** "(1) Section 201 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and retroactively takes effect January 1, 2004.

(2) This act takes effect July 1, 2004, except section 201 of this act." [2004 c 153 § 501.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—1988 c 103:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1988." [1988 c 103 § 4.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.08.0294 Exemptions—Sales of feed for cultivating or raising fish for sale.** The tax levied by RCW 82.08.020 shall not apply to sales of feed to persons for use in the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 3.]

**82.08.0296 Exemptions—Sales of feed consumed by livestock at a public livestock market.** The tax levied by RCW 82.08.020 shall not apply to sales of feed consumed by livestock at a public livestock market. [1986 c 265 § 1.]

**82.08.0297 Exemptions—Sales of food purchased with food stamps.** The tax levied by RCW 82.08.020 shall not apply to sales of eligible foods which are purchased with coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically, notwithstanding anything to the contrary in RCW 82.08.0293.

When a purchase of eligible foods is made with a combination of coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically and cash, check, or similar payment, the cash, check, or similar payment shall be applied first to food products exempt from tax under RCW 82.08.0293 whenever possible.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the food stamp act of 1977. [1998 c 79 § 18; 1987 c 28 § 1.]

**Effective date—1987 c 28:** "This act shall take effect October 1, 1987." [1987 c 28 § 3.]

**82.08.0298 Exemptions—Sales of diesel fuel for use in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.** The tax levied by RCW 82.08.020 shall not apply to sales of diesel fuel for use in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 1.]

**82.08.0299 Exemptions—Emergency lodging for homeless persons—Conditions.** (1) The tax levied by RCW 82.08.020 shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 1.]

**Effective date—1988 c 61:** "This act shall take effect July 1, 1988." [1988 c 61 § 4.]

**82.08.031 Exemptions—Sales to artistic or cultural organizations of certain objects acquired for exhibition or presentation.** The tax levied by RCW 82.08.020 shall not apply to sales to artistic or cultural organizations of objects which are acquired for the purpose of exhibition or presentation to the general public if the objects are:

- (1) Objects of art;
- (2) Objects of cultural value;

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(3) Objects to be used in the creation of a work of art, other than tools; or

(4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 4.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.08.0311 Exemptions—Sales of materials and supplies used in packing horticultural products.** The tax levied by RCW 82.08.020 shall not apply to sales of materials and supplies directly used in the packing of fresh perishable horticultural products by any person entitled to a deduction under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 1.]

**82.08.0315 Exemptions—Rentals or sales related to motion picture or video productions—Exceptions—Certificate.** (1) As used in this section:

(a) "Production equipment" means the following when used in motion picture or video production or postproduction: Grip and lighting equipment, cameras, camera mounts including tripods, jib arms, steadicams, and other camera mounts, cranes, dollies, generators, helicopter mounts, helicopters rented for motion picture or video production, walkie talkies, vans, trucks, and other vehicles specifically equipped for motion picture or video production or used solely for production activities, wardrobe and makeup trailers, special effects and stunt equipment, video assists, videotape recorders, cables and connectors, telepromoters [teleprompters], sound recording equipment, and editorial equipment.

(b) "Production services" means motion picture and video processing, printing, editing, duplicating, animation, graphics, special effects, negative cutting, conversions to other formats or media, stock footage, sound mixing, rerecording, sound sweetening, sound looping, sound effects, and automatic dialog replacement.

(c) "Motion picture or video production business" means a person engaged in the production of motion pictures and video tapes for exhibition, sale, or for broadcast by a person other than the person producing the motion picture or video tape.

(2) The tax levied by RCW 82.08.020 does not apply to the rental of production equipment, or the sale of production services, to a motion picture or video production business.

(3) The exemption provided for in this section shall not apply to rental of production equipment, or the sale of production services, to a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050.

(4) In order to claim an exemption under this section, the purchaser must provide the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files. [1997 c 61 § 1; 1995 2nd sp.s. c 5 § 1.]

**Effective date—1995 2nd sp.s. c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 5 § 3.]

**82.08.0316 Exemptions—Sales of cigarettes by Indian retailers.** The tax levied by RCW 82.08.020 does not

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apply to sales of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465 or 43.06.466. [2008 c 228 § 3; 2005 c 11 § 3; 2001 c 235 § 4.]

**Authorization for agreement—Effective date—2008 c 228:** See notes following RCW 43.06.466.

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**82.08.032 Exemption—Sales, rental, or lease of used park model trailers.** The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used park model trailers, as defined in RCW 82.45.032;

(2) The renting or leasing of used park model trailers, as defined in RCW 82.45.032, when the rental agreement or lease exceeds thirty days in duration. [2001 c 282 § 3.]

**Intent—2001 c 282:** "It is the intent of the legislature to promote fairness in the application of tax. Therefore, for the purposes of excise tax, park model trailers will be taxed in the same manner as mobile homes." [2001 c 282 § 1.]

**Effective date—2001 c 282:** "This act takes effect August 1, 2001." [2001 c 282 § 5.]

**82.08.033 Exemptions—Sales of used mobile homes or rental or lease of mobile homes.** The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used mobile homes as defined in RCW 82.45.032.

(2) The renting or leasing of mobile homes if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of such mobile home is not conducted jointly with the provision of short-term lodging for transients. [1986 c 211 § 2; 1979 ex.s. c 266 § 3.]

**82.08.034 Exemptions—Sales of used floating homes or rental or lease of used floating homes.** The tax imposed by RCW 82.08.020 shall not apply to:

(1) Sales of used floating homes, as defined in RCW 82.45.032;

(2) The renting or leasing of used floating homes, as defined in RCW 82.45.032, when the rental agreement or lease exceeds thirty days in duration. [1984 c 192 § 3.]

**82.08.035 Exemption for pollution control facilities.** See chapter 82.34 RCW.

**82.08.036 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.** The tax levied by RCW 82.08.020 shall not apply to consideration: (1) Received as core deposits or credits in a retail or wholesale sale; or (2) received or collected upon the sale of a new replacement vehicle tire as a fee imposed under RCW 70.95.510. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [1989 c 431 § 45.]

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**Severability—Section captions not law—1989 c 431:** See RCW 70.95.901 and 70.95.902.

**82.08.037 Credits and refunds for bad debts.** (1) A seller is entitled to a credit or refund for sales taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

(a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;

(b) Expenses incurred in attempting to collect debt; and

(c) Repossessed property.

(3) If a credit or refund of sales tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its sales tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation. [2007 c 6 § 102; 2004 c 153 § 302; 2003 c 168 § 212; 1982 1st ex.s. c 35 § 35.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Bad debts—Intent—2004 c 153 §§ 302-305:** "For the purposes of sections 302 through 305 of this act, the legislature does not intend by any provision of this act relating to bad debts, and did not intend by any provision of chapter 168, Laws of 2003 relating to bad debts, to affect the holding of the supreme court of the state of Washington in *Puget Sound National Bank v. the Department of Revenue*, 123 Wn. 2d 284 (1994)." [2004 c 153 § 301.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.08.040 Consignee, factor, bailee, auctioneer deemed seller.** Every consignee, bailee, factor, or auctioneer authorized, engaged, or employed to sell or call for bids on tangible personal property belonging to another, and so selling or calling, shall be deemed the seller of such tangible personal property within the meaning of this chapter and all sales made by such persons are subject to its provisions even though the sale would have been exempt from tax hereunder had it been made directly by the owner of the property sold. Every consignee, bailee, factor, or auctioneer shall collect and remit the amount of tax due under this chapter with respect to sales made or called by him: PROVIDED, That if the owner of the property sold is engaged in the business of

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selling tangible personal property in this state the tax imposed under this chapter may be remitted by such owner under such rules and regulations as the department of revenue shall prescribe. [1975 1st ex.s. c 278 § 46; 1961 c 15 § 82.08.040. Prior: 1939 c 225 § 8; 1935 c 180 § 18; RRS § 8370-18.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.050 Buyer to pay, seller to collect tax—Statement of tax—Exception—Penalties—Contingent expiration of subsection.** (1) The tax hereby imposed shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale in accordance with the schedule of collections adopted by the department pursuant to the provisions of RCW 82.08.060.

(2) The tax required by this chapter, to be collected by the seller, shall be deemed to be held in trust by the seller until paid to the department, and any seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(3) In case any seller fails to collect the tax herein imposed or, having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of his or her own acts or the result of acts or conditions beyond his or her control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax, unless the seller has taken from the buyer a resale certificate under RCW 82.04.470, a copy of a direct pay permit issued under RCW 82.32.087, a direct mail form under RCW 82.32.730(5), or other information required under the streamlined sales and use tax agreement, or information required under rules adopted by the department.

(4) Sellers shall not be relieved from personal liability for the amount of the tax unless they maintain proper records of exempt transactions and provide them to the department when requested.

(5) Sellers are not relieved from personal liability for the amount of tax if they fraudulently fail to collect the tax or if they solicit purchasers to participate in an unlawful claim of exemption.

(6) Sellers are not relieved from personal liability for the amount of tax if they accept an exemption certificate from a purchaser claiming an entity-based exemption if:

(a) The subject of the transaction sought to be covered by the exemption certificate is actually received by the purchaser at a location operated by the seller in Washington; and

(b) Washington provides an exemption certificate that clearly and affirmatively indicates that the claimed exemption is not available in Washington. Graying out exemption reason types on a uniform form and posting it on the department's web site is a clear and affirmative indication that the grayed out exemptions are not available.

(7)(a) Sellers are relieved from personal liability for the amount of tax if they obtain a fully completed exemption certificate or capture the relevant data elements required under the streamlined sales and use tax agreement within ninety

days, or a longer period as may be provided by rule by the department, subsequent to the date of sale.

(b) If the seller has not obtained an exemption certificate or all relevant data elements required under the streamlined sales and use tax agreement within the period allowed subsequent to the date of sale, the seller may, within one hundred twenty days, or a longer period as may be provided by rule by the department, subsequent to a request for substantiation by the department, either prove that the transaction was not subject to tax by other means or obtain a fully completed exemption certificate from the purchaser, taken in good faith.

(c) Sellers are relieved from personal liability for the amount of tax if they obtain a blanket exemption certificate for a purchaser with which the seller has a recurring business relationship. The department may not request from a seller renewal of blanket certificates or updates of exemption certificate information or data elements if there is a recurring business relationship between the buyer and seller. For purposes of this subsection (7)(c), a "recurring business relationship" means at least one sale transaction within a period of twelve consecutive months.

(8) The amount of tax, until paid by the buyer to the seller or to the department, shall constitute a debt from the buyer to the seller and any seller who fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any buyer who refuses to pay any tax due under this chapter is guilty of a misdemeanor.

(9) The tax required by this chapter to be collected by the seller shall be stated separately from the selling price in any sales invoice or other instrument of sale. On all retail sales through vending machines, the tax need not be stated separately from the selling price or collected separately from the buyer. For purposes of determining the tax due from the buyer to the seller and from the seller to the department it shall be conclusively presumed that the selling price quoted in any price list, sales document, contract or other agreement between the parties does not include the tax imposed by this chapter, but if the seller advertises the price as including the tax or that the seller is paying the tax, the advertised price shall not be considered the selling price.

(10) Where a buyer has failed to pay to the seller the tax imposed by this chapter and the seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the buyer for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the buyer to pay the same to the seller, regardless of when the tax may be collected by the department; and all of the provisions of chapter 82.32 RCW, including those relative to interest and penalties, shall apply in addition; and, for the sole purpose of applying the various provisions of chapter 82.32 RCW, the twenty-fifth day of the month following the tax period in which the purchase was made shall be considered as the due date of the tax.

(11) Notwithstanding subsections (1) through (10) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

(i) The storage, dissemination, or display of advertising;

- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(12) Subsection (11) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(13) For purposes of this section, "seller" includes a certified service provider, as defined in RCW 82.32.020, acting as agent for the seller. [2007 c 6 § 1202. Prior: 2003 c 168 § 203; 2003 c 76 § 3; 2003 c 53 § 400; 2001 c 188 § 4; 1993 sp.s. c 25 § 704; 1992 c 206 § 2; 1986 c 36 § 1; 1985 c 38 § 1; 1971 ex.s. c 299 § 7; 1965 ex.s. c 173 § 15; 1961 c 15 § 82.08.050; prior: 1951 c 44 § 1; 1949 c 228 § 6; 1941 c 71 § 3; 1939 c 225 § 11; 1937 c 227 § 7; 1935 c 180 § 21; Rem. Supp. 1949 § 8370-21.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Intent—2003 c 76:** See note following RCW 82.04.424.

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

**Finding—Intent—Effective date—2001 c 188:** See notes following RCW 82.32.087.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

*Project on exemption reporting requirements: RCW 82.32.440.*

**82.08.054 Computation of tax due.** Sellers shall compute the tax due under this chapter and chapters 82.12 and 82.14 RCW by carrying the computation to the third decimal place and rounding to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. Sellers may elect to compute the tax due on a transaction on an item or an invoice basis. This rounding rule shall be applied to the aggregated state and local taxes. [2003 c 168 § 210.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.055 Advertisement of price.** A seller may advertise the price as including the tax or that the seller is paying the tax, subject to the following conditions:

(1) Unless the advertised price is one in a listed series, the words "tax included" are stated immediately following the advertised price and in print size at least half as large as the advertised price;

(2) If the advertised prices are listed in a series, the words "tax included in all prices" are placed conspicuously at the head of the list and in the same print size as the advertised prices;

(3) If a price is advertised as "tax included," the price listed on any price tag shall be shown in the same manner; and

(4) All advertised prices and the words "tax included" are stated in the same medium, be it oral or visual, and if oral, in substantially the same inflection and volume. [1985 c 38 § 2.]

#### **82.08.060 Collection of tax—Methods and schedules.**

The department of revenue shall have power to adopt rules and regulations prescribing methods and schedules for the collection of the tax required to be collected by the seller from the buyer under this chapter. The methods and schedules prescribed shall be adopted so as to eliminate the collection of fractions of one cent and so as to provide that the aggregate collections of all taxes by the seller shall, insofar as practicable, equal the amount of tax imposed by this chapter. Such schedules may provide that no tax need be collected from the buyer upon sales below a stated sum and may be amended from time to time to accomplish the purposes set forth herein. [1975 1st ex.s. c 278 § 47; 1961 c 15 § 82.08.060. Prior: 1951 c 44 § 2; 1941 c 76 § 4; 1935 c 180 § 22; Rem. Supp. 1941 § 8370-22.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.064 Tax rate changes.** (1) A sales and use tax rate change under this chapter or chapter 82.12 RCW shall be imposed (a) no sooner than seventy-five days after its enactment into law and (b) only on the first day of January, April, July, or October.

(2) Subsection (1) of this section does not apply to the tax rate change in section 301, chapter 361, Laws of 2003.

(3)(a) A sales and use tax rate increase under this chapter or chapter 82.12 RCW imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A sales and use tax rate decrease under this chapter or chapter 82.12 RCW imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing. [2003 c 361 § 304; 2003 c 168 § 205; 2000 c 104 § 3.]

**Reviser's note:** This section was amended by 2003 c 168 § 205 and by 2003 c 361 § 304, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—Effective date—2000 c 104:** See notes following RCW 82.14.055.

**82.08.066 Deemed location for mobile telecommunications services.** (*Contingency, see note following RCW 82.04.530.*) For the purposes of this chapter, mobile telecommunications services are deemed to have occurred at the customer's place of primary use, regardless of where the mobile telecommunications services originate, terminate, or pass through, consistent with the mobile telecommunications sourcing act, P.L. 106-252, 4 U.S.C. Secs. 116 through 126. The definitions in RCW 82.04.065 apply to this section. [2002 c 67 § 5.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.08.080 Vending machine and other sales.** (1) The department of revenue may authorize a seller to pay the tax levied under this chapter upon sales made under conditions of business such as to render impracticable the collection of the tax as a separate item and waive collection of the tax from the customer. Where sales are made by a vending machine that results in delivery of the merchandise in single purchases of smaller value than the minimum sale upon which a one cent tax may be collected from the purchaser, according to the schedule provided by the department under authority of RCW 82.08.060, and where the design of the sales device is such that multiple sales of items are not possible or cannot be detected so as practically to assess a tax, in such a case the selling price for the purposes of the tax imposed under RCW 82.08.020 shall be sixty percent of the gross receipts of the vending machine through which such sales are made.

(2) No such authority shall be granted except upon application to the department and unless the department, after hearing, finds that the conditions of the applicant's business are such as to render impracticable the collection of the tax in the manner otherwise provided. The department, by rule, may provide that the applicant, under this section, furnish a proper bond sufficient to secure the payment of the tax.

(3) "Vending machine" means a machine or other mechanical device that accepts payment and:

(a) Dispenses tangible personal property;

(b) Provides facilities for installing, repairing, cleaning, altering, imprinting, or improving tangible personal property; or

(c) Provides a service to the buyer. [2004 c 153 § 409; 1986 c 36 § 2; 1975 1st ex.s. c 278 § 48; 1963 c 244 § 2; 1961 c 15 § 82.08.080. Prior: 1937 c 227 § 8; 1935 c 180 § 24; RRS § 8370-24.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.090 Installment sales and leases.** In the case of installment sales and leases of personal property, the department of revenue, by regulation, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [1975 1st ex.s. c 278 § 49; 1961 c 15 § 82.08.090. Prior: 1959 ex.s. c 3 § 8; 1959 c 197 § 4; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

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**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.100 Cash receipts taxpayers—Bad debts.** The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.08.037. [2004 c 153 § 303; 1982 1st ex.s. c 35 § 37; 1975 1st ex.s. c 278 § 50; 1961 c 15 § 82.08.100. Prior: 1959 ex.s. c 3 § 9; 1959 c 197 § 5; prior: 1941 c 178 § 9, part; 1939 c 225 § 12, part; 1935 c 180 § 25, part; Rem. Supp. 1941 § 8370-25, part.]

**Bad debts—Intent—2004 c 153:** See note following RCW 82.08.037.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.110 Sales from vehicles.** In the case of a person who has no fixed place of business and sells from one or more vehicles, each such vehicle shall constitute a "place of business" within the meaning of chapter 82.32 RCW. [1961 c 15 § 82.08.110. Prior: 1935 c 180 § 26; RRS § 8370-26.]

**82.08.120 Refunding or rebating of tax by seller prohibited—Penalty.** Whoever, excepting as expressly authorized by this chapter, refunds, remits, or rebates to a buyer, either directly or indirectly and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor. The violation of this section by any person holding a license granted by the state or any political subdivision thereof shall be sufficient grounds for the cancellation of the license of such person upon written notification by the department of revenue to the proper officer of the department granting the license that such person has violated the provisions of this section. Before any license shall be canceled hereunder, the licensee shall be entitled to a hearing before the department granting the license under such regulations as the department may prescribe. [1985 c 38 § 4; 1975 1st ex.s. c 278 § 51; 1961 c 15 § 82.08.120. Prior: 1939 c 225 § 13; 1935 c 180 § 27; RRS § 8370-27.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.08.130 Resale certificate—Purchase and resale—Rules.** If a buyer normally is engaged in both consuming and reselling certain types of articles of tangible personal property and is not able to determine at the time of purchase whether the particular property acquired will be consumed or resold, the buyer may use a resale certificate for the entire purchase if the buyer principally resells the articles according to the general nature of the buyer's business. The buyer shall account for the value of any articles purchased with a resale

certificate that are used by the buyer and remit the sales tax on the articles to the department.

A buyer who pays a tax on all purchases and subsequently resells an article at retail, without intervening use by the buyer, shall collect the tax from the purchaser as otherwise provided by law and is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the property resold upon which retail sales tax has been paid. The deduction is allowed only if the taxpayer keeps and preserves records that show the names of the persons from whom the articles were purchased, the date of the purchase, the type of articles, the amount of the purchase, and the tax that was paid. The department shall provide by rule for the refund or credit of retail sales tax paid by a buyer for purchases that are later sold at wholesale without intervening use by the buyer. [1993 sp.s. c 25 § 702.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

*Resale certificates:* RCW 82.04.470 and 82.32.291.

**82.08.140 Administration.** The provisions of RCW 82.04.470 and all of the provisions of chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.08.140. Prior: 1935 c 180 § 30; RRS § 8370-30.]

**82.08.145 Delivery charges.** When computing the tax levied by RCW 82.08.020, if a shipment consists of taxable tangible personal property and nontaxable tangible personal property, and delivery charges are included in the sales price, the seller must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to collect and remit tax on the percentage allocated to exempt tangible personal property. The seller may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total sales price of the taxable tangible personal property compared to the total sales price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 801.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.08.150 Tax on certain sales of intoxicating liquors—Additional taxes for specific purposes—Collection.** (1) There is levied and shall be collected a tax upon each retail sale of spirits in the original package at the rate of fifteen percent of the selling price. The tax imposed in this subsection shall apply to all such sales including sales by the Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(2) There is levied and shall be collected a tax upon each sale of spirits in the original package at the rate of ten percent of the selling price on sales by Washington state liquor stores and agencies to spirits, beer, and wine restaurant licensees.

(3) There is levied and shall be collected an additional tax upon each retail sale of spirits in the original package at

the rate of one dollar and seventy-two cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(4) An additional tax is imposed equal to fourteen percent multiplied by the taxes payable under subsections (1), (2), and (3) of this section.

(5) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of seven cents per liter. The additional tax imposed in this subsection shall apply to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(6)(a) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and seven-tenths percent of the selling price through June 30, 1995, two and six-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and three and four-tenths of the selling price thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) An additional tax is imposed upon retail sale of spirits in the original package at the rate of one and one-tenth percent of the selling price through June 30, 1995, one and seven-tenths percent of the selling price for the period July 1, 1995, through June 30, 1997, and two and three-tenths of the selling price thereafter. This additional tax applies to all such sales to spirits, beer, and wine restaurant licensees.

(c) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of twenty cents per liter through June 30, 1995, thirty cents per liter for the period July 1, 1995, through June 30, 1997, and forty-one cents per liter thereafter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, and including sales to spirits, beer, and wine restaurant licensees.

(d) All revenues collected during any month from additional taxes under this subsection shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(7)(a) An additional tax is imposed upon each retail sale of spirits in the original package at the rate of one dollar and thirty-three cents per liter. This additional tax applies to all such sales including sales by Washington state liquor stores and agencies, but excluding sales to spirits, beer, and wine restaurant licensees.

(b) All revenues collected during any month from additional taxes under this subsection shall be deposited by the twenty-fifth day of the following month as follows:

(i) 97.5 percent into the general fund;

(ii) 2.3 percent into the health services account created under RCW 43.72.900; and

(iii) 0.2 percent into the violence reduction and drug enforcement account created under RCW 69.50.520.

(8) The tax imposed in RCW 82.08.020 shall not apply to sales of spirits in the original package.

(9) The taxes imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the tax payable in respect to each taxable sale under this section. The taxes required by this section to be collected by the seller shall be stated separately from the selling price and for purposes of determining the tax due from the buyer to the seller, it shall be conclusively presumed that the selling price quoted in any price list does not include the taxes imposed by this section.

(10) As used in this section, the terms, "spirits" and "package" shall have the meaning ascribed to them in chapter 66.04 RCW. [2005 c 514 § 201; 2003 c 167 § 11; 1998 c 126 § 16; 1997 c 321 § 55; 1994 sp.s. c 7 § 903 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 310; 1989 c 271 § 503; 1983 2nd ex.s. c 3 § 12; 1982 1st ex.s. c 35 § 3; 1981 1st ex.s. c 5 § 25; 1973 1st ex.s. c 204 § 1; 1971 ex.s. c 299 § 9; 1969 ex.s. c 21 § 11; 1965 ex.s. c 173 § 16; 1965 c 42 § 1; 1961 ex.s. c 24 § 2; 1961 c 15 § 82.08.150. Prior: 1959 ex.s. c 5 § 9; 1957 c 279 § 4; 1955 c 396 § 1; 1953 c 91 § 5; 1951 2nd ex.s. c 28 § 5.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective date—2003 c 167:** See note following RCW 66.24.244.

**Report to legislature—2003 c 167:** See note following RCW 66.24.250.

**Effective date—1998 c 126:** See note following RCW 66.20.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1973 1st ex.s. c 204:** "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect the first day of July, 1973." [1973 1st ex.s. c 204 § 4.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**82.08.160 Remittance of tax—Liquor excise tax fund created.** On or before the twenty-fifth day of each month, all taxes collected under RCW 82.08.150 during the preceding month shall be remitted to the state department of revenue, to be deposited with the state treasurer. Upon receipt of such moneys the state treasurer shall credit sixty-five percent of the sums collected and remitted under RCW 82.08.150 (1)

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and (2) and one hundred percent of the sums collected and remitted under RCW 82.08.150 (3) and (4) to the state general fund and thirty-five percent of the sums collected and remitted under RCW 82.08.150 (1) and (2) to a fund which is hereby created to be known as the "liquor excise tax fund." [1982 1st ex.s. c 35 § 4; 1981 1st ex.s. c 5 § 26; 1969 ex.s. c 21 § 12; 1961 c 15 § 82.08.160. Prior: 1955 c 396 § 2.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Severability—Effective date—1981 1st ex.s. c 5:** See RCW 66.98.090 and 66.98.100.

**Effective date—1969 ex.s. c 21:** See note following RCW 66.04.010.

**82.08.170 Apportionment and distribution from liquor excise tax fund.** (1) During the months of January, April, July and October of each year, the state treasurer shall make the apportionment and distribution of all moneys in the liquor excise tax fund to the counties, cities and towns in the following proportions: (a) Twenty percent of the moneys in the liquor excise tax fund shall be divided among and distributed to the counties of the state in accordance with the provisions of RCW 66.08.200; and (b) eighty percent of the moneys in the liquor excise tax fund shall be divided among and distributed to the cities and towns of the state in accordance with the provisions of RCW 66.08.210.

(2) Each fiscal quarter and prior to making the twenty percent distribution to counties under subsection (1)(a) of this section, the treasurer shall transfer to the county research services account under RCW 43.110.050 sufficient moneys to fund the allotments from any legislative appropriations from the county research services account. [2002 c 38 § 3; 1997 c 437 § 4; 1983 c 3 § 215; 1961 c 15 § 82.08.170. Prior: 1955 c 396 § 3.]

**Effective date—1997 c 437:** See note following RCW 43.110.010.

**82.08.180 Apportionment and distribution from liquor excise tax fund—Withholding for noncompliance.** The governor may notify and direct the state treasurer to withhold the revenues to which the counties, cities, and towns are entitled under RCW 82.08.170 if the counties, cities, or towns are found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 36.]

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**82.08.190 Bundled transactions—Definitions.** The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1)(a) "Bundled transaction" means the retail sale of two or more products, except real property and services to real property, where:

(i) The products are otherwise distinct and identifiable; and

(ii) The products are sold for one nonitemized price.

(b) A bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction.

(2) "Distinct and identifiable products" does not include:

(a) Packaging such as containers, boxes, sacks, bags, and bottles, or other materials such as wrapping, labels, tags, and

instruction guides, that accompany the retail sale of the products and are incidental or immaterial to the retail sale thereof. Examples of packaging that are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes;

(b) A product provided free of charge with the required purchase of another product. A product is provided free of charge if the sales price of the product purchased does not vary depending on the inclusion of the product provided free of charge; or

(c) Items included in the definition of sales price in RCW 82.08.010.

(3) "One nonitemized price" does not include a price that is separately identified by product on binding sales or other supporting sales-related documentation made available to the customer in paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

(4) A transaction that otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

(a) The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, and is provided exclusively in connection with the service, and the true object of the transaction is the service; or

(b) The retail sale of services where one service is provided that is essential to the use or receipt of a second service and the first service is provided exclusively in connection with the second service and the true object of the transaction is the second service; or

(c) A transaction that includes taxable products and nontaxable products and the purchase price or sales price of the taxable products is de minimis;

(i) As used in this subsection (4)(c), de minimis means the seller's purchase price or sales price of the taxable products is ten percent or less of the total purchase price or sales price of the bundled products;

(ii) Sellers shall use either the purchase price or the sales price of the products to determine if the taxable products are de minimis;

(iii) Sellers shall use the full term of a service contract to determine if the taxable products are de minimis; or

(d) The retail sale of exempt tangible personal property and taxable tangible personal property where:

(i) The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, over-the-counter drugs, prosthetic devices, all as defined in this chapter, or medical supplies; and

(ii) Where the seller's purchase price or sales price of the taxable tangible personal property is fifty percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the fifty percent determination for a transaction. [2007 c 6 § 1401.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

### **82.08.195 Bundled transactions—Tax imposed.** (1)

A bundled transaction is subject to the tax imposed by RCW 82.08.020 if the retail sale of any of its component products would be subject to the tax imposed by RCW 82.08.020.

(2) The transactions described in RCW 82.08.190(4) (a) and (b) are subject to the tax imposed by RCW 82.08.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.08.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.08.020, the transaction is not subject to the tax imposed by RCW 82.08.020.

(3) The transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.08.020.

(4) The transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.08.020.

(5) In the case of a bundled transaction that includes any of the following: Telecommunications service, ancillary service, internet access, or audio or video programming service:

(a) If the price is attributable to products that are taxable and products that are not taxable, the portion of the price attributable to the nontaxable products are subject to the tax imposed by RCW 82.08.020 unless the seller can identify by reasonable and verifiable standards the portion from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes;

(b) If the price is attributable to products that are subject to tax at different tax rates, the total price is attributable to the products subject to the tax at the highest tax rate unless the seller can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to the tax imposed by RCW 82.08.020 at the lower rate from its books and records that are kept in the regular course of business for other purposes including, but not limited to, nontax purposes. [2007 c 6 § 1402.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

### **82.08.700 Exemptions—Vessels sold to nonresidents.**

(1) The tax levied by RCW 82.08.020 does not apply to sales to nonresident individuals of vessels thirty feet or longer if an individual purchasing a vessel purchases and displays a valid use permit.

(2)(a) An individual claiming exemption from retail sales tax under this section must display proof of his or her current nonresident status at the time of purchase.

(b) Acceptable proof of a nonresident individual's status includes one piece of identification such as a valid driver's license from the jurisdiction in which the out-of-state residency is claimed or a valid identification card that has a photograph of the holder and is issued by the out-of-state jurisdiction. Identification under this subsection (2)(b) must show the holder's residential address and have as one of its legal purposes the establishment of residency in that out-of-state jurisdiction.

(3) Nothing in this section requires the vessel dealer to make tax exempt retail sales to nonresidents. A dealer may choose to make sales to nonresidents, collect the sales tax, and remit the amount of sales tax collected to the state as otherwise provided by law. If the dealer chooses to make a sale to a nonresident without collecting the sales tax, the vendor

shall, in good faith, examine the proof of nonresidence, determine whether the proof is acceptable under subsection (2)(b) of this section, and maintain records for each nontaxable sale that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any.

(4) A vessel dealer shall issue a use permit to a buyer if the dealer is satisfied that the buyer is a nonresident. The use permit shall be in a form and manner required by the department and shall include an affidavit, signed by the purchaser, declaring that the vessel will be used in a manner consistent with this section. The fee for the issuance of a use permit is five hundred dollars for vessels fifty feet in length or less and eight hundred dollars for vessels greater than fifty feet in length. Funds collected under this section and RCW 82.12.700 shall be reported on the dealer's excise tax return and remitted to the department in accordance with RCW 82.32.045. The department shall transmit the fees to the state treasurer to be deposited in the state general fund. The use permit must be displayed on the vessel and is valid for twelve consecutive months from the date of issuance. A use permit is not renewable. A purchaser at the time of purchase must make an irrevocable election to take the exemption authorized in this section or the exemption in either RCW 82.08.0266 or 82.08.02665. A vessel dealer must maintain a copy of the use permit for the dealer's records. Vessel dealers must provide copies of use permits issued by the dealer under this section and RCW 82.12.700 to the department on a quarterly basis.

(5) A nonresident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.08.020 on the original selling price of the vessel and shall pay the tax directly to the department. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date the vessel was purchased, and accrues until the full amount of tax due is paid to the department.

(6) Any vessel dealer who makes sales without collecting the tax to a person who does not hold valid identification establishing out-of-state residency, and any dealer who fails to maintain records of sales to nonresidents as provided in this section, is personally liable for the amount of tax due.

(7) Chapter 82.32 RCW applies to the administration of the fee imposed in this section and RCW 82.12.700.

(8) A vessel dealer that issues use permits under this section and RCW 82.12.700 must file with the department all returns in an electronic format as provided or approved by the department. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(a) Any return required to be filed in an electronic format under this subsection is not filed until received by the department in an electronic format provided or approved by the department.

(b) The electronic filing requirement in this subsection ends when a vessel dealer no longer issues use permits, and the dealer has electronically filed all of its returns reporting the fees collected under this section and RCW 82.12.700.

(c) The department may waive the electronic filing requirement in this subsection for good cause shown. [2007 c 22 § 1.]

(2008 Ed.)

**Effective date—2007 c 22:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2007." [2007 c 22 § 4.]

**82.08.705 Exemptions—Financial information delivered electronically.** (1) The tax levied by RCW 82.08.020 shall not apply to sales of electronically delivered standard financial information, if the sale is to an investment management company or a financial institution.

(2) For purposes of this section and RCW 82.12.705, the following definitions apply:

(a) "Financial institution" means a business within the scope of chapter 82.14A RCW.

(b) "Investment management company" means an investment adviser registered under the investment advisers act of 1940, as amended, that is primarily engaged in providing investment management services to collective investment funds. For purposes of this subsection (2)(b), the definitions in RCW 82.04.293 apply.

(c)(i) "Standard financial information" means any collection of financial data or facts, not generated or compiled for a specific customer including, but not limited to, financial market data, bond ratings, credit ratings, and deposit, loan, or mortgage reports. It does not include reports furnished as part of a service described in RCW 82.04.050(3).

(ii) For purposes of this subsection (2)(c), "financial market data" means market pricing information, such as for securities, commodities, and derivatives; corporate actions for publicly and privately traded companies, such as dividend schedules and reorganizations; corporate attributes, such as domicile, currencies used, and exchange where shares are traded; and currency information. [2007 c 182 § 1.]

**Effective date—2007 c 182:** "This act takes effect August 1, 2007." [2007 c 182 § 3.]

**82.08.803 Exemptions—Nebulizers.** (1) An exemption from the tax imposed by RCW 82.08.020 in the form of a refund is provided for sales of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" means a device, not a building fixture, that converts a liquid medication into a mist so that it can be inhaled.

(2) Sellers shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1103; 2004 c 153 § 104.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**82.08.804 Exemptions—Ostomic items.** The tax levied by RCW 82.08.020 shall not apply to sales of ostomic items used by colostomy, ileostomy, or urostomy patients. "Ostomic items" means disposable medical supplies used by colostomy, ileostomy, and urostomy patients, and includes

bags, belts to hold up bags, tapes, tubes, adhesives, deodorants, soaps, jellies, creams, germicides, and other like supplies. "Ostomic items" does not include undergarments, pads and shields to protect undergarments, sponges, or rubber sheets. [2004 c 153 § 106.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**82.08.805 Exemptions—Tangible personal property used at an aluminum smelter.** (1) A person who has paid tax under RCW 82.08.020 for tangible personal property used at an aluminum smelter, tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. A person claiming an exemption must pay the tax and may then take a credit equal to the state share of retail sales tax paid under RCW 82.08.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012. [2006 c 182 § 3; 2004 c 24 § 10.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**82.08.806 Exemptions—Sale of computer equipment parts and services to printer or publisher.** (1) The tax levied by RCW 82.08.020 shall not apply to sales, to a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.08.02565.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the purchaser provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection (3) apply throughout this section, unless the context clearly requires otherwise.

(a) "Computer" has the same meaning as in RCW 82.04.215.

(b) "Computer equipment" means a computer and the associated physical components that constitute a computer system, including monitors, keyboards, printers, modems, scanners, pointing devices, and other computer peripheral equipment, cables, servers, and routers. "Computer equipment" also includes digital cameras and computer software.

(c) "Computer software" has the same meaning as in RCW 82.04.215.

(d) "Primarily" means greater than fifty percent as measured by time.

(e) "Printer or publisher" means a person, as defined in RCW 82.04.030, who is subject to tax under RCW 82.04.280(1).

(4) "Computer equipment" does not include computer equipment that is used primarily for administrative purposes including but not limited to payroll processing, accounting, customer service, telemarketing, and collection. If computer equipment is used simultaneously for administrative and non-administrative purposes, the administrative use shall be disregarded during the period of simultaneous use for purposes of determining whether the computer equipment is used primarily for administrative purposes. [2004 c 8 § 2.]

**Findings—Intent—2004 c 8:** "(1) The legislature finds that the manufacturer's machinery and equipment sales and use tax exemption is vital to the continued development of economic opportunity in this state, including the development of new businesses and the expansion or modernization of existing businesses.

(2) The legislature finds that the printing and publishing industries have not been able to realize the benefits of the manufacturer's machinery and equipment sales and use tax exemption to the same extent as other manufacturing industries due to dramatic changes in business methods caused by computer technology not contemplated when the manufacturer's machinery and equipment sales and use tax exemption was adopted. As a result of these changes in business methods, a substantial amount of computer equipment used by printers and publishers is not eligible for the manufacturer's machinery and equipment sales and use tax exemption because the computer equipment is not used within the manufacturing site.

(3) The legislature further finds that additional incentives for printers and publishers need to be adopted to provide these industries with similar benefits as the manufacturer's machinery and equipment sales and use tax exemption provides for other manufacturing industries, and in recognition of the rapid rate of technological advancement in business methods undergone by the printing and publishing industries. The legislature intends to accomplish this by providing a sales and use tax exemption to printers and publishers for computer equipment, not otherwise eligible for the manufacturer's machinery and equipment sales and use tax exemption, used primarily in the printing or publishing of printed material, and for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such computer equipment." [2004 c 8 § 1.]

**82.08.807 Exemptions—Direct mail delivery charges.** The tax levied by RCW 82.08.020 does not apply to delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser. [2005 c 514 § 115.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.08.808 Exemptions—Sales of medical supplies, chemicals, or materials to comprehensive cancer centers.** (1) The tax levied by RCW 82.08.020 does not apply to the sale of medical supplies, chemicals, or materials to a comprehensive cancer center. The exemption in this section does not apply to the sale of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) For the purposes of this section, the following definitions apply:

(a) "Comprehensive cancer center" has the meaning provided in RCW 82.04.4265.

(b) "Chemical" means any catalyst, solvent, water, acid, oil, or other additive that physically or chemically interacts with blood, bone, or tissue.

(c) "Materials" means any item of tangible personal property, including, but not limited to, bags, packs, collecting sets, filtering materials, testing reagents, antisera, and refrigerants used or consumed in performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue.

(d) "Research" means basic and applied research that has as its objective the design, development, refinement, testing, marketing, or commercialization of a product, service, or process.

(e) "Medical supplies" means any item of tangible personal property, including any repair and replacement parts for such tangible personal property, used by a comprehensive cancer center for the purpose of performing research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. The term includes tangible personal property used to:

(i) Provide preparatory treatment of blood, bone, or tissue;

(ii) Control, guide, measure, tune, verify, align, regulate, test, or physically support blood, bone, or tissue; and

(iii) Protect the health and safety of employees or others present during research on, procuring, testing, processing, storing, packaging, distributing, or using blood, bone, or tissue. [2005 c 514 § 402.]

**Effective date—2005 c 514 §§ 401-403:** See note following RCW 82.04.4265.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.08.809 Exemptions—Vehicles using clean alternative fuels.** (*Effective January 1, 2009, until January 1, 2011.*) (1) The tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which are exclusively powered by a clean alternative fuel.

(2) The seller must keep records necessary for the department to verify eligibility under this section.

(3) As used in this section, "clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California code of regulations, effective January 1, 2005, and the rules of the Washington state department of ecology. [2005 c 296 § 1.]

**Effective date—2005 c 296:** "This act takes effect January 1, 2009." [2005 c 296 § 5.]

**Expiration date—2005 c 296:** "This act expires January 1, 2011." [2005 c 296 § 6.]

**82.08.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Exemption certificate—Payments on cessation of operation.** (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that

are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of tangible personal property to a light and power business, as defined in RCW 82.16.010, for construction or installation of air pollution control facilities at a thermal electric generation facility; or

(b) Sales of, cost of, or charges made for labor and services performed in respect to the construction or installation of air pollution control facilities.

(3) The exemption provided under this section applies only to sales, costs, or charges:

(a) Incurred for air pollution control facilities constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975;

(b) If the air pollution control facilities are constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW; and

(c) For which the purchaser provides the seller with an exemption certificate, signed by the purchaser or purchaser's agent, that includes a description of items or services for which payment is made, the amount of the payment, and such additional information as the department reasonably may require.

(4) This section does not apply to sales of tangible personal property purchased or to sales of, costs of, or charges made for labor and services used for maintenance or repairs of pollution control equipment.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due as follows:

Year event occurs	Portion of previously exempted tax due
2003	100%
2004	95%
2005	90%
2006	85%
2007	80%
2008	75%
2009	70%
2010	65%
2011	60%
2012	55%
2013	50%
2014	45%
2015	40%
2016	35%
2017	30%
2018	25%
2019	20%
2020	15%
2021	10%
2022	5%
2023	0%

(6) RCW 82.32.393 applies to this section. [1997 c 368 § 2.]

**Findings—Intent—1997 c 368:** "(1) The legislature finds that:

(a) Thermal electric generation facilities play an important role in providing jobs for residents of the communities where such plants are located; and

(b) Taxes paid by thermal electric generation facilities help to support schools and local and state government operations.

(2) It is the intent of the legislature to assist thermal electric generation facilities placed in operation after December 31, 1969, and before July 1, 1975, to update their air pollution control equipment and abate pollution by extending certain tax exemptions and credits so that such plants may continue to play a long-term vital economic role in the communities where they are located." [1997 c 368 § 1.]

**Rules adoption—1997 c 368:** "The department of revenue and the department of ecology may adopt rules to implement this act." [1997 c 368 § 15.]

**Severability—1997 c 368:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 368 § 16.]

**Effective date—1997 c 368:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 1997]." [1997 c 368 § 17.]

**82.08.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.** (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the tax levied by RCW 82.08.020 does not apply to sales of coal used to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control

authority or the department of ecology, the department of ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) RCW 82.32.393 applies to this section. [1997 c 368 § 4.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.08.813 Exemptions—High gas mileage vehicles. (Effective January 1, 2009, until January 1, 2011.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated highway gasoline mileage rating of at least forty miles per gallon.

(2) The seller must keep records necessary for the department to verify eligibility under this section.

(3) As used in this section, "hybrid technology" means propulsion units powered by both electricity and gasoline. [2005 c 296 § 2.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.08.815 Exemptions—Property and services related to electrification systems to power heavy duty diesel vehicles. (Expires July 1, 2015.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is integral and necessary for the retail sale, lease, or rental of auxiliary power to heavy duty diesel vehicles through onboard or stand-alone electrification systems. Structures and machinery and equipment that are used for the retail sale, lease, or rental of auxiliary power to heavy duty diesel vehicles through onboard or stand-alone electrification systems are exempt only on the portion integral and necessary for providing that service.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) For the purposes of this section, the definitions in RCW 82.04.4338 apply.

(4) This section expires July 1, 2015. [2006 c 323 § 3.]

**Findings—Intent—2006 c 323:** See note following RCW 82.04.4338.

**82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective until July 1, 2012.)** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Cold storage warehouse" has the meaning provided in RCW 82.74.010;

(c) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least twenty-five thousand square feet of additional space to an existing cold storage warehouse, at least two hundred thousand square feet of additional space to an existing warehouse other than a cold storage warehouse, or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(d) "Department" means the department of revenue;

(e) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(f) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(g) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(h) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins,

drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(i) "Person" has the meaning given in RCW 82.04.030;

(j) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(k) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(l) "Third-party warehouse" means a person taxable under RCW 82.04.280(4);

(m) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(n) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying

purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [2006 c 354 § 11; 2005 c 513 § 11; 1997 c 450 § 2.]

**Expiration date—2006 c 354 § 11:** "Section 11 of this act expires July 1, 2012." [2006 c 354 § 20.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Findings—Intent—1997 c 450:** "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

**Report—1997 c 450:** "The legislative fiscal committees shall report to the legislature by December 1, 2001, on the economic impacts of this act. This report shall analyze employment and other relevant economic data pertaining to the tax exemptions authorized under this act and shall measure the effect on the creation or retention of family-wage jobs and diversification of the state's economy. The report must include the committee's findings on the tax incentive program's performance in achieving its goals and recommendations on ways to improve its effectiveness. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and comparisons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department of revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section." [1997 c 450 § 6.]

**Effective date—1997 c 450:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 450 § 7.]

**82.08.820 Exemptions—Remittance—Warehouse and grain elevators and distribution centers—Material-handling and racking equipment—Construction of warehouse or elevator—Information sheet—Rules—Records—Exceptions. (Effective July 1, 2012.)** (1) Wholesalers or third-party warehouse owners who own or operate ware-

houses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. "Construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product. "Finished goods" does not include logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins,

drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;

(h) "Person" has the meaning given in RCW 82.04.030;

(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;

(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse shall be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;

(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(4);

(l) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and

(m) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.

(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department shall on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments. [2006 c 354 § 12; 2005 c 513 § 11; 1997 c 450 § 2.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Findings—Intent—1997 c 450:** "The legislature finds that the state's overall economic health and prosperity is bolstered through tax incentives targeted to specific industries. The warehouse and distribution industry is critical to other businesses. The transportation sector, the retail sector, the ports, and the wholesalers all rely on the warehouse and distribution industry. It is the intent of the legislature to stimulate interstate trade by providing tax incentives to those persons in the warehouse and distribution industry engaged in highly competitive trade." [1997 c 450 § 1.]

**Report—1997 c 450:** "The legislative fiscal committees shall report to the legislature by December 1, 2001, on the economic impacts of this act. This report shall analyze employment and other relevant economic data pertaining to the tax exemptions authorized under this act and shall measure the effect on the creation or retention of family-wage jobs and diversification of the state's economy. The report must include the committee's findings on the tax incentive program's performance in achieving its goals and recommendations on ways to improve its effectiveness. Analytic techniques may include, but not be limited to, comparisons of Washington to other states that did not enact business tax changes, comparisons across Washington counties based on usage of the tax exemptions, and comparisons across similar firms based on their use of the tax exemptions. In performing the analysis, the legislative fiscal committees shall consult with business and labor interests. The department of revenue, the employment security department, and other agencies shall provide to the legislative fiscal committees such data as the legislative fiscal committees may request in performing the analysis required under this section." [1997 c 450 § 6.]

**Effective date—1997 c 450:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 20, 1997]." [1997 c 450 § 7.]

**82.08.825 Exemptions—Property and services that enable heavy duty diesel vehicles to operate with onboard electrification systems. (Expires July 1, 2015.)** (1) The tax levied by RCW 82.08.020 does not apply to the sale of, and labor and services rendered in respect to, tangible personal property installed on a heavy duty diesel vehicle if the property enables the vehicle to operate, while parked, through the use of an onboard electrification system. Only parts and other components that are specific to enabling a heavy duty diesel vehicle to operate, while parked, with an onboard electrification system are exempt under this section.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) For the purposes of this section, the definitions in RCW 82.04.4338 apply.

(4) This section expires July 1, 2015. [2006 c 323 § 5.]

**Findings—Intent—2006 c 323:** See note following RCW 82.04.4338.

**82.08.830 Exemptions—Sales at camp or conference center by nonprofit organization.** The tax levied by RCW 82.08.020 shall not apply to a sale made at a camp or conference center if the gross income from the sale is exempt under RCW 82.04.363. [1997 c 388 § 2.]

**Effective date—1997 c 388:** See note following RCW 82.04.363.

**82.08.832 Exemptions—Sales of gun safes.** (1) The tax levied by RCW 82.08.020 does not apply to sales of gun safes.

(2) As used in this section and RCW 82.12.832, "gun safe" means an enclosure specifically designed or modified for the purpose of storing a firearm and equipped with a padlock, key lock, combination lock, or similar locking device which, when locked, prevents the unauthorized use of the firearm. [1998 c 178 § 1.]

**Effective date—1998 c 178:** "This act takes effect July 1, 1998." [1998 c 178 § 3.]

**82.08.834 Exemptions—Sales/leasebacks by regional transit authorities.** The tax levied by RCW 82.08.020 does not apply to lease amounts paid by a seller/lessee to a lessor under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property, used by the seller/lessee, or to the purchase amount paid by the lessee pursuant to an option to purchase at the end of the lease term, but only if the seller/lessee previously paid any tax otherwise due under this chapter or chapter 82.12 RCW at the time of acquisition of the tangible personal property. [2000 2nd sp.s. c 4 § 21.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**82.08.835 Exemptions—Solar hot water systems. (Expires July 1, 2009.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of OG-300 rated solar water heating systems, OG-100 rated solar water heating collectors, solar heat exchangers, or differential solar controllers, including repair and replacement parts for such equipment, or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such equipment.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "OG-300 rated solar water heating system" means those fully integrated solar water heating systems that have been rated as having met the operational guidelines currently set and listed by the solar rating and certification corporation.

(b) "OG-100 rated solar water heating collector" means those collectors that convert light energy to heat and that have

been rated as having met the operational guidelines currently set and listed by the solar rating and certification corporation.

(c) "Solar heat exchanger" means a device that is used to transfer heat from one fluid to another through a separating wall.

(d) "Differential solar controller" means a controlling device that reads and adjusts the temperature at the solar water heating collector and the heated water collection tank. [2006 c 218 § 1.]

**Effective date—2006 c 218:** "This act takes effect July 1, 2006." [2006 c 218 § 3.]

**Expiration date—2006 c 218:** "This act expires July 1, 2009." [2006 c 218 § 4.]

**82.08.841 Exemptions—Farming equipment—Hay sheds. (Expires January 1, 2011.)** (1) The tax levied by RCW 82.08.020 does not apply to:

(a) Sales of the following machinery and equipment to qualified farmers: No-till drills, minimum-till drills, chisels, plows, sprayers, discs, cultivators, harrows, mowers, swathers, power rakes, balers, bale handlers, shredders, transplanter, tractors two hundred fifty horsepower and over designed to pull conservation equipment on steep hills and highly erodible lands, and combine components limited to straw choppers, chaff spreaders, and stripper headers; and

(b) Labor and services rendered in respect to constructing hay sheds for qualified farmers or to sales of tangible personal property to qualified farmers that becomes an ingredient or component of hay sheds during the course of the constructing.

(2)(a) No application is necessary for the tax exemption in this section. A person taking the exemption under this section must keep records necessary for the department to verify eligibility. The department may request from a qualified farmer, copies of farm service agency or crop insurance records for verification purposes, however information obtained from farm service agency or crop insurance records is deemed taxpayer information under RCW 82.32.330 and is not disclosable.

(b) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section.

(a) "Qualified farmer" means a farmer as defined in RCW 82.04.213 who has more than fifty percent of his or her tillable acres in cereal grains and/or field and turf grass grown for seed in qualified counties.

(b) "Qualified counties" means those counties in Washington state where cereal grain production within the county exceeds fifteen thousand acres.

(4) This section expires January 1, 2011. [2005 c 420 § 2.]

**Findings—2005 c 420:** "The legislature finds that rules enacted to improve air quality in selected parts of eastern Washington created a financial hardship for some growers of cereal grains and grass grown for seed. As stated in RCW 70.94.656, it is "the policy of this state ...to promote the development of economical and practical alternate agricultural practices to such burning...". The legislature provided tax incentives in 2000 to assist such growers transition to alternative management systems while further improving air quality. Because those incentives have been difficult to

administer, the legislature finds that it is necessary to refine and narrow those incentives." [2005 c 420 § 1.]

**Effective date—2005 c 420:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 420 § 5.]

**82.08.850 Exemptions—Conifer seed.** (1) The tax levied by RCW 82.08.020 does not apply to the sale of conifer seed that is immediately placed into freezer storage operated by the seller and is: (a) Used for growing timber outside Washington; or (b) sold to an Indian tribe or member and is to be used for growing timber in Indian country. This section applies only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010.

(2) If a buyer of conifer seed is normally engaged in growing timber both within and outside Washington and is not able to determine at the time of purchase whether the seed acquired, or the seedlings germinated from the seed acquired, will be used for growing timber within or outside Washington, the buyer may defer payment of the sales tax until it is determined that the seed, or seedlings germinated from the seed, will be planted for growing timber in Washington. A buyer that does not pay sales tax on the purchase of conifer seed and subsequently determines that the sale did not qualify for the tax exemption must remit to the department the amount of sales tax that would have been paid at the time of purchase.

(3) A buyer who pays retail sales tax on the purchase of conifer seed and subsequently determines that the sale qualifies for the tax exemption provided in this section is entitled to a deduction on the buyer's tax return equal to the cost to the buyer of the purchased seed. The deduction is allowed only if the buyer keeps and preserves records that show from whom the seed was purchased, the date of the purchase, the amount of the purchase, and the tax that was paid. [2001 c 129 § 2.]

**Finding—Intent—2001 c 129:** "The legislature finds that in-state sellers of conifer seed and persons growing customer-owned conifer seed into seedlings are placed at a marketplace disadvantage compared to persons doing the same activity out of state because of the unique storage and growing requirements of conifer seed. It is the intent of the legislature to eliminate this disadvantage by providing a limited sales tax exemption for the sale of conifer seed to be used to grow timber outside Washington, or sold to an Indian tribe or member to grow timber in Indian country, if upon sale the seed is immediately placed into freezer storage operated by the seller." [2001 c 129 § 1.]

**Retroactive application—2001 c 129:** "This act applies retroactively." [2001 c 129 § 4.]

**82.08.855 Exemptions—Replacement parts for qualifying farm machinery and equipment.** (1) The tax levied by RCW 82.08.020 does not apply to the sale to an eligible farmer of:

- (a) Replacement parts for qualifying farm machinery and equipment;
- (b) Labor and services rendered in respect to the installing of replacement parts; and
- (c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided

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that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section.

(3)(a) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. An exemption is available only when the buyer provides the seller with an exemption certificate issued by the department containing such information as the department requires. The exemption certificate shall be in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(b) The department shall provide an exemption certificate to an eligible farmer or renew an exemption certificate, upon application by that eligible farmer. The application must be in a form and manner prescribed by the department and shall contain the following information as required by the department:

- (i) The name and address of the applicant;
- (ii) The uniform business identifier or tax reporting account number of the applicant, if the applicant is required to be registered with the department;
- (iii) The type of farming engaged in;
- (iv) Either a copy of the applicant's information as provided in (b)(iv)(A) of this subsection or a declaration as provided in (b)(iv)(B) of this subsection, as elected by the applicant:

(A) A copy of the applicant's Schedule F of Form 1040, Form 1120, or other applicable form filed with the internal revenue service indicating the applicant's gross sales or harvested value of agricultural products for the tax year covered by the return. If the applicant has not filed a federal income tax return for the prior tax year or is not required to file a federal income tax return, the applicant shall provide copies of other documents establishing the amount of the applicant's gross sales or harvested value of agricultural products for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;

(B) A declaration signed under penalty of perjury as provided in RCW 9A.72.085 that the applicant is an eligible farmer as defined in subsection (4)(b) of this section. Any person who knowingly makes a materially false statement on an application submitted to the department under the provisions of this section shall be guilty of perjury in the second degree under chapter 9A.72 RCW. In addition, the person is liable for payment of any taxes for which an exemption under

this section was claimed, with interest at the rate provided for delinquent taxes, retroactively to the date the exemption was claimed, and penalties as provided under chapter 82.32 RCW;

(v) The name of the individual authorized to sign the certificate, printed in a legible fashion;

(vi) The signature of the authorized individual; and

(vii) Other information the department may require to verify the applicant's eligibility for the exemption.

(c)(i) Except as otherwise provided in this section, exemption certificates take effect on the date issued by the department are not transferable and are valid for the remainder of the calendar year in which the certificate is issued and the following four calendar years. The department shall attempt to notify holders of exemption certificates of the impending expiration of the certificate at least sixty days before the certificate expires and shall provide an application for renewal of the certificate.

(ii) When a certificate holder merely changes identity or form of ownership of an entity and there is no change in beneficial ownership, the exemption certificate shall be transferred to the new entity upon written notice to the department by the transferor or transferee.

(d)(i) A person who is an eligible farmer as defined in subsection (4)(b)(iii) of this section shall be issued a conditional exemption certificate. The exemption certificate is conditioned upon:

(A) The eligible farmer having gross sales or a harvested value of agricultural products grown, raised, or produced by that person of at least ten thousand dollars in the first full tax year in which the person engages in business as a farmer; or

(B) The eligible farmer, during the first full tax year in which that person engages in business as a farmer, growing, raising, or producing agricultural products having an estimated value at any time during that year of at least ten thousand dollars, if the person will not sell or harvest an agricultural product during the first full tax year in which the person engages in business as a farmer.

(ii) If a person fails to meet the condition provided in (d)(i)(A) or (B) of this subsection, the department shall revoke the exemption certificate. The department shall notify the person in writing of the revocation and the person's responsibility, and due date, for payment of any taxes for which an exemption under this section was claimed. Any taxes for which an exemption under this section was claimed shall be due and payable within thirty days of the date of the notice revoking the certificate. The department shall assess interest on the taxes for which the exemption was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the exemption was claimed, and shall accrue until the taxes for which the exemption was claimed are paid. Penalties shall not be imposed on any tax required to be paid under this subsection (3)(d)(ii) if full payment is received by the due date. Nothing in this subsection (3)(d) prohibits a person from reapplying for an exemption certificate.

(4) The definitions in this subsection apply to this section.

(a) "Agricultural products" has the meaning provided in RCW 82.04.213.

(b) "Eligible farmer" means:

(i) A farmer as defined in RCW 82.04.213 whose gross sales or harvested value of agricultural products grown, raised, or produced by that person is at least ten thousand dollars for the tax year immediately preceding the year in which an application for exemption under this section is submitted to the department;

(ii) The transferee of an exemption certificate under subsection (3)(c)(ii) of this section where the transferred certificate expires before the transferee engages in farming operations for a full tax year, if the combined gross sales or harvested value of agricultural products that the transferor and transferee have grown, raised, or produced meet the requirements of (b)(i) of this subsection;

(iii) A farmer as defined in RCW 82.04.213, who does not meet the definition of "eligible farmer" in (b)(i) or (ii) of this subsection, and who did not engage in farming for the entire tax year immediately preceding the year in which application for exemption under this section is submitted to the department, because the farmer is either new to farming or newly returned to farming; or

(iv) Anyone who otherwise meets the definition of "eligible farmer" in this subsection except that they are not a "person" as defined in RCW 82.04.030.

(c) "Farm vehicle" has the same meaning as in RCW 46.04.181.

(d) "Harvested value" means the number of units of the agricultural product that were grown, raised, or produced, multiplied by the average sales price of the agricultural product. For purposes of this subsection (4)(d), "average sales price" means the average price per unit of agricultural product received by farmers in this state as reported by the United States department of agriculture's national agricultural statistics service for the twelve-month period that coincides with, or that ends closest to, the end of the relevant tax year, regardless of whether the prices are subject to revision. If the price per unit of an agricultural product received by farmers in this state is not available from the national agricultural statistics service, average sales price may be determined by using the average price per unit of agricultural product received by farmers in this state as reported by a recognized authority for the agricultural product.

(e) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products. "Qualifying farm machinery and equipment" does not include:

(i) Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles, and other farm implements. For purposes of this subsection (4)(e)(i), "farm implement" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

(ii) Aircraft;

(iii) Hand tools and hand-powered tools; and

(iv) Property with a useful life of less than one year.

(f)(i) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment.

(ii) Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined in (f)(i) of this subsection or making repairs as described in subsection (1)(c) of this section.

(g) "Tax year" means the period for which a person files its federal income tax return, irrespective of whether the period represents a calendar year, fiscal year, or some other consecutive twelve-month period. If a person is not required to file a federal income tax return, "tax year" means a calendar year. [2007 c 332 § 1; 2006 c 172 § 1.]

**Effective date—2006 c 172:** "This act takes effect July 1, 2006." [2006 c 172 § 3.]

**82.08.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.** (1) The tax levied by RCW 82.08.020 does not apply to sales of diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for nonhighway use. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were sold as separate products. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in RCW 82.04.213 and this subsection apply to this section.

(a) "Aircraft fuel" is defined as provided in RCW 82.42.010.

(b) "Biodiesel fuel" is defined as provided in RCW 19.112.010.

(c) "Diesel fuel" is defined as provided in 26 U.S.C. 4083, as amended or renumbered as of January 1, 2006.

(d) "Farm fuel user" means: (i) A farmer; or (ii) a person who provides horticultural services for farmers, such as soil preparation services, crop cultivation services, and crop harvesting services. [2007 c 443 § 1; 2006 c 7 § 1.]

**Effective date—2007 c 443:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 11, 2007]." [2007 c 443 § 3.]

**Effective date—2006 c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 6, 2006]." [2006 c 7 § 3.]

*Additional sales tax exemption for motor vehicle and special fuel: RCW 82.08.0255.*

**82.08.870 Exemptions—Motorcycles for training programs.** The tax levied by RCW 82.08.020 does not apply to sales of motorcycles purchased for use in a motorcycle operator training and education program created under RCW 46.20.520. [2001 c 285 § 2.]

**82.08.880 Exemptions—Animal pharmaceuticals.** (1) The tax levied by RCW 82.08.020 does not apply to sales to farmers or to veterinarians of animal pharmaceuticals approved by the United States department of agriculture or by the United States food and drug administration, if the pharmaceutical is to be administered to an animal that is (2008 Ed.)

raised by a farmer for the purpose of producing for sale an agricultural product.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) For the purposes of this section and RCW 82.12.880, the following definitions apply:

(a) "Farmer" and "agricultural product" mean the same as in RCW 82.04.213.

(b) "Veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW. [2001 2nd sp.s. c 17 § 1.]

**Effective date—2001 2nd sp.s. c 17:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect August 1, 2001." [2001 2nd sp.s. c 17 § 3.]

**82.08.890 Exemptions—Livestock nutrient management equipment and facilities.** (1) The tax levied by RCW 82.08.020 does not apply to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of livestock nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to sales made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under subsection (4)(c)(iii) of this section.

(3)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The department of agriculture must provide a list of eligible persons, as defined in subsection (4)(c)(i) and (ii) of this section, to the department of revenue. Conservation districts must maintain lists of eligible persons as defined in subsection (4)(c)(iii) of this section to allow the department of revenue to verify eligibility. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the dairy or animal feeding operation and other information the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(4) The definitions in this subsection apply to this section and RCW 82.12.890 unless the context clearly requires otherwise:

(a) "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Conservation district" means a subdivision of state government organized under chapter 89.08 RCW.

(c) "Eligible person" means a person (i) licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan, as required by chapter 90.64 RCW; (ii) who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or (iii) who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards.

(d) "Livestock nutrient management equipment and facilities" means machinery, equipment, and structures used in the handling and treatment of livestock manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts.

(e) "Permit" means either a state waste discharge permit or a national pollutant discharge elimination system permit, or both. [2006 c 151 § 2; 2001 2nd sp.s. c 18 § 2.]

**Effective date—2006 c 151:** "This act takes effect July 1, 2006." [2006 c 151 § 7.]

**Intent—2001 2nd sp.s. c 18:** "It is the intent of the legislature to provide tax exemptions to assist dairy farmers to comply with the dairy nutrient management act, chapter 90.64 RCW, to encourage owners of nondairy animal feeding operations to develop and implement approved nutrient management plans, and to assist public or private entities to establish and operate anaerobic digesters to treat livestock nutrients on a regional or on-farm basis." [2006 c 151 § 1; 2001 2nd sp.s. c 18 § 1.]

**Effective date—2001 2nd sp.s. c 18:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 13, 2001]." [2001 2nd sp.s. c 18 § 6.]

**82.08.900 Exemptions—Anaerobic digesters.** (1) The tax levied by RCW 82.08.020 does not apply to sales to an eligible person establishing or operating an anaerobic digester or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester, or to sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily to treat livestock manure.

(2)(a) The department of revenue must provide an exemption certificate to an eligible person upon application by that person. The application must be in a form and manner prescribed by the department and must contain information regarding the location of the facility and other information as the department may require.

(b) A person claiming an exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.900 unless the context clearly requires otherwise:

(a) "Anaerobic digester" means a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(b) "Eligible person" means any person establishing or operating an anaerobic digester to treat primarily livestock manure.

(c) "Primarily" means more than fifty percent measured by volume or weight. [2006 c 151 § 4; 2001 2nd sp.s. c 18 § 4.]

**Effective date—Conservation commission—Report to legislature—2006 c 151:** See notes following RCW 82.08.890.

**Intent—Effective date—2001 2nd sp.s. c 18:** See notes following RCW 82.08.890.

**82.08.910 Exemptions—Propane or natural gas to heat chicken structures.** (1) The tax levied by RCW 82.08.020 does not apply to sales to farmers of propane or natural gas used to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures. The structures must be used exclusively to house chickens that are sold as agricultural products.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.910.

(a) "Structures" means barns, sheds, and other similar buildings in which chickens are housed.

(b) "Farmer" has the same meaning as provided in RCW 82.04.213.

(c) "Agricultural product" has the same meaning as provided in RCW 82.04.213. [2001 2nd sp.s. c 25 § 3.]

**Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25:** See notes following RCW 82.04.260.

**82.08.920 Exemptions—Chicken bedding materials.** (1) The tax levied by RCW 82.08.020 does not apply to sales to a farmer of bedding materials used to accumulate and facilitate the removal of chicken manure. The farmer must be raising chickens that are sold as agricultural products.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) The definitions in this subsection apply to this section and RCW 82.12.920.

(a) "Bedding materials" means wood shavings, straw, sawdust, shredded paper, and other similar materials.

(b) "Farmer" has the same meaning as provided in RCW 82.04.213.

(c) "Agricultural product" has the same meaning as provided in RCW 82.04.213. [2001 2nd sp.s. c 25 § 5.]

**Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25:** See notes following RCW 82.04.260.

**82.08.925 Exemptions—Dietary supplements.** The tax levied by RCW 82.08.020 shall not apply to sales of dietary supplements for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 302.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.935 Exemptions—Disposable devices used to deliver prescription drugs for human use.** The tax levied by RCW 82.08.020 shall not apply to sales of disposable devices used or to be used to deliver drugs for human use, pursuant to a prescription. "Disposable devices used to deliver drugs" means single use items such as syringes, tubing, or catheters. [2003 c 168 § 404.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.940 Exemptions—Over-the-counter drugs for human use.** The tax levied by RCW 82.08.020 shall not apply to sales of over-the-counter drugs for human use dispensed or to be dispensed to patients, pursuant to a prescription. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 405.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.945 Exemptions—Kidney dialysis devices.** The tax levied by RCW 82.08.020 shall not apply to sales of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices. [2004 c 153 § 110; 2003 c 168 § 410.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.950 Exemptions—Steam, electricity, electrical energy.** The tax levied by RCW 82.08.020 shall not apply to sales of steam, electricity, or electrical energy. [2003 c 168 § 703.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.08.955 Exemptions—Sales of machinery, equipment, vehicles, and services related to biodiesel blend or E85 motor fuel. (Expires July 1, 2015.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a biodiesel blend or E85 motor fuel. Structures and machinery and equipment that are used for the retail sale of a biodiesel blend or E85 motor fuel

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and for other purposes are exempt only on the portion used directly for the retail sale of a biodiesel blend or E85 motor fuel.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel blend or E85 motor fuel.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in RCW 82.04.4334 and this subsection apply.

(a) "Biodiesel blend" means fuel that contains at least twenty percent biodiesel fuel by volume.

(b) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(c) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of biodiesel blends or E85 motor fuel into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2015. [2007 c 309 § 4; 2003 c 63 § 2.]

**Effective date—2003 c 63:** See note following RCW 82.04.4334.

**82.08.960 Sales of machinery, equipment, vehicles, and services related to wood biomass fuel blend. (Expires July 1, 2009.)** (1) The tax levied by RCW 82.08.020 does not apply to sales of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or to sales of tangible personal property that becomes an ingredient or component of structures or machinery and equipment, if the machinery, equipment, or structure is used directly for the retail sale of a wood biomass fuel blend. Structures and machinery and equipment that are used for the retail sale of a wood biomass fuel blend and for other purposes are exempt only on the portion used directly for the retail sale of a wood biomass fuel blend.

(2) The tax levied by RCW 82.08.020 does not apply to sales of fuel delivery vehicles or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles including repair parts and replacement parts if at least seventy-five percent of the fuel distributed by the vehicles is a wood biomass fuel blend.

(3) A person taking the exemption under this section must keep records necessary for the department to verify eli-

gibility under this section. The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(4) For the purposes of this section, the definitions in \*RCW 82.69.010 [2003 c 339 § 1] and this subsection apply.

(a) "Wood biomass fuel blend" means fuel that contains at least twenty percent wood biomass fuel by volume.

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities and tangible personal property that becomes an ingredient or component thereof, including repair parts and replacement parts that are integral and necessary for the delivery of a wood biomass fuel blend into the fuel tank of a motor vehicle.

(5) This section expires July 1, 2009. [2003 c 339 § 13.]

\*Reviser's note: RCW 82.69.010 failed to become law. See 2003 c 339 § 17.

Effective dates—2003 c 339: See note following RCW 84.36.640.

**82.08.965 Exemptions—Semiconductor materials manufacturing. (Contingent effective date; contingent expiration date.)**

(1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the constructing of new buildings used for the manufacturing of semiconductor materials, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) To be eligible under this section the manufacturer or processor for hire must meet the following requirements for an eight-year period, such period beginning the day the new building commences commercial production, or a portion of tax otherwise due shall be immediately due and payable pursuant to subsection (3) of this section:

(a) The manufacturer or processor for hire must maintain at least seventy-five percent of full employment at the new building for which the exemption under this section is claimed.

(b) Before commencing commercial production at a new facility the manufacturer or processor for hire must meet with the department to review projected employment levels in the new buildings. The department, using information provided by the taxpayer, shall make a determination of the number of positions that would be filled at full employment. This number shall be used throughout the eight-year period to determine whether any tax is to be repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(c) In those situations where a production building in existence on \*the effective date of this section will be phased out of operation during which time employment at the new building at the same site is increased, the manufacturer or processor for hire shall maintain seventy-five percent of full employment at the manufacturing site overall.

(d) No application is necessary for the tax exemption. The person is subject to all the requirements of chapter 82.32 RCW. A person taking the exemption under this section must report as required under RCW 82.32.535.

(3) If the employment requirement is not met for any one calendar year, one-eighth of the exempt sales and use taxes shall be due and payable by April 1st of the following year. The department shall assess interest to the date the tax was imposed, but not penalties, on the taxes for which the person is not eligible.

(4) The exemption applies to new buildings, or parts of buildings, that are used exclusively in the manufacturing of semiconductor materials, including the storage of raw materials and finished product.

(5) For the purposes of this section:

(a) "Commencement of commercial production" is deemed to have occurred when the equipment and process qualifications in the new building are completed and production for sale has begun; and

(b) "Full employment" is the number of positions required for full capacity production at the new building, for positions such as line workers, engineers, and technicians.

(c) "Semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(6) No exemption may be taken after twelve years after \*the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(7) This section expires twelve years after \*the effective date of this act. [2003 c 149 § 5.]

\*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

**82.08.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Expires December 1, 2018.)**

(1) The tax levied by RCW 82.08.020 shall not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404.

(2) A person taking the exemption under this section must report under RCW 82.32.5351. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after December 1, 2006. [2006 c 84 § 3.]

Effective date—2006 c 84 §§ 2-8: See note following RCW 82.04.2404.

Findings—Intent—2006 c 84: See note following RCW 82.04.2404.

**82.08.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Contingent effective date; contingent expiration date.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For the purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under RCW 82.32.535. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after \*the effective date of this act. [2003 c 149 § 7.]

\*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

**82.08.975 Exemptions—Computer parts and software related to the manufacture of commercial airplanes. (Expires July 1, 2024.)** (1) The tax levied by RCW 82.08.020 shall not apply to sales of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.08.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to sales of or charges made for labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(3) As used in this section, the following definitions apply:

(a) "Aerospace products" means:

(i) Commercial airplanes and their components;

(ii) Machinery and equipment that is designed and used primarily for the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components by federal aviation regulation part 145 certificated repair stations; and

(iii) Tooling specifically designed for use in manufacturing commercial airplanes or their components.

(b) "Aerospace services" means the maintenance, repair, overhaul, or refurbishing of commercial airplanes or their components, but only when such services are performed by a FAR part 145 certificated repair station.

(c) "Commercial airplane" and "component" have the same meanings provided in RCW 82.32.550.

(d) "Peripherals" includes keyboards, monitors, mouse devices, and other accessories that operate outside of the computer, excluding cables, conduit, wiring, and other similar property.

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(4) This section expires July 1, 2024. [2008 c 81 § 2; 2003 2nd sp.s. c 1 § 9.]

**Findings—2008 c 81:** "The legislature finds that the aerospace industry provides good wages and benefits for the thousands of engineers, mechanics, support staff, and other employees working directly in the industry throughout the state. The legislature further finds that suppliers and vendors that support the aerospace industry in turn provide a range of well-paying jobs. In 2003, and again in 2006, the legislature determined it was in the public interest to encourage the continued presence of this industry through the provision of tax incentives.

However, the legislature recognizes that key elements of Washington's aerospace industry cluster were afforded few, if any, of the aerospace tax incentives enacted in 2003 and 2006. The comprehensive tax incentives in this act are intended to more comprehensively address the cost of doing business in Washington state compared to locations in other states for a larger segment of the aerospace industry cluster." [2008 c 81 § 1.]

**Savings—2008 c 81:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2008 c 81 § 17.]

**Effective date—2008 c 81:** "This act takes effect July 1, 2008." [2008 c 81 § 18.]

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**82.08.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (Expires July 1, 2024.)** (1) The tax levied by RCW 82.08.020 shall not apply to charges made for labor and services rendered in respect to the constructing of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or by a port district, to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, to sales of tangible personal property that will be incorporated as an ingredient or component of such buildings during the course of the constructing, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b). The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller shall retain a copy of the certificate for the seller's files.

(2) No application is necessary for the tax exemption in this section, however in order to qualify under this section before starting construction the port district must have entered into an agreement with the manufacturer to build such a facility. A person taking the exemption under this section is subject to all the requirements of chapter 82.32 RCW. In addition, the person must report as required under RCW 82.32.545.

(3) The exemption in this section applies to buildings, or parts of buildings, that are used exclusively in the manufacturing of superefficient airplanes, including buildings used for the storage of raw materials and finished product.

(4) For the purposes of this section, "superefficient airplane" has the meaning given in RCW 82.32.550.

(5) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 11.]

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**82.08.985 Exemptions—Insulin.** The tax levied by RCW 82.08.020 shall not apply to sales of insulin for human use. [2004 c 153 § 102.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**82.08.990 Exemptions—Import or export commerce.** The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property if the sale is exempt from business and occupation tax under RCW 82.04.610. [2007 c 477 § 3.]

**Intent—Purpose—2007 c 477:** See note following RCW 82.04.610.

**82.08.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.** (1) The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2007 c 381 § 2.]

**82.08.997 Exemptions—Temporary medical housing.** (1) The tax levied by RCW 82.08.020 does not apply to sales of temporary medical housing by a health or social welfare organization, if the following conditions are met:

(a) The temporary medical housing is provided only:

(i) While the patient is receiving medical treatment at: (A) A hospital required to be licensed under RCW 70.41.090; or (B) an outpatient clinic associated with such hospital; or

(ii) During any period of recuperation or observation immediately following medical treatment received by a patient at a facility in (a)(i)(A) or (B) of this subsection; and

(b) The health or social welfare organization does not furnish lodging or related services to the general public.

(2) For the purposes of this section, the following definitions apply:

(a) "Health or social welfare organization" has the meaning provided in RCW 82.04.431; and

(b) "Temporary medical housing" means transient lodging and related services provided to a patient or the patient's immediate family, legal guardian, or other persons necessary to the patient's mental or physical well-being. [2008 c 137 § 2.]

**Effective date—2008 c 137:** "This act takes effect July 1, 2008." [2008 c 137 § 7.]

**82.08.998 Exemptions—Weatherization of a residence.** (1) The tax imposed by RCW 82.08.020 does not apply to sales of tangible personal property used in the weatherization of a residence under the weatherization assistance program under chapter 70.164 RCW. The exemption only applies to tangible personal property that becomes a component of the residence.

(2) The exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(3) "Residence" and "weatherization" have the meanings provided in RCW 70.164.020. [2008 c 92 § 1.]

## Chapter 82.12 RCW

### USE TAX

#### Sections

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- 82.12.0297 Exemptions—Use of food purchased with food stamps.
- 82.12.0298 Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.
- 82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.
- 82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products.
- 82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions.
- 82.12.0316 Exemptions—Sales of cigarettes by Indian retailers.
- 82.12.032 Exemption—Use of used park model trailers.
- 82.12.033 Exemption—Use of certain used mobile homes.
- 82.12.034 Exemption—Use of used floating homes.
- 82.12.0345 Exemptions—Use of newspapers.
- 82.12.0347 Exemptions—Use of academic transcripts.
- 82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.
- 82.12.036 Exemptions and credits—Pollution control facilities.
- 82.12.037 Credits and refunds—Bad debts.
- 82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.
- 82.12.040 Retailers to collect tax—Penalty—Contingent expiration of subsection.
- 82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance.
- 82.12.060 Installment sales or leases.
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- 82.12.195 Bundled transactions—Tax imposed.
- 82.12.700 Exemptions—Vessels sold to nonresidents.
- 82.12.705 Exemptions—Financial information delivered electronically.
- 82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer.
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- 82.12.802 Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules.
- 82.12.803 Exemptions—Nebulizers.
- 82.12.804 Exemptions—Ostomic items.
- 82.12.805 Exemptions—Tangible personal property used at an aluminum smelter.
- 82.12.806 Exemptions—Use of computer equipment parts and services by printer or publisher.
- 82.12.807 Exemptions—Direct mail delivery charges.
- 82.12.808 Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers.
- 82.12.809 Exemptions—Vehicles using clean alternative fuels.
- 82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation.
- 82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.
- 82.12.813 Exemptions—High gas mileage vehicles.
- 82.12.815 Exemptions—Property and services related to electrification systems to power heavy duty diesel vehicles.
- 82.12.820 Exemptions—Warehouse and grain elevators and distribution centers.
- 82.12.825 Exemptions—Property and services that enable heavy duty diesel vehicles to operate with onboard electrification systems.
- 82.12.832 Exemptions—Use of gun safes.
- 82.12.834 Exemptions—Sales/leasebacks by regional transit authorities.
- 82.12.835 Exemptions—Solar hot water systems.
- 82.12.841 Exemptions—Farming equipment—Hay sheds.
- 82.12.845 Use of motorcycles loaned to department of licensing.
- 82.12.850 Exemptions—Conifer seed.
- 82.12.855 Exemptions—Replacement parts for qualifying farm machinery and equipment.
- 82.12.860 Exemptions—Property and services acquired from a federal credit union.
- 82.12.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.
- 82.12.880 Exemptions—Animal pharmaceuticals.
- 82.12.890 Exemptions—Livestock nutrient management equipment and facilities.
- 82.12.900 Exemptions—Anaerobic digesters.
- 82.12.910 Exemptions—Propane or natural gas to heat chicken structures.
- 82.12.920 Exemptions—Chicken bedding materials.
- 82.12.925 Exemptions—Dietary supplements.
- 82.12.930 Exemptions—Watershed protection or flood prevention.
- 82.12.935 Exemptions—Disposable devices used to deliver prescription drugs for human use.
- 82.12.940 Exemptions—Over-the-counter drugs for human use.
- 82.12.945 Exemptions—Kidney dialysis devices.
- 82.12.950 Exemptions—Steam, electricity, electrical energy.
- 82.12.955 Exemptions—Use of machinery, equipment, vehicles, and services related to biodiesel or E85 motor fuel.
- 82.12.960 Exemptions—Use of machinery, equipment, vehicles, and services related to wood biomass fuel blend.
- 82.12.965 Exemptions—Semiconductor materials manufacturing.
- 82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials.
- 82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials.
- 82.12.975 Computer parts and software related to the manufacture of commercial airplanes.
- 82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes.
- 82.12.985 Exemptions—Insulin.
- 82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.
- 82.12.998 Exemptions—Weatherization of a residence.

*Changes in tax law—Liability: RCW 82.08.064, 82.14.055, and 82.32.430.  
Direct pay permits: RCW 82.32.087.*

### **82.12.010 Definitions.** For the purposes of this chapter:

(1) "Purchase price" means the same as sales price as defined in RCW 82.08.010.

(2)(a) "Value of the article used" shall be the purchase price for the article of tangible personal property, the use of which is taxable under this chapter. The term also includes, in addition to the purchase price, the amount of any tariff or duty paid with respect to the importation of the article used. In case the article used is acquired by lease or by gift or is extracted, produced, or manufactured by the person using the same or is sold under conditions wherein the purchase price does not represent the true value thereof, the value of the article used shall be determined as nearly as possible according to the retail selling price at place of use of similar products of like quality and character under such rules as the department may prescribe.

(b) In case the articles used are acquired by bailment, the value of the use of the articles so used shall be in an amount representing a reasonable rental for the use of the articles so bailed, determined as nearly as possible according to the value of such use at the places of use of similar products of like quality and character under such rules as the department of revenue may prescribe. In case any such articles of tangible personal property are used in respect to the construction, repairing, decorating, or improving of, and which become or are to become an ingredient or component of, new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any such articles therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, then the value of the use of such articles so used shall be determined according to the retail selling price of such articles, or in the absence of such a selling price, as nearly as possible according to the retail selling price at place of use of similar products of like quality and character or, in the absence of either of these selling price measures, such value may be determined upon a cost basis, in any event under such rules as the department of revenue may prescribe.

(c) In the case of articles owned by a user engaged in business outside the state which are brought into the state for no more than one hundred eighty days in any period of three hundred sixty-five consecutive days and which are temporarily used for business purposes by the person in this state, the value of the article used shall be an amount representing a reasonable rental for the use of the articles, unless the person has paid tax under this chapter or chapter 82.08 RCW upon the full value of the article used, as defined in (a) of this subsection.

(d) In the case of articles manufactured or produced by the user and used in the manufacture or production of products sold or to be sold to the department of defense of the United States, the value of the articles used shall be determined according to the value of the ingredients of such articles.

(e) In the case of an article manufactured or produced for purposes of serving as a prototype for the development of a new or improved product, the value of the article used shall be determined by: (i) The retail selling price of such new or improved product when first offered for sale; or (ii) the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale.

(f) In the case of an article purchased with a direct pay permit under RCW 82.32.087, the value of the article used shall be determined by the purchase price of such article if, but for the use of the direct pay permit, the transaction would have been subject to sales tax;

(3) "Value of the service used" means the purchase price for the service, the use of which is taxable under this chapter. If the service is received by gift or under conditions wherein the purchase price does not represent the true value thereof, the value of the service used shall be determined as nearly as possible according to the retail selling price at place of use of similar services of like quality and character under rules the department may prescribe;

(4) "Value of the extended warranty used" means the purchase price for the extended warranty, the use of which is taxable under this chapter. If the extended warranty is received by gift or under conditions wherein the purchase price does not represent the true value of the extended warranty, the value of the extended warranty used shall be determined as nearly as possible according to the retail selling price at place of use of similar extended warranties of like quality and character under rules the department may prescribe;

(5) "Use," "used," "using," or "put to use" shall have their ordinary meaning, and shall mean:

(a) With respect to tangible personal property, the first act within this state by which the taxpayer takes or assumes dominion or control over the article of tangible personal property (as a consumer), and include installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption within this state;

(b) With respect to a service defined in RCW 82.04.050(2)(a), the first act within this state after the service has been performed by which the taxpayer takes or assumes dominion or control over the article of tangible personal property upon which the service was performed (as a consumer), and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state; and

(c) With respect to an extended warranty, the first act within this state after the extended warranty has been acquired by which the taxpayer takes or assumes dominion or control over the article of tangible personal property to which the extended warranty applies, and includes installation, storage, withdrawal from storage, distribution, or any other act preparatory to subsequent actual use or consumption of the article within this state;

(6) "Taxpayer" and "purchaser" include all persons included within the meaning of the word "buyer" and the word "consumer" as defined in chapters 82.04 and 82.08 RCW;

(7)(a)(i) Except as provided in (a)(ii) of this subsection (7), "retailer" means every seller as defined in RCW 82.08.010 and every person engaged in the business of selling tangible personal property at retail and every person required to collect from purchasers the tax imposed under this chapter.

(ii) "Retailer" does not include a professional employer organization when a covered employee coemployed with the client under the terms of a professional employer agreement engages in activities that constitute a sale of tangible personal property, extended warranty, or a sale of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a) that is subject to the tax imposed by this chapter. In such cases, the client, and not the professional employer organization, is deemed to be the retailer and is responsible for collecting and remitting the tax imposed by this chapter.

(b) For the purposes of (a) of this subsection, the terms "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540;

(8) "Extended warranty" has the same meaning as in RCW 82.04.050(7);

(9) The meaning ascribed to words and phrases in chapters 82.04 and 82.08 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under the provisions of this chapter. "Consumer," in addition to the meaning ascribed to it in chapters 82.04 and 82.08 RCW insofar as applicable, shall also mean any person who distributes or displays, or causes to be distributed or displayed, any article of tangible personal property, except newspapers, the primary purpose of which is to promote the sale of products or services. With respect to property distributed to persons within this state by a consumer as defined in this subsection (9), the use of the property shall be deemed to be by such consumer. [2006 c 301 § 3; 2005 c 514 § 104. Prior: 2003 c 168 § 102; 2003 c 5 § 1; 2002 c 367 § 3; 2001 c 188 § 3; 1994 c 93 § 1; prior: 1985 c 222 § 1; 1985 c 132 § 1; 1983 1st ex.s. c 55 § 2; 1975-'76 2nd ex.s. c 1 § 1; 1975 1st ex.s. c 278 § 52; 1965 ex.s. c 173 § 17; 1961 c 293 § 15; 1961 c 15 § 82.12.010; prior: 1955 c 389 § 24; 1951 1st ex.s. c 9 § 3; 1949 c 228 § 9; 1945 c 249 § 8; 1943 c 156 § 10; 1939 c 225 § 18; 1937 c 191 § 4; 1935 c 180 § 35; Rem. Supp. 1949 § 8370-35.]

**Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301:** See notes following RCW 82.32.710.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Finding—Intent—Retroactive application—2003 c 5:** "The legislature finds that in the enactment of chapter 367, Laws of 2002, some use tax exemptions were not updated to reflect the change in taxability regarding services. It is the legislature's intent to correct this omission by amending the various use tax exemptions so that services exempt from the sales tax are also exempt from the use tax. Sections 1 through 19 of this act apply retroactively to June 1, 2002. The department of revenue shall refund any use taxes paid and forgive use taxes unpaid as a result of the omission." [2003 c 5 § 20.]

**Effective date—2003 c 5:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 2003]." [2003 c 5 § 21.]

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Finding—Intent—Effective date—2001 c 188:** See notes following RCW 82.32.087.

**Effective date—1994 c 93:** "This act shall take effect July 1, 1994." [1994 c 93 § 3.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Application to preexisting contracts—1975-'76 2nd ex.s. c 1; 1975 1st ex.s. c 90:** "In the event any person has entered into a contract prior to July 1, 1975 or has bid upon a contract prior to July 1, 1975 and has been awarded the contract after July 1, 1975, the additional taxes imposed by chapter 90, Laws of 1975 1st ex. sess., section 5, chapter 291, Laws of 1975 1st ex. sess. and this 1975 amendatory act shall not be required to be paid by such person in carrying on activities in the fulfillment of such contract." [1975-'76 2nd ex.s. c 1 § 3; 1975 1st ex.s. c 90 § 4.]

**Severability—1975-'76 2nd ex.s. c 1:** "If any provision of this 1975 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 1 § 4.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

(2008 Ed.)

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.12.020 Use tax imposed.** (1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer: (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7); (b) any prewritten computer software, regardless of the method of delivery, but excluding prewritten computer software that is either provided free of charge or is provided for temporary use in viewing information, or both; or (c) any extended warranty.

(2) This tax shall apply to the use of every extended warranty, service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) The provisions of this chapter do not apply in respect to the use of any article of tangible personal property, extended warranty, or service taxable under RCW 82.04.050 (2)(a) or (3)(a), purchased at retail or acquired by lease, gift, or bailment if the sale to, or the use by, the present user or his bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his bailor or donor.

(4) Except as provided in this section, payment by one purchaser or user of tangible personal property, extended warranty, or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property, extended warranty, or service from the taxes imposed by such chapters. If the sale to, or the use by, the present user or his or her bailor or donor has already been subjected to the tax under chapter 82.08 RCW or this chapter and the tax has been paid by the present user or by his or her bailor or donor; or in respect to the use of property acquired by bailment and the tax has once been paid based on reasonable rental as determined by RCW 82.12.060 measured by the value of the article at time of first use multiplied by the tax rate imposed by chapter 82.08 RCW or this chapter as of the time of first use; or in respect to the use of any article of tangible personal property acquired by bailment, if the property was acquired by a previous bailee from the same bailor for use in the same general activity and the original bailment was prior to June 9, 1961, the tax imposed by this chapter does not apply.

(5) The tax shall be levied and collected in an amount equal to the value of the article used, value of the extended warranty used, or value of the service used by the taxpayer multiplied by the rates in effect for the retail sales tax under RCW 82.08.020, except in the case of a seller required to collect use tax from the purchaser, the tax shall be collected in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. [2005 c 514 § 105. Prior: 2003 c 361 § 302; 2003 c 168 § 214; 2003 c 5 § 2; 2002 c 367 § 4; 1999 c 358 § 9; 1998 c 332 § 7; 1996

c 148 § 5; 1994 c 93 § 2; 1983 c 7 § 7; 1981 2nd ex.s. c 8 § 2; 1980 c 37 § 79; 1977 ex.s. c 324 § 3; 1975-'76 2nd ex.s. c 130 § 2; 1975-'76 2nd ex.s. c 1 § 2; 1971 ex.s. c 281 § 10; 1969 ex.s. c 262 § 32; 1967 ex.s. c 149 § 22; 1965 ex.s. c 173 § 18; 1961 c 293 § 9; 1961 c 15 § 82.12.020; prior: 1959 ex.s. c 3 § 10; 1955 ex.s. c 10 § 3; 1955 c 389 § 25; 1949 c 228 § 7; 1943 c 156 § 8; 1941 c 76 § 6; 1939 c 225 § 14; 1937 c 191 § 1; 1935 c 180 § 31; Rem. Supp. 1949 § 8370-31.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Findings—Intent—Effective date—1998 c 332:** See notes following RCW 82.04.29001.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**Effective date—1994 c 93:** See note following RCW 82.12.010.

**Construction—Severability—Effective dates—1983 c 7:** See notes following RCW 82.08.020.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**Effective date—1975-'76 2nd ex.s. c 130:** See note following RCW 82.08.020.

**Application to preexisting contracts—1975-'76 2nd ex.s. c 1:** See note following RCW 82.12.010.

**Severability—1975-'76 2nd ex.s. c 1:** See note following RCW 82.12.010.

*High capacity transportation systems—Sales and use tax: RCW 81.104.170.*

**82.12.0201 Dedication of taxes—Comprehensive performance audits.** Beginning on December 8, 2005, 0.16 percent of the taxes collected under RCW 82.12.020 based on the rate in RCW 82.08.020(1) shall be dedicated to funding comprehensive performance audits under RCW 43.09.470. Revenue identified in this section shall be deposited in the performance audits of government account created in RCW 43.09.475. [2006 c 1 § 4 (Initiative Measure No. 900, approved November 8, 2005).]

**Short title—Effective date—2006 c 1 (Initiative Measure No. 900):** See RCW 43.09.471.

**Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900):** See notes following RCW 43.09.470.

**82.12.0204 Exemptions—Honey bees. (*Expires July 1, 2013.*)** The provisions of this chapter do not apply in respect to the use of honey bees by an eligible apiarist, as defined in RCW 82.04.629. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. [2008 c 314 § 5.]

**Finding—Intent—Effective date—Expiration date—2008 c 314:** See notes following RCW 82.04.629.

[Title 82 RCW—page 120]

**82.12.0205 Exemptions—Waste vegetable oil.** The provisions of this chapter do not apply with respect to the use of waste vegetable oil that is used by a person in the production of biodiesel for personal use. The definitions in RCW 82.08.0205 apply to this section. [2008 c 237 § 3.]

**Effective date—2008 c 237:** See note following RCW 82.08.0205.

**82.12.022 Natural or manufactured gas—Use tax imposed—Exemption.** (1) There is hereby levied and there shall be collected from every person in this state a use tax for the privilege of using natural gas or manufactured gas within this state as a consumer.

(2) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(7) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.

(3) The tax levied in this section shall not apply to the use of natural or manufactured gas delivered to the consumer by other means than through a pipeline.

(4) The tax levied in this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 82.16.020 with respect to the gas for which exemption is sought under this subsection.

(5) The tax levied in this section shall not apply to the use of natural or manufactured gas by an aluminum smelter as that term is defined in RCW 82.04.217 before January 1, 2012.

(6) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 82.16.020 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(7) The use tax hereby imposed shall be paid by the consumer to the department.

(8) There is imposed a reporting requirement on the person who delivered the gas to the consumer to make a quarterly report to the department. Such report shall contain the volume of gas delivered, name of the consumer to whom delivered, and such other information as the department shall require by rule.

(9) The department may adopt rules under chapter 34.05 RCW for the administration and enforcement of sections 1 through 6, chapter 384, Laws of 1989. [2006 c 182 § 5; 2004 c 24 § 12; 1994 c 124 § 9; 1989 c 384 § 3.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**Intent—1989 c 384:** "Due to a change in the federal regulations governing the sale of brokered natural gas, cities have lost significant revenues from the utility tax on natural gas. It is therefore the intent of the legislature to adjust the utility and use tax authority of the state and cities to maintain

this revenue source for the municipalities and provide equality of taxation between intrastate and interstate transactions." [1989 c 384 § 1.]

**Effective date—1989 c 384:** "This act shall take effect July 1, 1990." [1989 c 384 § 7.]

**82.12.023 Natural or manufactured gas, exempt from use tax imposed by RCW 82.12.020.** The tax levied by RCW 82.12.020 shall not apply in respect to the use of natural or manufactured gas that is taxable under RCW 82.12.022. [1994 c 124 § 10; 1989 c 384 § 5.]

**Intent—Effective date—1989 c 384:** See notes following RCW 82.12.022.

**82.12.024 Deferral of use tax on certain users of natural or manufactured gas.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001, and is owned by a direct service industrial customer for the purpose of producing electricity to be consumed by the direct service industrial customer.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct service industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, the tax levied in RCW 82.12.022 on the first sixty months' use of natural or manufactured gas by a direct service industrial customer that owns a facility shall be deferred. This deferral is limited to the tax on natural or manufactured gas used or consumed to generate electricity at the facility.

(3) Application for deferral shall be made by the direct service industrial customer before the first use of natural or manufactured gas. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, the projected date of first use of natural or manufactured gas to generate electricity at the facility, the date construction is projected to begin or did begin, the applicant's average annual employment in the state for the six calendar years immediately preceding the year in which the application is made, and shall affirm the applicant's status as a direct service industrial customer. The department shall rule on the application within thirty days of receipt.

(4)(a) The direct service industrial customer shall begin paying the deferred tax in the sixth calendar year following the calendar year in which the month of first use of natural or manufactured gas to generate electricity at the facility occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the following schedule:

<u>Payment Year</u>	<u>% of Deferred Tax to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the tax deferred under this section for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for deferred tax will not be extinguished by insolvency or other failure of the direct service industrial customer. Transfer of ownership of the facility does not affect deferral eligibility. However, the deferral is available to the successor only if the eligibility conditions of this section are met.

(5)(a) If the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of use of natural or manufactured gas to generate electricity at a facility is equal to or exceeds the six-year average annual employment stated on the application for deferral under this section, the tax deferred need not be paid. The direct service industrial customer shall certify to the department by June 1st of the sixth calendar year following the calendar year in which the month of first use of gas occurs the average annual employment for each of the five prior calendar years.

(b) If the five-year average calculated in (a) of this subsection is less than the average annual employment stated on the application for deferral under this section, the tax deferred under this section shall be paid in the amount as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Deferred Tax to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(c) Tax paid under this subsection shall be paid according to the schedule in subsection (4)(a) of this section and under the terms and conditions of subsection (4)(b) and (c) of this section.

(6) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department.

(7) A person claiming this deferral shall supply to the department quarterly reports containing information necessary to document the total volume of natural or manufactured gas purchased in the quarter, the value of that total volume, and the percentage of the total volume used to generate electricity at the facility. [2001 c 214 § 10.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**82.12.0251 Exemptions—Use of tangible personal property by nonresident while temporarily within state—Use of household goods, personal effects, and private motor vehicles acquired in another state while resident of other state—Use of certain warranties.** The provisions of this chapter shall not apply in respect to the use:

(1) Of any article of tangible personal property, and services that were rendered in respect to such property, brought into the state of Washington by a nonresident thereof for his or her use or enjoyment while temporarily within the state of Washington unless such property is used in conducting a nontransitory business activity within the state of Washington;

(2) By a nonresident of Washington of a motor vehicle or trailer which is registered or licensed under the laws of the state of his or her residence, and which is not required to be registered or licensed under the laws of Washington, including motor vehicles or trailers exempt pursuant to a declaration issued by the department of licensing under RCW 46.85.060, and services rendered outside the state of Washington in respect to such property;

(3) Of household goods, personal effects, and private motor vehicles, and services rendered in respect to such property, by a bona fide resident of Washington, or nonresident members of the armed forces who are stationed in Washington pursuant to military orders, if such articles and services were acquired and used by such person in another state while a bona fide resident thereof and such acquisition and use occurred more than ninety days prior to the time he or she entered Washington. For purposes of this subsection, private motor vehicles do not include motor homes;

(4) Of an extended warranty, to the extent that the property covered by the extended warranty is exempt under this section from the tax imposed under this chapter.

For purposes of this section, "state" means a state of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, and "services" means services defined as retail sales in RCW 82.04.050(2)(a). [2005 c 514 § 106; 2003 c 5 § 18; 1997 c 301 § 1; 1987 c 27 § 1; 1985 c 353 § 4; 1983 c 26 § 2; 1980 c 37 § 51. Formerly RCW 82.12.030(1).]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02525 Exemptions—Sale of copied public records by state and local agencies.** The provisions of this chapter shall not apply with respect to the use of public records sold by state and local agencies, as the terms are defined in RCW 42.17.020, that are obtained under a request for the record for which no fee is charged other than a statutorily set fee or a fee to reimburse the agency for its actual costs directly incident to the copying. A request for a record includes a request for a document not available to the public

but available to those persons who by law are allowed access to the document, such as requests for fire reports, law enforcement reports, taxpayer information, and academic transcripts. [1996 c 63 § 2.]

**Effective date—1996 c 63:** See note following RCW 82.08.02525.

**82.12.0253 Exemptions—Use of tangible personal property taxable under chapter 82.16 RCW.** The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property the sale of which is specifically taxable under chapter 82.16 RCW. [1980 c 37 § 53. Formerly RCW 82.12.030(3).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0254 Exemptions—Use of airplanes, locomotives, railroad cars, or watercraft used in interstate or foreign commerce or outside state's territorial waters—Components—Use of motor vehicle or trailer in the transportation of persons or property across state boundaries—Conditions—Use of motor vehicle or trailer under one-transit permit to point outside state.** (1) The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving.

(2) The provisions of this chapter shall not apply in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state.

(3) The provisions of this chapter shall not apply in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of

any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder, in the course of repairing, cleaning, altering, or improving the same; also the use of labor and services rendered in respect to such repairing, cleaning, altering, or improving. [2003 c 5 § 3; 1998 c 311 § 7; 1995 c 63 § 2; 1980 c 37 § 54. Formerly RCW 82.12.030(4).]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Effective date—1995 c 63:** See note following RCW 82.08.0263.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0255 Exemptions—Nontaxable tangible personal property and warranties.** The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property, extended warranty, or service which the state is prohibited from taxing under the Constitution of the state or under the Constitution or laws of the United States. [2005 c 514 § 107; 2003 c 5 § 4; 1980 c 37 § 55. Formerly RCW 82.12.030(5).]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0256 Exemptions—Use of motor vehicle and special fuel—Conditions.** The provisions of this chapter shall not apply in respect to the use of:

(1) Special fuel purchased in this state upon which a refund is obtained as provided in RCW 82.38.180(2); and

(2) Motor vehicle and special fuel if:

(a) The fuel is used for the purpose of public transportation and the purchaser is entitled to a refund or an exemption under RCW 82.36.275 or 82.38.080(3); or

(b) The fuel is purchased by a private, nonprofit transportation provider certified under chapter 81.66 RCW and the purchaser is entitled to a refund or an exemption under RCW 82.36.285 or 82.38.080(1)(h); or

(c) The fuel is purchased by a public transportation benefit area created under chapter 36.57A RCW or a county-owned ferry or county ferry district created under chapter 36.54 RCW for use in passenger-only ferry vessels; or

(d) The fuel is taxable under chapter 82.36 or 82.38 RCW: PROVIDED, That the use of motor vehicle and special fuel upon which a refund of the applicable fuel tax is obtained shall not be exempt under this subsection (2)(d), and the director of licensing shall deduct from the amount of such tax to be refunded the amount of tax due under this chapter and remit the same each month to the department of revenue. [2007 c 223 § 10; 2005 c 443 § 6; 1998 c 176 § 5. Prior: 1983

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1st ex.s. c 35 § 3; 1983 c 108 § 2; 1980 c 147 § 2; 1980 c 37 § 56. Formerly RCW 82.12.030(6).]

**Effective date—2007 c 223:** See note following RCW 36.57A.220.

**Finding—Intent—Effective date—2005 c 443:** See notes following RCW 82.08.0255.

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Intent—1983 1st ex.s. c 35:** See note following RCW 82.08.0255.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

*Diesel, biodiesel, and aircraft fuel sales tax exemption for farmers:* RCW 82.12.865.

**82.12.02565 Exemptions—Machinery and equipment used for manufacturing, research and development, or a testing operation.** The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation, to the use by a person engaged in testing for a manufacturer or processor for hire of machinery and equipment used directly in a testing operation, or to the use of labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the machinery and equipment. [2003 c 5 § 5; 1999 c 211 § 6; 1998 c 330 § 2; 1996 c 247 § 3; 1995 1st sp.s. c 3 § 3.]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Finding—Intent—1999 c 211:** See note following RCW 82.08.02565.

**Findings—Intent—1996 c 247:** See note following RCW 82.08.02566.

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**82.12.02566 Exemptions—Use of tangible personal property incorporated in prototype for aircraft parts, auxiliary equipment, and aircraft modification—Limitations on yearly exemption.** (1) The provisions of this chapter shall not apply with respect to the use of tangible personal property incorporated into a prototype for aircraft parts, auxiliary equipment, or modifications; or in respect to the use of tangible personal property that at one time is incorporated into the prototype but is later destroyed in the testing or development of the prototype.

(2) This exemption does not apply in respect to the use of tangible personal property by any person whose total taxable amount during the immediately preceding calendar year exceeds twenty million dollars. For purposes of this section, "total taxable amount" means gross income of the business and value of products manufactured, less any amounts for which a credit is allowed under RCW 82.04.440.

(3) State and local taxes for which an exemption is received under this section and RCW 82.08.02566 shall not exceed one hundred thousand dollars for any person during any calendar year.

(4) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department. [2003 c 168 § 209; 1997 c 302 § 2; 1996 c 247 § 5.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—1997 c 302:** See note following RCW 82.08.02566.

**Findings—Intent—1996 c 247:** See note following RCW 82.08.02566.

**82.12.02567 Exemptions—Use of machinery and equipment used in generating electricity. (Expires June 30, 2009.)** (1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred watts of electricity using fuel cells, wind, sun, or landfill gas as the principal source of power, or to the use of labor and services rendered in respect to installing such machinery and equipment.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2009. [2004 c 152 § 2; 2003 c 5 § 6; 2001 c 213 § 2; 1999 c 358 § 10; 1998 c 309 § 2; 1996 c 166 § 2.]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Effective date—2001 c 213:** See note following RCW 82.08.02567.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Effective date—1998 c 309:** See note following RCW 82.08.02567.

**Effective date—1996 c 166:** See note following RCW 82.08.02567.

**82.12.02568 Exemptions—Use of carbon and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale.** The provisions of this chapter shall not apply in respect to the use of carbon, petroleum coke, coal tar, pitch, and similar substances that become an ingredient or component of anodes or cathodes used in producing aluminum for sale. [1996 c 170 § 2.]

**Effective date—1996 c 170:** See note following RCW 82.08.02568.

**82.12.02569 Exemptions—Use of tangible personal property related to a building or structure that is an integral part of a laser interferometer gravitational wave observatory.** The provisions of this chapter shall not apply in respect to the use of tangible personal property by a consumer as defined in RCW 82.04.190(6) if the tangible personal property is incorporated into, installed in, or attached to a building or other structure that is an integral part of a laser interferometer gravitational wave observatory on which construction is commenced before December 1, 1996. [1996 c 113 § 2.]

**Effective date—1996 c 113:** See note following RCW 82.08.02569.

**82.12.0257 Exemptions—Use of tangible personal property of the operating property of a public utility by state or political subdivision.** The provisions of this chapter shall not apply in respect to the use of any article of tangible personal property included within the transfer of the title to the entire operating property of a publicly or privately owned public utility, or of a complete operating integral section thereof, by the state or a political subdivision thereof in conducting any business defined in RCW 82.16.010 (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), or (11). [1980 c 37 § 57. Formerly RCW 82.12.030(7).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0258 Exemptions—Use of tangible personal property previously used in farming and purchased from farmer at auction.** The provisions of this chapter shall not apply in respect to the use of tangible personal property (including household goods) which have been used in conducting a farm activity, if such property was purchased from a farmer at an auction sale held or conducted by an auctioneer upon a farm and not otherwise. [1980 c 37 § 58. Formerly RCW 82.12.030(8).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0259 Exemptions—Use of tangible personal property by federal corporations providing aid and relief.** The provisions of this chapter shall not apply in respect to the use of tangible personal property or the use of services defined in RCW 82.04.050(2)(a) by corporations which have been incorporated under any act of the congress of the United States and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, flood, and other national calamities and to devise and carry on measures for preventing the same. [2003 c 5 § 7; 1980 c 37 § 59. Formerly RCW 82.12.030(9).]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02595 Exemptions—Tangible personal property and certain services donated to nonprofit organization or governmental entity.** (1) This chapter does not apply to the use by a nonprofit charitable organization or state or local governmental entity of any item of tangible personal property that has been donated to the nonprofit charitable organization or state or local governmental entity, or to the subsequent use of the property by a person to whom the property is donated or bailed in furtherance of the purpose for which the property was originally donated.

(2) This chapter does not apply to the donation of tangible personal property without intervening use to a nonprofit charitable organization, or to the incorporation of tangible personal property without intervening use into real or personal property of or for a nonprofit charitable organization in the course of installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating the real or personal property for no charge.

(3) This chapter does not apply to the use by a nonprofit charitable organization of labor and services rendered in respect to installing, repairing, cleaning, altering, imprinting, or improving personal property provided to the charitable organization at no charge, or to the donation of such services.

(4) This chapter does not apply to the donation of amusement and recreation services without intervening use to a nonprofit organization or state or local governmental entity, to the use by a nonprofit organization or state or local governmental entity of amusement and recreation services, or to the subsequent use of the services by a person to whom the services are donated or bailed in furtherance of the purpose for which the services were originally donated. As used in this subsection, "amusement and recreation services" has the

meaning in RCW 82.04.050(3)(a). [2004 c 155 § 1; 2003 c 5 § 11; 1998 c 182 § 1; 1995 c 201 § 1.]

**Effective date—2004 c 155:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 155 § 2.]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Effective date—1995 c 201:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 201 § 2.]

**82.12.0261 Exemptions—Use of livestock.** The provisions of this chapter shall not apply in respect to the use of livestock, as defined in RCW 16.36.005, for breeding purposes where said animals are registered in a nationally recognized breed association; or to sales of cattle and milk cows used on the farm. [2001 c 118 § 5; 1980 c 37 § 60. Formerly RCW 82.12.030(10).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0262 Exemptions—Use of poultry for producing poultry and poultry products for sale.** The provisions of this chapter shall not apply in respect to the use of poultry in the production for sale of poultry or poultry products. [1980 c 37 § 61. Formerly RCW 82.12.030(11).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0263 Exemptions—Use of fuel by extractor or manufacturer thereof.** The provisions of this chapter shall not apply in respect to the use of fuel by the extractor or manufacturer thereof when used directly in the operation of the particular extractive operation or manufacturing plant which produced or manufactured the same. [1980 c 37 § 62. Formerly RCW 82.12.030(12).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0264 Exemptions—Use of dual-controlled motor vehicles by school for driver training.** The provisions of this chapter shall not apply in respect to the use of motor vehicles, equipped with dual controls, which are loaned to and used exclusively by a school in connection with its driver training program: PROVIDED, That this exemption and the term "school" shall apply only to (1) the University of Washington, Washington State University, the regional universities, The Evergreen State College and the state community colleges or (2) any public, private or parochial school accredited by either the state board of education or by the University of Washington (the state accrediting station) or (3) any public vocational school meeting the standards, courses and requirements established and prescribed or approved in accordance with the Community College Act of 1967 (chapter 8, Laws of 1967 first extraordinary session). [1980 c 37 § 63. Formerly RCW 82.12.030(13).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0265 Exemptions—Use by bailee of tangible personal property consumed in research, development, etc., activities.** The provisions of this chapter shall not apply in respect to the use by a bailee of any article of tangible per-

sonal property which is entirely consumed in the course of research, development, experimental and testing activities conducted by the user, provided the acquisition or use of such articles by the bailor was not subject to the taxes imposed by chapter 82.08 RCW or chapter 82.12 RCW. [1980 c 37 § 64. Formerly RCW 82.12.030(14).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0266 Exemptions—Use by residents of motor vehicles and trailers acquired and used while members of the armed services and stationed outside the state.** The provisions of this chapter shall not apply in respect to the use by residents of this state of motor vehicles and trailers acquired and used while such persons are members of the armed services and are stationed outside this state pursuant to military orders, but this exemption shall not apply to members of the armed services called to active duty for training purposes for periods of less than six months and shall not apply to the use of motor vehicles or trailers acquired less than thirty days prior to the discharge or release from active duty of any person from the armed services. [1980 c 37 § 65. Formerly RCW 82.12.030(15).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0267 Exemptions—Use of semen in artificial insemination of livestock.** The provisions of this chapter shall not apply in respect to the use of semen in the artificial insemination of livestock. [1980 c 37 § 66. Formerly RCW 82.12.030(16).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0268 Exemptions—Use of form lumber by persons engaged in constructing, repairing, etc., structures for consumers.** The provisions of this chapter shall not apply in respect to the use of form lumber by any person engaged in the constructing, repairing, decorating or improving of new or existing buildings or other structures under, upon or above real property of or for consumers: PROVIDED, That such lumber is used or to be used first by such person for the molding of concrete in a single such contract, project or job and is thereafter incorporated into the product of that same contract, project or job as an ingredient or component thereof. [1980 c 37 § 67. Formerly RCW 82.12.030(17).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02685 Exemptions—Use of tangible personal property related to agricultural employee housing.** (1) The provisions of this chapter shall not apply in respect to the use of tangible personal property that becomes an ingredient or component of buildings or other structures used as agricultural employee housing during the course of constructing, repairing, decorating, or improving the buildings or other structures by any person.

(2) The exemption provided in this section for agricultural employee housing provided to year-round employees of the agricultural employer, only applies if that housing is built to the current building code for single-family or multifamily dwellings according to the state building code, chapter 19.27 RCW.

(3) Any agricultural employee housing built under this section shall be used according to this section for at least five consecutive years from the date the housing is approved for occupancy, or the full amount of a tax otherwise due shall be immediately due and payable together with interest, but not penalties, from the date the housing is approved for occupancy until the date of payment. If at any time agricultural employee housing that is not located on agricultural land ceases to be used in the manner specified in subsection (2) of this section, the full amount of tax otherwise due shall be immediately due and payable with interest, but not penalties, from the date the housing ceases to be used as agricultural employee housing until the date of payment.

(4) The exemption provided in this section shall not apply to housing built for the occupancy of an employer, family members of an employer, or persons owning stock or shares in a farm partnership or corporation business.

(5) The definitions in RCW 82.08.02745(5) apply to this section. [1997 c 438 § 2; 1996 c 117 § 2.]

**Effective date—1997 c 438:** See note following RCW 82.08.02745.

**Effective date—1996 c 117:** See note following RCW 82.08.02745.

**82.12.0269 Exemptions—Use of sand, gravel, or rock to extent of labor and service charges for mining, sorting, crushing, etc., thereof from county or city quarry for public road purposes.** The provisions of this chapter shall not apply in respect to the use of any sand, gravel, or rock to the extent of the cost of or charges made for labor and services performed in respect to the mining, sorting, crushing, screening, washing, hauling, and stockpiling such sand, gravel, or rock, when such sand, gravel, or rock is taken from a pit or quarry which is owned by or leased to a county or a city, and such sand, gravel, or rock is (1) either stockpiled in said pit or quarry for placement or is placed on the street, road, place, or highway of the county or city by the county or city itself, or (2) sold by the county or city to a county, or a city at actual cost for placement on a publicly owned street, road, place, or highway. The exemption provided for in this section shall not apply to the use of such material to the extent of the cost of or charge made for such labor and services, if the material is used for other than public road purposes or is sold otherwise than as provided for in this section. [1980 c 37 § 68. Formerly RCW 82.12.030(18).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0271 Exemptions—Use of wearing apparel only as a sample for display for sale.** The provisions of this chapter shall not apply in respect to the use of wearing apparel only as a sample for display for the purpose of effecting sales of goods represented by such sample. [1980 c 37 § 69. Formerly RCW 82.12.030(19).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0272 Exemptions—Use of tangible personal property in single trade shows.** The provisions of this chapter shall not apply in respect to the use of tangible personal property held for sale and displayed in single trade shows for a period not in excess of thirty days, the primary purpose of which is to promote the sale of products or services. [1980 c 37 § 70. Formerly RCW 82.12.030(20).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0273 Exemptions—Use of pollen.** The provisions of this chapter shall not apply in respect to the use of pollen. [1980 c 37 § 71. Formerly RCW 82.12.030(21).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.0274 Exemptions—Use of tangible personal property by political subdivision resulting from annexation or incorporation.** The provisions of this chapter shall not apply in respect to the use of the personal property of one political subdivision by another political subdivision directly or indirectly arising out of or resulting from the annexation or incorporation of any part of the territory of one political subdivision by another. [1980 c 37 § 72. Formerly RCW 82.12.030(22).]

**Intent—1980 c 37:** See note following RCW 82.04.4281.

**82.12.02745 Exemptions—Use by free hospitals of certain items.** (1) The provisions of this chapter shall not apply in respect to the use by free hospitals of items reasonably necessary for the operation of, and provision of health care by, free hospitals.

(2) As used in this section, "free hospital" means a hospital that does not charge patients for health care provided by the hospital. [1993 c 205 § 2.]

**Effective date—1993 c 205:** See note following RCW 82.08.02795.

**82.12.02747 Exemptions—Use of medical products by qualifying blood, tissue, or blood and tissue banks.** (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a qualifying blood bank, a qualifying tissue bank, or a qualifying blood and tissue bank. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.324 and 82.08.02805 apply to this section. [2004 c 82 § 3; 1995 2nd sp.s. c 9 § 5.]

**Effective date—1995 2nd sp.s. c 9:** See note following RCW 84.36.035.

**82.12.02748 Exemptions—Use of human blood, tissue, organs, bodies, or body parts for medical research or quality control testing.** The provisions of this chapter shall not apply in respect to the use of human blood, tissue, organs, bodies, or body parts for medical research and quality control testing purposes. [1996 c 141 § 2.]

**Effective date—1996 c 141:** See note following RCW 82.08.02806.

**82.12.02749 Exemptions—Use of medical supplies, chemicals, or materials by organ procurement organization.** The tax levied by RCW 82.08.020 shall not apply to the use of medical supplies, chemicals, or materials by an organ procurement organization exempt under RCW 82.04.326. The definitions of medical supplies, chemicals, and materials in \*RCW 82.04.324 apply to this section. This exemption does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles. [2002 c 113 § 3.]

\*Reviser's note: RCW 82.04.324 was amended by 2004 c 82 § 1, deleting the definitions of "medical supplies," "chemicals," and "materials."

Effective date—2002 c 113: See note following RCW 82.04.326.

**82.12.0275 Exemptions—Use of certain drugs or family planning devices.** (1) The provisions of this chapter shall not apply in respect to the use of drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the drugs are for human use.

(2) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use dispensed or to be dispensed to patients, pursuant to a prescription.

(3) The provisions of this chapter shall not apply in respect to the use of drugs or devices used for family planning purposes, including the prevention of conception, for human use supplied by a family planning clinic that is under contract with the department of health to provide family planning services.

(4) As used in this section, "prescription" and "drug" have the same meanings as in RCW 82.08.0281. [2003 c 168 § 406; 1993 sp.s. c 25 § 309; 1980 c 37 § 73. Formerly RCW 82.12.030(23).]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25: See notes following RCW 82.04.230.

Finding—1993 sp.s. c 25: See note following RCW 82.08.0281.

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.12.0276 Exemptions—Use of returnable containers for beverages and foods.** The provisions of this chapter shall not apply in respect to the use of returnable containers for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers. [1980 c 37 § 74. Formerly RCW 82.12.030(24).]

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.12.0277 Exemptions—Certain medical items.** (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Prosthetic devices prescribed, fitted, or furnished for an individual by a person licensed under the laws of this state to prescribe, fit, or furnish prosthetic devices, and the components of such prosthetic devices;

(b) Medicines of mineral, animal, and botanical origin prescribed, administered, dispensed, or used in the treatment of an individual by a person licensed under chapter 18.36A RCW; and

(c) Medically prescribed oxygen, including, but not limited to, oxygen concentrator systems, oxygen enricher systems, liquid oxygen systems, and gaseous, bottled oxygen systems prescribed for an individual by a person licensed under chapter 18.57 or 18.71 RCW for use in the medical treatment of that individual.

(2) In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of any of the items exempted under subsection (1) of this section.

(2008 Ed.)

(3) The exemption provided by subsection (1) of this section shall not apply to the use of durable medical equipment, other than as specified in subsection (1)(c) of this section, or mobility enhancing equipment.

(4) "Prosthetic device," "durable medical equipment," and "mobility enhancing equipment" have the same meanings as in RCW 82.08.0283. [2007 c 6 § 1102; 2004 c 153 § 109. Prior: 2003 c 168 § 412; 2003 c 5 § 8; 2001 c 75 § 2; 1998 c 168 § 3; 1997 c 224 § 2; 1996 c 162 § 2; 1991 c 250 § 3; 1986 c 255 § 2; 1980 c 86 § 2; 1980 c 37 § 75. Formerly RCW 82.12.030(25).]

Part headings not law—Savings—Effective date—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Effective date—2001 c 75: See note following RCW 82.08.0283.

Effective date—1998 c 168: See note following RCW 82.04.120.

Effective date—1997 c 224: See note following RCW 82.08.0283.

Effective date—1996 c 162: See note following RCW 82.08.0283.

Finding—Intent—1991 c 250: See note following RCW 82.08.0283.

Effective date—1986 c 255: See note following RCW 82.08.0283.

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.12.0279 Exemptions—Use of ferry vessels by the state or local governmental units—Components thereof.** The provisions of this chapter shall not apply in respect to the use of ferry vessels of the state of Washington or of local governmental units in the state of Washington in transporting pedestrian or vehicular traffic within and outside the territorial waters of the state, in respect to the use of tangible personal property which becomes a component part of any such ferry vessel, and in respect to the use of labor and services rendered in respect to improving such ferry vessels. [2003 c 5 § 9; 1980 c 37 § 77. Formerly RCW 82.12.030(27).]

Finding—Intent—Retroactive application—Effective date—2003 c 5: See notes following RCW 82.12.010.

Intent—1980 c 37: See note following RCW 82.04.4281.

**82.12.0282 Exemptions—Use of vans as ride-sharing vehicles.** The tax imposed by this chapter shall not apply with respect to the use of passenger motor vehicles used as ride-sharing vehicles by not less than five persons, including the driver, with a gross vehicle weight not to exceed 10,000 pounds where the primary usage is for commuter ride-sharing, as defined in RCW 46.74.010, by not less than four persons including the driver when at least two of those persons are confined to wheelchairs when riding, or passenger motor vehicles where the primary usage is for ride-sharing for persons with special transportation needs, as defined in RCW 46.74.010, if the vehicles are used as ride-sharing vehicles for thirty-six consecutive months beginning with the date of first use.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either

within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [2001 c 320 § 5; 1999 c 358 § 11; 1996 c 88 § 4; 1993 c 488 § 4; 1980 c 166 § 2.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Construction—1996 c 88:** "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1996 c 88 § 5.]

**Severability—1996 c 88:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 88 § 6.]

**Effective date—1996 c 88:** "This act shall take effect July 1, 1996." [1996 c 88 § 7.]

**Finding—Annual recertification rule—Report—1993 c 488:** See notes following RCW 82.08.0287.

**Severability—1980 c 166:** See note following RCW 82.08.0287.  
*Ride-sharing vehicles—Special plates:* RCW 46.16.023.

**82.12.0283 Exemptions—Use of certain irrigation equipment.** The provisions of this chapter shall not apply to the use of irrigation equipment if:

- (1) The irrigation equipment was purchased by the lessor for the purpose of irrigating land controlled by the lessor;
- (2) The lessor has paid tax under RCW 82.08.020 or 82.12.020 in respect to the irrigation equipment;
- (3) The irrigation equipment is attached to the land in whole or in part; and
- (4) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land to the lessee and is used solely on such land. [1983 1st ex.s. c 55 § 6.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.12.0284 Exemptions—Use of computers or computer components, accessories, or software donated to schools or colleges.** The provisions of this chapter shall not apply in respect to the use of computers, computer components, computer accessories, or computer software irrevocably donated to any public or private nonprofit school or col-

lege, as defined under chapter 84.36 RCW, in this state. For purposes of this section, "computer" and "computer software" have the same meaning as in RCW 82.04.215. [2007 c 54 § 15; 2003 c 168 § 603; 1983 1st ex.s. c 55 § 7.]

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.12.02915 Exemptions—Use of items by health or social welfare organizations for alternative housing for youth in crisis.** The provisions of this chapter shall not apply in respect to the use of any item acquired by a health or social welfare organization, as defined in RCW 82.04.431, of items necessary for new construction of alternative housing for youth in crisis, so long as the facility will be a licensed agency under chapter 74.15 RCW, upon completion. [1998 c 183 § 2; 1997 c 386 § 57; 1995 c 346 § 2.]

**Effective date—1997 c 386 §§ 56, 57:** See note following RCW 82.08.02915.

**Effective date—1995 c 346:** See note following RCW 82.08.02915.

*Youth in crisis—Definition—Limited purpose:* RCW 82.08.02917.

**82.12.02917 Exemptions—Use of amusement and recreation services by nonprofit youth organization.** The provisions of this chapter shall not apply in respect to the use of amusement and recreation services by a nonprofit youth organization, as defined in RCW 82.04.4271, to members of the organization. [1999 c 358 § 7.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**82.12.0293 Exemptions—Use of food and food ingredients.** (1) The provisions of this chapter shall not apply in respect to the use of food and food ingredients for human consumption. "Food and food ingredients" has the same meaning as in RCW 82.08.0293.

(2) The exemption of "food and food ingredients" provided for in subsection (1) of this section shall not apply to prepared food, soft drinks, or dietary supplements. "Prepared food," "soft drinks," and "dietary supplements" have the same meanings as in RCW 82.08.0293.

(3) Notwithstanding anything in this section to the contrary, the exemption of "food and food ingredients" provided in this section shall apply to food and food ingredients which are furnished, prepared, or served as meals:

(a) Under a state administered nutrition program for the aged as provided for in the Older Americans Act (P.L. 95-478 Title III) and RCW 74.38.040(6); or

(b) Which are provided to senior citizens, disabled persons, or low-income persons by a not-for-profit organization organized under chapter 24.03 or 24.12 RCW. [2003 c 168 § 303; 1988 c 103 § 2; 1986 c 182 § 2; 1985 c 104 § 2; 1982 1st ex.s. c 35 § 34.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—1988 c 103:** See note following RCW 82.08.0293.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.12.0294 Exemptions—Use of feed for cultivating or raising fish for sale.** The provisions of this chapter shall not apply in respect to the use of feed by persons for the cultivating or raising for sale of fish entirely within confined rearing areas on the person's own land or on land in which the person has a present right of possession. [1985 c 148 § 4.]

**82.12.0296 Exemptions—Use of feed consumed by livestock at a public livestock market.** The provisions of this chapter shall not apply with respect to the use of feed consumed by livestock at a public livestock market. [1986 c 265 § 2.]

**82.12.0297 Exemptions—Use of food purchased with food stamps.** The provisions of this chapter shall not apply with respect to the use of eligible foods which are purchased with coupons issued under the food stamp act of 1977 or food stamp or coupon benefits transferred electronically, notwithstanding anything to the contrary in RCW 82.12.0293.

As used in this section, "eligible foods" shall have the same meaning as that established under federal law for purposes of the food stamp act of 1977. [1998 c 79 § 19; 1987 c 28 § 2.]

**Effective date—1987 c 28:** See note following RCW 82.08.0297.

**82.12.0298 Exemptions—Use of diesel fuel in operating watercraft in commercial deep sea fishing or commercial passenger fishing boat operations outside the state.** The provisions of this chapter shall not apply with respect to the use of diesel fuel in the operation of watercraft in commercial deep sea fishing operations or commercial passenger fishing boat operations by persons who are regularly engaged in the business of commercial deep sea fishing or commercial passenger fishing boat operations outside the territorial waters of this state.

For purposes of this section, a person is not regularly engaged in the business of commercial deep sea fishing or the operation of a commercial passenger fishing boat if the person has gross receipts from these operations of less than five thousand dollars a year. [1987 c 494 § 2.]

**82.12.031 Exemptions—Use by artistic or cultural organizations of certain objects.** The provisions of this chapter shall not apply in respect to the use by artistic or cultural organizations of:

- (1) Objects of art;
- (2) Objects of cultural value;
- (3) Objects to be used in the creation of a work of art, other than tools; or
- (4) Objects to be used in displaying art objects or presenting artistic or cultural exhibitions or performances. [1981 c 140 § 5.]

*"Artistic or cultural organization" defined: RCW 82.04.4328.*

**82.12.0311 Exemptions—Use of materials and supplies in packing horticultural products.** The provisions of this chapter shall not apply with respect to the use of materials and supplies directly used in the packing of fresh perishable horticultural products by any person entitled to a deduction (2008 Ed.)

tion under RCW 82.04.4287 either as an agent or an independent contractor. [1988 c 68 § 2.]

**82.12.0315 Exemptions—Rental or sales related to motion picture or video productions—Exceptions.** (1) The provisions of this chapter shall not apply in respect to the use of:

(a) Production equipment rented to a motion picture or video production business;

(b) Production equipment acquired and used by a motion picture or video production business in another state, if the acquisition and use occurred more than ninety days before the time the motion picture or video production business entered this state; and

(c) Production services that are within the scope of RCW 82.04.050(2)(a) and are sold to a motion picture or video production business.

(2) As used in this section, "production equipment," "production services," and "motion picture or video production business" have the meanings given in RCW 82.08.0315.

(3) The exemption provided for in this section shall not apply to the use of production equipment rented to, or production equipment or production services that are within the scope of RCW 82.04.050(2)(a) acquired and used by, a motion picture or video production business that is engaged, to any degree, in the production of erotic material, as defined in RCW 9.68.050. [2003 c 5 § 10; 1995 2nd sp.s. c 5 § 2.]

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Effective date—1995 2nd sp.s. c 5:** See note following RCW 82.08.0315.

**82.12.0316 Exemptions—Sales of cigarettes by Indian retailers.** The provisions of this chapter shall not apply in respect to the use of cigarettes sold by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455 or a cigarette tax agreement under RCW 43.06.465 or 43.06.466. [2008 c 228 § 4; 2005 c 11 § 4; 2001 c 235 § 5.]

**Authorization for agreement—Effective date—2008 c 228:** See notes following RCW 43.06.466.

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**82.12.032 Exemption—Use of used park model trailers.** The provisions of this chapter shall not apply with respect to the use of used park model trailers, as defined in RCW 82.45.032. [2001 c 282 § 4.]

**Intent—Effective date—2001 c 282:** See notes following RCW 82.08.032.

**82.12.033 Exemption—Use of certain used mobile homes.** The tax imposed by RCW 82.12.020 shall not apply in respect to:

(1) The use of used mobile homes as defined in RCW 82.45.032.

(2) The use of a mobile home acquired by renting or leasing if the rental agreement or lease exceeds thirty days in duration and if the rental or lease of the mobile home is not

conducted jointly with the provision of short-term lodging for transients. [1986 c 211 § 3; 1979 ex.s. c 266 § 4.]

**82.12.034 Exemption—Use of used floating homes.**

The provisions of this chapter shall not apply with respect to the use of used floating homes, as defined in RCW 82.45.032. [1984 c 192 § 4.]

**82.12.0345 Exemptions—Use of newspapers.** The tax imposed by RCW 82.12.020 shall not apply in respect to the use of newspapers. [1994 c 124 § 11.]

**82.12.0347 Exemptions—Use of academic transcripts.** The provisions of this chapter shall not apply in respect to the use of academic transcripts. [1996 c 272 § 3.]

**Effective date—1996 c 272:** See note following RCW 82.04.399.

**82.12.035 Credit for retail sales or use taxes paid to other jurisdictions with respect to property used.** A credit shall be allowed against the taxes imposed by this chapter upon the use of tangible personal property, extended warranty, or services taxable under RCW 82.04.050 (2)(a) or (3)(a), in the state of Washington in the amount that the present user thereof or his or her bailor or donor has paid a retail sales or use tax with respect to such property, extended warranty, or service to any other state, possession, territory, or commonwealth of the United States, any political subdivision thereof, the District of Columbia, and any foreign country or political subdivision thereof, prior to the use of such property, extended warranty, or service in Washington. [2007 c 6 § 1203; 2005 c 514 § 108; 2002 c 367 § 5; 1996 c 148 § 6; 1987 c 27 § 2; 1967 ex.s. c 89 § 5.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Severability—Effective date—1996 c 148:** See notes following RCW 82.04.050.

**82.12.036 Exemptions and credits—Pollution control facilities.** See chapter 82.34 RCW.

**82.12.037 Credits and refunds—Bad debts.** (1) A seller is entitled to a credit or refund for use taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

(2) For purposes of this section, "bad debts" does not include:

- (a) Amounts due on property that remains in the possession of the seller until the full purchase price is paid;
- (b) Expenses incurred in attempting to collect debt; and
- (c) Repossessed property.

(3) If a credit or refund of use tax is taken for a bad debt and the debt is subsequently collected in whole or in part, the tax on the amount collected must be paid and reported on the return filed for the period in which the collection is made.

(4) Payments on a previously claimed bad debt are applied first proportionally to the taxable price of the property or service and the sales or use tax thereon, and secondly to interest, service charges, and any other charges.

(5) If the seller uses a certified service provider as defined in RCW 82.32.020 to administer its use tax responsibilities, the certified service provider may claim, on behalf of the seller, the credit or refund allowed by this section. The certified service provider must credit or refund the full amount received to the seller.

(6) The department shall allow an allocation of bad debts among member states to the streamlined sales and use tax agreement, as defined in RCW 82.58.010(1), if the books and records of the person claiming bad debts support the allocation. [2007 c 6 § 103; 2004 c 153 § 304; 1982 1st ex.s. c 35 § 36.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Bad debts—Intent—2004 c 153:** See note following RCW 82.08.037.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.12.038 Exemptions—Vehicle battery core deposits or credits—Replacement vehicle tire fees—"Core deposits or credits" defined.** The provisions of this chapter shall not apply: (1) To the value of core deposits or credits in a retail or wholesale sale; or (2) to the fees imposed under RCW 70.95.510 upon the sale of a new replacement vehicle tire. For purposes of this section, the term "core deposits or credits" means the amount representing the value of returnable products such as batteries, starters, brakes, and other products with returnable value added for the purpose of recycling or remanufacturing. [1989 c 431 § 46.]

**Severability—Section captions not law—1989 c 431:** See RCW 70.95.901 and 70.95.902.

**82.12.040 Retailers to collect tax—Penalty—Continuing expiration of subsection.** (1) Every person who maintains in this state a place of business or a stock of goods, or engages in business activities within this state, shall obtain from the department a certificate of registration, and shall, at the time of making sales of tangible personal property, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or making transfers of either possession or title, or both, of tangible personal property for use in this state, collect from the purchasers or transferees the tax imposed under this chapter. The tax to be collected under this section shall be in an amount equal to the purchase price multiplied by the rate in effect for the retail sales tax under RCW 82.08.020. For the purposes of this chapter, the phrase "maintains in this state a place of business" shall include the solicitation of sales and/or taking of orders by sales agents or traveling representatives. For the purposes of this chapter, "engages in business activity within this state" includes every activity which is sufficient under the Constitution of the United States for this state to require collection of tax under this chapter. The department shall in rules specify activities which constitute engaging in business

activity within this state, and shall keep the rules current with future court interpretations of the Constitution of the United States.

(2) Every person who engages in this state in the business of acting as an independent selling agent for persons who do not hold a valid certificate of registration, and who receives compensation by reason of sales of tangible personal property, extended warranties, or sales of any service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), of his or her principals for use in this state, shall, at the time such sales are made, collect from the purchasers the tax imposed on the purchase price under this chapter, and for that purpose shall be deemed a retailer as defined in this chapter.

(3) The tax required to be collected by this chapter shall be deemed to be held in trust by the retailer until paid to the department and any retailer who appropriates or converts the tax collected to the retailer's own use or to any use other than the payment of the tax provided herein to the extent that the money required to be collected is not available for payment on the due date as prescribed shall be guilty of a misdemeanor. In case any seller fails to collect the tax herein imposed or having collected the tax, fails to pay the same to the department in the manner prescribed, whether such failure is the result of the seller's own acts or the result of acts or conditions beyond the seller's control, the seller shall nevertheless, be personally liable to the state for the amount of such tax, unless the seller has taken from the buyer in good faith a copy of a direct pay permit issued under RCW 82.32.087.

(4) Any retailer who refunds, remits, or rebates to a purchaser, or transferee, either directly or indirectly, and by whatever means, all or any part of the tax levied by this chapter shall be guilty of a misdemeanor.

(5) Notwithstanding subsections (1) through (4) of this section, any person making sales is not obligated to collect the tax imposed by this chapter if:

(a) The person's activities in this state, whether conducted directly or through another person, are limited to:

- (i) The storage, dissemination, or display of advertising;
- (ii) The taking of orders; or
- (iii) The processing of payments; and

(b) The activities are conducted electronically via a web site on a server or other computer equipment located in Washington that is not owned or operated by the person making sales into this state nor owned or operated by an affiliated person. "Affiliated persons" has the same meaning as provided in RCW 82.04.424.

(6) Subsection (5) of this section expires when: (a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or (b) it is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers. [2005 c 514 § 109. Prior: 2003 c 168 § 215; 2003 c 76 § 4; 2001 c 188 § 5; 1986 c 48 § 1; 1971 ex.s. c 299 § 11; 1961 c 293 § 11; 1961 c 15 § 82.12.040; prior: 1955 c 389 § 27; 1945 c 249 § 7; 1941 c 178 § 10; 1939 c 225 § 16; Rem. Supp. 1945 § 8370-33; prior: 1935 c 180 § 33.]

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

(2008 Ed.)

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Intent—2003 c 76:** See note following RCW 82.04.424.

**Finding—Intent—Effective date—2001 c 188:** See notes following RCW 82.32.087.

**Effective date—1986 c 48:** "This act shall take effect July 1, 1986." [1986 c 48 § 2.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

*Project on exemption reporting requirements: RCW 82.32.440.*

### **82.12.045 Collection of tax on motor vehicles by county auditor or director of licensing—Remittance.** (1)

In the collection of the use tax on motor vehicles, the department of revenue may designate the county auditors of the several counties of the state as its collecting agents. Upon such designation, it shall be the duty of each county auditor to collect the tax at the time an applicant applies for the registration of, and transfer of title to, the motor vehicle, except in the following instances:

(a) Where the applicant exhibits a dealer's report of sale showing that the retail sales tax has been collected by the dealer;

(b) Where the application is for the renewal of registration;

(c) Where the applicant presents a written statement signed by the department of revenue, or its duly authorized agent showing that no use tax is legally due; or

(d) Where the applicant presents satisfactory evidence showing that the retail sales tax or the use tax has been paid by the applicant on the vehicle in question.

(2) The term "motor vehicle," as used in this section means and includes all motor vehicles, trailers and semitrailers used, or of a type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads, facilities for human habitation, and vehicles carrying exempt licenses.

(3) It shall be the duty of every applicant for registration and transfer of certificate of title who is subject to payment of tax under this section to declare upon the application the value of the vehicle for which application is made, which shall consist of the consideration paid or contracted to be paid therefor.

(4) Each county auditor who acts as agent of the department of revenue shall at the time of remitting license fee receipts on motor vehicles subject to the provisions of this section pay over and account to the state treasurer for all use tax revenue collected under this section, after first deducting as a collection fee the sum of two dollars for each motor vehicle upon which the tax has been collected. All revenue received by the state treasurer under this section shall be credited to the general fund. The auditor's collection fee shall be deposited in the county current expense fund. A duplicate of the county auditor's transmittal report to the state treasurer shall be forwarded forthwith to the department of revenue.

(5) Any applicant who has paid use tax to a county auditor under this section may apply to the department of revenue for refund thereof if he or she has reason to believe that such tax was not legally due and owing. No refund shall be

allowed unless application therefor is received by the department of revenue within the statutory period for assessment of taxes, penalties, or interest prescribed by \*RCW 82.32.050(3). Upon receipt of an application for refund the department of revenue shall consider the same and issue its order either granting or denying it and if refund is denied the taxpayer shall have the right of appeal as provided in RCW 82.32.170, 82.32.180 and 82.32.190.

(6) The provisions of this section shall be construed as cumulative of other methods prescribed in chapters 82.04 to 82.32 RCW, inclusive, for the collection of the tax imposed by this chapter. The department of revenue shall have power to promulgate such rules as may be necessary to administer the provisions of this section. Any duties required by this section to be performed by the county auditor may be performed by the director of licensing but no collection fee shall be deductible by said director in remitting use tax revenue to the state treasurer.

(7) The use tax revenue collected on the rate provided in RCW 82.08.020(3) shall be deposited in the multimodal transportation account under RCW 47.66.070. [2003 c 361 § 303; 1996 c 149 § 19; 1983 c 77 § 2; 1979 c 158 § 222; 1969 ex.s. c 10 § 1; 1963 c 21 § 1; 1961 c 15 § 82.12.045. Prior: 1951 c 37 § 1.]

**\*Reviser's note:** RCW 82.32.050 was amended by 2008 c 181 § 501, changing subsection (3) to subsection (4).

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**82.12.060 Installment sales or leases.** In the case of installment sales and leases of personal property, the department, by rule, may provide for the collection of taxes upon the installments of the purchase price, or amount of rental, as of the time the same fall due. [2003 c 168 § 216; 1975 1st ex.s. c 278 § 54; 1961 c 293 § 16; 1961 c 15 § 82.12.060. Prior: 1959 ex.s. c 3 § 13; 1959 c 197 § 8; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.12.070 Cash receipts taxpayers—Bad debts.** The department of revenue, by general regulation, shall provide that a taxpayer whose regular books of account are kept on a cash receipts basis may file returns based upon his cash receipts for each reporting period and pay the tax herein provided upon such basis in lieu of reporting and paying the tax on all sales made during such period. A taxpayer filing returns on a cash receipts basis is not required to pay such tax on debt subject to credit or refund under RCW 82.12.037. [2004 c 153 § 305; 1982 1st ex.s. c 35 § 38; 1975 1st ex.s. c 278 § 55; 1961 c 15 § 82.12.070. Prior: 1959 ex.s. c 3 § 14; 1959 c 197 § 9; prior: 1941 c 178 § 11, part; Rem. Supp. 1941 § 8370-34a, part.]

**Bad debts—Intent—2004 c 153:** See note following RCW 82.08.037.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.12.080 Administration.** The provisions of chapter 82.32 RCW, insofar as applicable, shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.12.080. Prior: 1949 c 228 § 9, part; 1945 c 249 § 8, part; 1943 c 156 § 10, part; 1939 c 225 § 18, part; 1937 c 191 § 4, part; 1935 c 180 § 35, part; Rem. Supp. 1949 § 8470-35, part.]

**82.12.145 Delivery charges.** When computing the tax levied by RCW 82.12.020, if a shipment consists of taxable tangible personal property and nontaxable tangible personal property, and delivery charges are included in the purchase price, the consumer must remit tax or the retailer must collect and remit tax on the percentage of delivery charges allocated to the taxable tangible personal property, but does not have to remit or collect and remit tax on the percentage allocated to exempt tangible personal property. The consumer or retailer may use either of the following percentages to determine the taxable portion of the delivery charges:

(1) A percentage based on the total purchase price of the taxable tangible personal property compared to the total purchase price of all tangible personal property in the shipment; or

(2) A percentage based on the total weight of the taxable tangible personal property compared to the total weight of all tangible personal property in the shipment. [2007 c 6 § 802.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.12.195 Bundled transactions—Tax imposed.** (1) The use of each product acquired in a bundled transaction is subject to the tax imposed by RCW 82.12.020 if the use of any of its component products is subject to the tax imposed by RCW 82.12.020.

(2) The use of each product acquired in a transaction described in RCW 82.08.190(4) (a) or (b) is subject to the tax imposed by RCW 82.12.020 if the service that is the true object of the transaction is subject to the tax imposed by RCW 82.12.020. If the service that is the true object of the transaction is not subject to the tax imposed by RCW 82.12.020, the use of each product acquired in the transaction is not subject to the tax imposed by RCW 82.12.020.

(3) The use of each product acquired in a transaction described in RCW 82.08.190(4)(c) is not subject to the tax imposed by RCW 82.12.020.

(4) The use of each product in a transaction described in RCW 82.08.190(4)(d) is not subject to the tax imposed by RCW 82.12.020.

(5) The definitions in RCW 82.08.190 apply to this section. [2007 c 6 § 1403.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.12.700 Exemptions—Vessels sold to nonresidents.**

(1) The provisions of this chapter do not apply in respect to the use of a vessel thirty feet or longer if a nonresident individual:

(a) Purchased the vessel from a vessel dealer in accordance with RCW 82.08.700;

(b) Purchased the vessel in the state from a person other than a vessel dealer, but the nonresident individual purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is purchased in this state; or

(c) Acquired the vessel outside the state, but purchases and displays a valid use permit from a vessel dealer under this section within fourteen days of the date that the vessel is first brought into this state.

(2) Any vessel dealer that makes tax exempt sales under RCW 82.08.700 shall issue use permits under this section. A vessel dealer shall issue a use permit under this section if the dealer is satisfied that the individual purchasing the permit is a nonresident. The use permit is valid for twelve consecutive months from the date of issuance. A use permit is not renewable, and an individual may only purchase one use permit for a particular vessel. A person who has been issued a use permit under RCW 82.08.700 for a particular vessel may not purchase a use permit under this section for the same vessel after the use permit issued under RCW 82.08.700 expires. All other requirements and conditions, not inconsistent with the provisions of this section, relating to use permits in RCW 82.08.700, apply to use permits under this section. A person may not claim an exemption under RCW 82.12.0251(1) within twenty-four months after a use permit, issued under this section or RCW 82.08.700, for the same vessel, has expired.

(3)(a) Except as provided in (b) of this subsection, a nonresident who claims an exemption under this section and who uses a vessel in this state after his or her use permit for that vessel has expired is liable for the tax imposed under RCW 82.12.020 based on the value of the vessel at the time that the vessel was either purchased in this state under circumstances in which the exemption under RCW 82.08.700 did not apply or was first brought into this state, as the case may be. Interest at the rate provided in RCW 82.32.050 applies to amounts due under this subsection, retroactively to the date that the vessel was purchased in this state or first brought into the state, and accrues until the full amount of tax due is paid to the department.

(b) A nonresident individual who is exempt under both this section and RCW 82.08.700 and who uses a vessel in this state after his or her use permit for that vessel expires is liable for tax and interest as provided in RCW 82.08.700(5).

(4) Any vessel dealer that issues a use permit to an individual who does not hold valid identification establishing out-of-state residency, and any dealer that fails to maintain records for each use permit issued that shows the type of proof accepted, including any identification numbers where appropriate, and the expiration date, if any, is personally liable for the amount of tax due. [2007 c 22 § 2.]

**Effective date—2007 c 22:** See note following RCW 82.08.700.

**82.12.705 Exemptions—Financial information delivered electronically.** The provisions of this chapter shall not

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apply with respect to the use, by an investment management company or a financial institution, of electronically delivered standard financial information. [2007 c 182 § 2.]

**Effective date—2007 c 182:** See note following RCW 82.08.705.

**82.12.800 Exemptions—Uses of vessel, vessel's trailer by manufacturer.** (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.010, by the manufacturer of the vessel:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, to include performance, endurance, and sink testing, if the vessel is to be held for sale;

(b) Training activities of a manufacturer's employees, agents, or subcontractors involved in the development and manufacturing of the manufacturer's vessels, if the vessel is to be held for sale;

(c) Activities to promote the sale of the manufacturer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from vessel promotional events for the express purpose of displaying a manufacturer's vessels;

(d) Any vessels loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.010, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [1997 c 293 § 1.]

**82.12.801 Exemptions—Uses of vessel, vessel's trailer by dealer.** (1) The tax imposed under RCW 82.12.020 shall not apply to the following uses of a vessel, as defined in RCW 88.02.010, by a vessel dealer registered under chapter 88.02 RCW:

(a) Activities to test, set-up, repair, remodel, evaluate, or otherwise make a vessel seaworthy, if the vessel is held for sale;

(b) Training activity of a dealer's employees, agents, or subcontractors involved in the sale of the dealer's vessels, if the vessel is held for sale;

(c) Activities to promote the sale of the dealer's vessels, to include photography and video sessions to be used in promotional materials; traveling directly to and from promotional vessel events for the express purpose of displaying a dealer's vessels for sale, provided it is displayed on the vessel that it is, in fact, for sale and the identification of the regis-

tered vessel dealer offering the vessel for sale is also displayed on the vessel;

(d) Any vessel loaned or donated to a civic, religious, nonprofit, or educational organization for continuous periods of use not exceeding seventy-two hours, or longer if approved by the department; or to vessels loaned or donated to governmental entities;

(e) Direct transporting, displaying, or demonstrating any vessel at a wholesale or retail vessel show;

(f) Delivery of a vessel to a buyer, vessel manufacturer, registered vessel dealer as defined in RCW 88.02.010, or to any other person involved in the manufacturing or sale of that vessel for the purpose of the manufacturing or sale of that vessel; and

(g) Displaying, showing, and operating a vessel for sale to a prospective buyer to include the short-term testing, operating, and examining by a prospective buyer.

(2) Subsection (1) of this section shall apply to any trailer or other similar apparatus used to transport, display, show, or operate a vessel, if the trailer or other similar apparatus is held for sale. [1997 c 293 § 2.]

**82.12.802 Vessels held in inventory by dealer or manufacturer—Tax on personal use—Documentation—Rules.** If a vessel held in inventory is used by a vessel dealer or vessel manufacturer for personal use, use tax shall be due based only on the reasonable rental value of the vessel used, but only if the vessel dealer or manufacturer can show that the vessel is truly held for sale and that the dealer or manufacturer is and has been making good faith efforts to sell the vessel. The department may by rule require dealers and manufacturers to provide vessel logs or other documentation showing that vessels are truly held for sale. [1997 c 293 § 3.]

**82.12.803 Exemptions—Nebulizers.** (1) The provisions of this chapter shall not apply in respect to the use of nebulizers, including repair, replacement, and component parts for such nebulizers, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to labor and services rendered in respect to the repairing, cleaning, altering, or improving of nebulizers. "Nebulizer" has the same meaning as in RCW 82.08.803.

(2) Sellers obligated to collect use tax shall collect tax on sales subject to this exemption. The buyer shall apply for a refund directly from the department in a form and manner prescribed by the department. [2007 c 6 § 1104; 2004 c 153 § 105.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**82.12.804 Exemptions—Ostomic items.** The provisions of this chapter shall not apply in respect to the use of ostomic items by colostomy, ileostomy, or urostomy patients. "Ostomic items" has the same meaning as in RCW 82.08.804. [2004 c 153 § 107.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

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**82.12.805 Exemptions—Tangible personal property used at an aluminum smelter.** (1) A person who is subject to tax under RCW 82.12.020 for tangible personal property used at an aluminum smelter, or for tangible personal property that will be incorporated as an ingredient or component of buildings or other structures at an aluminum smelter, or for labor and services rendered with respect to such buildings, structures, or tangible personal property, is eligible for an exemption from the state share of the tax in the form of a credit, as provided in this section. The amount of the credit shall be equal to the state share of use tax computed to be due under RCW 82.12.020. The person shall submit information, in a form and manner prescribed by the department, specifying the amount of qualifying purchases or acquisitions for which the exemption is claimed and the amount of exempted tax.

(2) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217.

(3) Credits may not be claimed under this section for taxable events occurring on or after January 1, 2012. [2006 c 182 § 4; 2004 c 24 § 11.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**82.12.806 Exemptions—Use of computer equipment parts and services by printer or publisher.** (1) The provisions of this chapter do not apply in respect to the use, by a printer or publisher, of computer equipment, including repair parts and replacement parts for such equipment, when the computer equipment is used primarily in the printing or publishing of any printed material, or to labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the computer equipment. This exemption applies only to computer equipment not otherwise exempt under RCW 82.12.02565.

(2) For the purposes of this section, the definitions in RCW 82.08.806 apply. [2004 c 8 § 3.]

**Findings—Intent—2004 c 8:** See note following RCW 82.08.806.

**82.12.807 Exemptions—Direct mail delivery charges.** (1) The tax levied by this chapter does not apply to the value of delivery charges made for the delivery of direct mail if the charges are separately stated on an invoice or similar billing document given to the purchaser.

(2) "Delivery charges" and "direct mail" have the same meanings as in RCW 82.08.010. [2005 c 514 § 116.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.12.808 Exemptions—Use of medical supplies, chemicals, or materials by comprehensive cancer centers.** (1) The provisions of this chapter do not apply in respect to the use of medical supplies, chemicals, or materials by a comprehensive cancer center. The exemption in this section does not apply to the use of construction materials, office equipment, building equipment, administrative supplies, or vehicles.

(2) The definitions in RCW 82.04.4265 and 82.08.808 apply to this section. [2005 c 514 § 403.]

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**Part headings not law—2005 c 514:** "Part headings used in this act are not any part of the law." [2005 c 514 § 1301.]

**Severability—2005 c 514:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 514 § 1309.]

**Effective date—2005 c 514 §§ 401-403:** See note following RCW 82.04.4265.

**82.12.809 Exemptions—Vehicles using clean alternative fuels. (Effective January 1, 2009, until January 1, 2011.)** (1) The provisions of this chapter do not apply in respect to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, which are exclusively powered by a clean alternative fuel.

(2) "Clean alternative fuel" has the same meaning as provided in RCW 82.08.809. [2005 c 296 § 3.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.12.810 Exemptions—Air pollution control facilities at a thermal electric generation facility—Exceptions—Payments on cessation of operation.** (1) For the purposes of this section, "air pollution control facilities" mean any treatment works, control devices and disposal systems, machinery, equipment, structures, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation.

(2) The provisions of this chapter do not apply in respect to:

(a) The use of air pollution control facilities installed and used by a light and power business, as defined in RCW 82.16.010, in generating electric power; or

(b) The use of labor and services performed in respect to the installing of air pollution control facilities.

(3) The exemption provided under this section applies only to air pollution control facilities that are:

(a) Constructed or installed after May 15, 1997, and used in a thermal electric generation facility placed in operation after December 31, 1969, and before July 1, 1975; and

(b) Constructed or installed to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW.

(4) This section does not apply to the use of tangible personal property for maintenance or repairs of the pollution control equipment or to labor and services performed in respect to such maintenance or repairs.

(5) If production of electricity at a thermal electric generation facility for any calendar year after 2002 and before 2023 falls below a twenty percent annual capacity factor for the generation facility, all or a portion of the tax previously exempted under this section in respect to construction or installation of air pollution control facilities at the generation facility shall be due according to the schedule provided in RCW 82.08.810(5).

(6) RCW 82.32.393 applies to this section. [2003 c 5 § 12; 1997 c 368 § 3.]

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**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.12.811 Exemptions—Coal used at coal-fired thermal electric generation facility—Application—Demonstration of progress in air pollution control—Notice of emissions violations—Reapplication—Payments on cessation of operation.** (1) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements, and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975.

(2) Beginning January 1, 1999, the provisions of this chapter do not apply in respect to the use of coal to generate electric power at a generation facility operated by a business if the following conditions are met:

(a) The owners must make an application to the department of revenue for a tax exemption;

(b) The owners must make a demonstration to the department of ecology that the owners have made reasonable initial progress to install air pollution control facilities to meet applicable regulatory requirements established under state or federal law, including the Washington clean air act, chapter 70.94 RCW;

(c) Continued progress must be made on the development of air pollution control facilities to meet the requirements of the permit; and

(d) The generation facility must emit no more than ten thousand tons of sulfur dioxide during a previous consecutive twelve-month period.

(3) During a consecutive twelve-month period, if the generation facility is found to be in violation of excessive sulfur dioxide emissions from a regional air pollution control authority or the department of ecology, the department of ecology shall notify the department of revenue and the owners of the generation facility shall lose their tax exemption under this section. The owners of a generation facility may reapply for the tax exemption when they have once again met the conditions of subsection (2)(d) of this section.

(4) RCW 82.32.393 applies to this section. [1997 c 368 § 6.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.12.813 Exemptions—High gas mileage vehicles. (Effective January 1, 2009, until January 1, 2011.)** (1) The provisions of this chapter do not apply in respect to the use of new passenger cars, light duty trucks, and medium duty passenger vehicles, which utilize hybrid technology and have a United States environmental protection agency estimated

highway gasoline mileage rating of at least forty miles per gallon.

(2) "Hybrid technology" has the same meaning as provided in RCW 82.08.813. [2005 c 296 § 4.]

**Effective date—Expiration date—2005 c 296:** See notes following RCW 82.08.809.

**82.12.815 Exemptions—Property and services related to electrification systems to power heavy duty diesel vehicles. (Expires July 1, 2015.)** (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or machinery and equipment, or tangible personal property that becomes an ingredient or component of structures or machinery and equipment, integral and necessary for the retail sale, lease, or rental of auxiliary power to heavy duty diesel vehicles through onboard or stand-alone electrification systems.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) For the purposes of this section, the definitions in RCW 82.04.4338 apply.

(4) This section expires July 1, 2015. [2006 c 323 § 4.]

**Findings—Intent—2006 c 323:** See note following RCW 82.04.4338.

**82.12.820 Exemptions—Warehouse and grain elevators and distribution centers. (Effective until July 1, 2012.)** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more, other than cold storage warehouses, and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment. For cold storage warehouses with square footage of twenty-five thousand or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and one hundred percent of the amount of tax paid for qualifying material-handling equip-

ment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, \*82.61, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [2005 c 513 § 12; 2003 c 5 § 13; 2000 c 103 § 9; 1997 c 450 § 3.]

**\*Reviser's note:** Chapter 82.61 RCW was repealed in its entirety by 2005 c 443 § 7, effective July 1, 2006.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**82.12.820 Exemptions—Warehouse and grain elevators and distribution centers. (Effective July 1, 2012.)** (1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. For warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section. [2006 c 354 § 13; 2005 c 513 § 12; 2003 c 5 § 13; 2000 c 103 § 9; 1997 c 450 § 3.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**82.12.825 Exemptions—Property and services that enable heavy duty diesel vehicles to operate with onboard electrification systems. (Expires July 1, 2015.)** (1) The provisions of this chapter do not apply in respect to the use of tangible personal property, labor, or services if the property, labor, or services enable a heavy duty diesel vehicle to oper-

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ate, while parked, through the use of an onboard electrification system. Only parts and other components that are specific to enabling a heavy duty diesel vehicle to operate, while parked, with an onboard electrification system are exempt under this section.

(2) A person taking the exemption under this section must keep records necessary for the department to verify eligibility under this section.

(3) For the purposes of this section, the definitions in RCW 82.04.4338 apply.

(4) This section expires July 1, 2015. [2006 c 323 § 6.]

**Findings—Intent—2006 c 323:** See note following RCW 82.04.4338.

**82.12.832 Exemptions—Use of gun safes.** The provisions of this chapter do not apply with respect to the use of gun safes as defined in RCW 82.08.832. [1998 c 178 § 2.]

**Effective date—1998 c 178:** See note following RCW 82.08.832.

**82.12.834 Exemptions—Sales/leasebacks by regional transit authorities.** This chapter does not apply to the use of tangible personal property by a seller/lessee under a sale/leaseback agreement under RCW 81.112.300 in respect to tangible personal property used by the seller/lessee, or to the use of tangible personal property under an exercise of an option to purchase at the end of the lease term, but only if the seller/lessee previously paid any tax otherwise due under this chapter or chapter 82.08 RCW at the time of acquisition of the tangible personal property. [2001 c 320 § 6; 2000 2nd sp.s. c 4 § 22.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**82.12.835 Exemptions—Solar hot water systems. (Expires July 1, 2009.)** (1) The provisions of this chapter shall not apply in respect to the use of OG-300 rated solar water heating systems, OG-100 rated solar water heating collectors, solar heat exchangers, or differential solar controllers; repair and replacement parts for such equipment; or to sales of or charges made for labor and services rendered in respect to installing, repairing, cleaning, altering, or improving such equipment.

(2) For the purposes of this section, the definitions in RCW 82.08.835 apply. [2006 c 218 § 2.]

**Effective date—Expiration date—2006 c 218:** See notes following RCW 82.08.835.

**82.12.841 Exemptions—Farming equipment—Hay sheds. (Expires January 1, 2011.)** (1) The tax levied by RCW 82.12.020 does not apply in respect to:

(a) The use of the following machinery and equipment by qualified farmers: No-till drills, minimum-till drills, chisels, plows, sprayers, discs, cultivators, harrows, mowers, swathers, power rakes, balers, bale handlers, shredders, transplanters, tractors two hundred fifty horsepower and over designed to pull conservation equipment on steep hills and highly erodible lands, and combine components limited to straw choppers, chaff spreaders, and stripper headers; and

(b) The use of tangible personal property that will be incorporated as an ingredient or component of hay sheds by a

qualified farmer, during the course of constructing such hay sheds.

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.841 apply to this section.

(3) This section expires January 1, 2011. [2005 c 420 § 3.]

**Findings—Effective date—2005 c 420:** See notes following RCW 82.08.841.

**82.12.845 Use of motorcycles loaned to department of licensing.** This chapter does not apply to the use of motorcycles that are loaned to the department of licensing exclusively for the provision of motorcycle training under RCW 46.20.520, or to persons contracting with the department to provide this training. [2001 c 121 § 1.]

**82.12.850 Exemptions—Conifer seed.** The provisions of this chapter do not apply in respect to the use of conifer seed to grow seedlings if the seedlings are grown by a person other than the owner of the seed. This section applies only if the seedlings will be used for growing timber outside Washington, or if the owner of the conifer seed is an Indian tribe or member and the seedlings will be used for growing timber in Indian country.

If the owner of conifer seed is not able to determine at the time the seed is used in a growing process whether the use of the seed is exempt from tax under this section, the owner may defer payment of the use tax until it is determined that the seedlings will be planted for growing timber in Washington. For the purposes of this section, "Indian country" has the meaning given in RCW 82.24.010. [2001 c 129 § 3.]

**Finding—Intent—Retroactive application—2001 c 129:** See notes following RCW 82.08.850.

**82.12.855 Exemptions—Replacement parts for qualifying farm machinery and equipment.** (1) The provisions of this chapter do not apply in respect to the use by an eligible farmer of:

(a) Replacement parts for qualifying farm machinery and equipment;

(b) Labor and services rendered in respect to the installing of replacement parts; and

(c) Labor and services rendered in respect to the repairing of qualifying farm machinery and equipment, provided that during the course of repairing no tangible personal property is installed, incorporated, or placed in, or becomes a component of, the qualifying farm machinery and equipment other than replacement parts.

(2)(a) Notwithstanding anything to the contrary in this chapter, if a single transaction involves services that are not exempt under this section and services that would be exempt under this section if provided separately, the exemptions provided in subsection (1)(b) and (c) of this section apply if: (i) The seller makes a separately itemized charge for labor and services described in subsection (1)(b) or (c) of this section; and (ii) the separately itemized charge does not exceed the seller's usual and customary charge for such services.

(b) If the requirements in (a)(i) and (ii) of this subsection (2) are met, the exemption provided in subsection (1)(b) or (c) of this section applies to the separately itemized charge

for labor and services described in subsection (1)(b) or (c) of this section.

(3) The definitions and recordkeeping requirements in RCW 82.08.855, other than the exemption certificate requirement, apply to this section.

(4) If a person is an eligible farmer as defined in RCW 82.08.855(4)(b)(iii) who cannot prove income because the person is new to farming or newly returned to farming, the exemption under this section will apply only if one of the conditions in RCW 82.08.855(3)(d)(i)(A) or (B) is met. If the conditions are not met, any taxes for which an exemption under this section was claimed and interest on such taxes must be paid. Amounts due under this subsection shall be in accordance with RCW 82.08.855(3)(d)(ii), except that the due date for payment is January 31st of the year immediately following the first full tax year in which the person engaged in business as a farmer.

(5) Except as provided in subsection (4) of this section, the department shall not assess the tax imposed under this chapter against a person who no longer qualifies as an eligible farmer with respect to the use of any articles or services exempt under subsection (1) of this section, if the person was an eligible farmer when the person first put the articles or services to use in this state. [2007 c 332 § 2; 2006 c 172 § 2.]

**Effective date—2006 c 172:** See note following RCW 82.08.855.

**82.12.860 Exemptions—Property and services acquired from a federal credit union.** (1) This chapter does not apply to state credit unions with respect to the use of any article of tangible personal property, service defined as a retail sale in RCW 82.04.050 (2)(a) or (3)(a), or extended warranty, acquired from a federal credit union, foreign credit union, or out-of-state credit union as a result of a merger or conversion.

(2) For purposes of this section, the following definitions apply:

(a) "Federal credit union" means a credit union organized and operating under the laws of the United States.

(b) "Foreign credit union" means a credit union organized and operating under the laws of another country or other foreign jurisdiction.

(c) "Out-of-state credit union" means a credit union organized and operating under the laws of another state or United States territory or possession.

(d) "State credit union" means a credit union organized and operating under the laws of this state. [2006 c 11 § 1.]

**82.12.865 Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.** (1) The provisions of this chapter do not apply with respect to the nonhighway use of diesel fuel, biodiesel fuel, or aircraft fuel, by a farm fuel user. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were acquired as separate products. Fuel used for space or water heating for human habitation is not exempt under this section.

(2) The definitions in RCW 82.08.865 apply to this section. [2007 c 443 § 2; 2006 c 7 § 2.]

**Effective date—2007 c 443:** See note following RCW 82.08.865.

**Effective date—2006 c 7:** See note following RCW 82.08.865.

*Additional use tax exemption for fuel: RCW 82.12.0256.*

### **82.12.880 Exemptions—Animal pharmaceuticals.**

(1) The provisions of this chapter do not apply with respect to the use by farmers or by veterinarians of animal pharmaceuticals approved by the United States department of agriculture or by the United States food and drug administration, if the pharmaceutical is administered to an animal that is raised by a farmer for the purpose of producing for sale an agricultural product.

(2) The definitions in RCW 82.08.880 apply to this section. [2001 2nd sp.s. c 17 § 2.]

**Effective date—2001 2nd sp.s. c 17:** See note following RCW 82.08.880.

### **82.12.890 Exemptions—Livestock nutrient management equipment and facilities.**

(1) The provisions of this chapter do not apply with respect to the use by an eligible person of tangible personal property that becomes an ingredient or component of livestock nutrient management equipment and facilities, as defined in RCW 82.08.890, or to labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property.

(2)(a) To be eligible, the equipment and facilities must be used exclusively for activities necessary to maintain a livestock nutrient management plan.

(b) The exemption applies to the use of tangible personal property or labor and services made after the livestock nutrient management plan is: (i) Certified under chapter 90.64 RCW; (ii) approved as part of the permit issued under chapter 90.48 RCW; or (iii) approved as required under RCW 82.08.890(4)(c)(iii).

(3) The exemption certificate and recordkeeping requirements of RCW 82.08.890 apply to this section. The definitions in RCW 82.08.890 apply to this section. [2006 c 151 § 3; 2003 c 5 § 15; 2001 2nd sp.s. c 18 § 3.]

**Effective date—Conservation commission—Report to legislature—2006 c 151:** See notes following RCW 82.08.890.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—Effective date—2001 2nd sp.s. c 18:** See notes following RCW 82.08.890.

**82.12.900 Exemptions—Anaerobic digesters.** The provisions of this chapter do not apply with respect to the use of anaerobic digesters, tangible personal property that becomes an ingredient or component of anaerobic digesters, or the use of services rendered in respect to installing, repairing, cleaning, altering, or improving eligible tangible personal property by an eligible person establishing or operating an anaerobic digester, as defined in RCW 82.08.900. The anaerobic digester must be used primarily to treat livestock manure. [2006 c 151 § 5; 2003 c 5 § 16; 2001 2nd sp.s. c 18 § 5.]

**Effective date—Conservation commission—Report to legislature—2006 c 151:** See notes following RCW 82.08.890.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

**Intent—Effective date—2001 2nd sp.s. c 18:** See notes following RCW 82.08.890.

(2008 Ed.)

**82.12.910 Exemptions—Propane or natural gas to heat chicken structures.** (1) The provisions of this chapter do not apply with respect to the use by a farmer of propane or natural gas to heat structures used to house chickens. The propane or natural gas must be used exclusively to heat the structures used to house chickens. The structures must be used exclusively to house chickens that are sold as agricultural products.

(2) The exemption certificate, recordkeeping requirements, and definitions of RCW 82.08.910 apply to this section. [2001 2nd sp.s. c 25 § 4.]

**Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25:** See notes following RCW 82.04.260.

### **82.12.920 Exemptions—Chicken bedding materials.**

(1) The provisions of this chapter do not apply with respect to the use by a farmer of bedding materials used to accumulate and facilitate the removal of chicken manure. The farmer must be raising chickens that are sold as agricultural products.

(2) The exemption certificate, recordkeeping requirements, and definitions of RCW 82.08.920 apply to this section. [2001 2nd sp.s. c 25 § 6.]

**Purpose—Intent—Part headings not law—2001 2nd sp.s. c 25:** See notes following RCW 82.04.260.

**82.12.925 Exemptions—Dietary supplements.** The provisions of this chapter shall not apply to the use of dietary supplements dispensed or to be dispensed to patients, pursuant to a prescription, if the dietary supplements are for human use. "Dietary supplement" has the same meaning as in RCW 82.08.0293. [2003 c 168 § 304.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

### **82.12.930 Exemptions—Watershed protection or flood prevention.**

The provisions of this chapter do not apply with respect to the use by municipal corporations, the state, and all political subdivisions thereof of tangible personal property consumed and/or of labor and services as defined in RCW 82.04.050(2)(a) rendered in respect to contracts for watershed protection and/or flood prevention. This exemption is limited to that portion of the selling price that is reimbursed by the United States government according to the provisions of the watershed protection and flood prevention act (68 Stat. 666; \*16 U.S.C. Sec. 101 et seq.). [2003 c 5 § 17.]

**\*Reviser's note:** The reference to 16 U.S.C. Sec. 101 et seq. should be to 16 U.S.C. Sec. 1001 et seq.

**Finding—Intent—Retroactive application—Effective date—2003 c 5:** See notes following RCW 82.12.010.

### **82.12.935 Exemptions—Disposable devices used to deliver prescription drugs for human use.**

The provisions of this chapter shall not apply to the use of disposable devices used to deliver drugs for human use, pursuant to a prescription. Disposable devices means the same as provided in RCW 82.08.935. [2003 c 168 § 407.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.12.940 Exemptions—Over-the-counter drugs for human use.** The provisions of this chapter shall not apply to the use of over-the-counter drugs dispensed or to be dispensed to patients, pursuant to a prescription, if the over-the-counter drugs are for human use. "Over-the-counter drug" has the same meaning as in RCW 82.08.0281. [2003 c 168 § 408.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.12.945 Exemptions—Kidney dialysis devices.** The provisions of this chapter shall not apply to the use of kidney dialysis devices, including repair and replacement parts, for human use pursuant to a prescription. In addition, the provisions of this chapter shall not apply in respect to the use of labor and services rendered in respect to the repairing, cleaning, altering, or improving of kidney dialysis devices. [2004 c 153 § 111; 2003 c 168 § 411.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.12.950 Exemptions—Steam, electricity, electrical energy.** The provisions of this chapter shall not apply in respect to the use of steam, electricity, or electrical energy. [2003 c 168 § 704.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.12.955 Exemptions—Use of machinery, equipment, vehicles, and services related to biodiesel or E85 motor fuel. (Expires July 1, 2015.)** (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and equipment used directly for the retail sale of a biodiesel or E85 motor fuel.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a biodiesel or E85 motor fuel.

(3) For the purposes of this section, the definitions in RCW 82.04.4334 and 82.08.955 apply.

(4) This section expires July 1, 2015. [2007 c 309 § 5; 2003 c 63 § 3.]

**Effective date—2003 c 63:** See note following RCW 82.04.4334.

**82.12.960 Exemptions—Use of machinery, equipment, vehicles, and services related to wood biomass fuel blend. (Expires July 1, 2009.)** (1) The provisions of this chapter do not apply in respect to the use of machinery and equipment, or to services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, or tangible personal property that becomes an ingredient or component of machinery and

equipment used directly for the retail sale of a wood biomass fuel blend.

(2) The provisions of this chapter do not apply in respect to the use of fuel delivery vehicles including repair parts and replacement parts and to services rendered in respect to installing, repairing, cleaning, altering, or improving the vehicles if at least seventy-five percent of the fuel distributed by the vehicles is a wood biomass fuel blend.

(3) For the purposes of this section, the definitions in RCW 82.08.960 apply.

(4) This section expires July 1, 2009. [2003 c 339 § 14.]

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**82.12.965 Exemptions—Semiconductor materials manufacturing. (Contingent effective date; contingent expiration date.)** (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings used for the manufacturing of semiconductor materials during the course of constructing such buildings or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.965 apply to this section.

(3) No exemption may be taken twelve years after \*the effective date of this act, however all of the eligibility criteria and limitations are applicable to any exemptions claimed before that date.

(4) This section expires twelve years after \*the effective date of this act. [2003 c 149 § 6.]

**\*Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

**82.12.9651 Exemptions—Gases and chemicals used in production of semiconductor materials. (Expires December 1, 2018.)** (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the production of semiconductor materials. This exemption is limited to gases and chemicals used in the production process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the production process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the meaning provided in RCW 82.04.2404.

(2) A person taking the exemption under this section must report under RCW 82.32.5351. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after December 1, 2006. [2006 c 84 § 4.]

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**82.12.970 Exemptions—Gases and chemicals used to manufacture semiconductor materials. (Contingent effective date; contingent expiration date.)** (1) The provisions of this chapter do not apply with respect to the use of gases and chemicals used by a manufacturer or processor for hire in the manufacturing of semiconductor materials. This exemption is limited to gases and chemicals used in the manufacturing process to grow the product, deposit or grow permanent or sacrificial layers on the product, to etch or remove material from the product, to anneal the product, to immerse the product, to clean the product, and other such uses whereby the gases and chemicals come into direct contact with the product during the manufacturing process, or uses of gases and chemicals to clean the chambers and other like equipment in which such processing takes place. For purposes of this section, "semiconductor materials" has the same meaning as provided in RCW 82.04.240(2).

(2) A person taking the exemption under this section must report under RCW 82.32.535. No application is necessary for the tax exemption. The person is subject to all of the requirements of chapter 82.32 RCW.

(3) This section expires twelve years after \*the effective date of this act. [2003 c 149 § 8.]

\*Contingent effective date—Findings—Intent—2003 c 149: See notes following RCW 82.04.426.

**82.12.975 Computer parts and software related to the manufacture of commercial airplanes. (Expires July 1, 2024.)** (1) The provisions of this chapter shall not apply in respect to the use of computer hardware, computer peripherals, or software, not otherwise eligible for exemption under RCW 82.12.02565, used primarily in the development, design, and engineering of aerospace products or in providing aerospace services, or to the use of labor and services rendered in respect to installing the computer hardware, computer peripherals, or software.

(2) As used in this section, "peripherals," "aerospace products," and "aerospace services" have the same meanings as provided in RCW 82.08.975.

(3) This section expires July 1, 2024. [2008 c 81 § 3; 2003 2nd sp.s. c 1 § 10.]

Findings—Savings—Effective date—2008 c 81: See notes following RCW 82.08.975.

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

**82.12.980 Exemptions—Labor, services, and personal property related to the manufacture of superefficient airplanes. (Expires July 1, 2024.)** (1) The provisions of this chapter do not apply with respect to the use of tangible personal property that will be incorporated as an ingredient or component of new buildings by a manufacturer engaged in the manufacturing of superefficient airplanes or owned by a port district and to be leased to a manufacturer engaged in the manufacturing of superefficient airplanes, during the course of constructing such buildings, or to labor and services rendered in respect to installing, during the course of constructing, building fixtures not otherwise eligible for the exemption under RCW 82.08.02565(2)(b).

(2) The eligibility requirements, conditions, and definitions in RCW 82.08.980 apply to this section.

(2008 Ed.)

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 12.]

Contingent effective date—2003 2nd sp.s. c 1: See RCW 82.32.550.

Finding—2003 2nd sp.s. c 1: See note following RCW 82.04.4461.

**82.12.985 Exemptions—Insulin.** The provisions of this chapter shall not apply in respect to the use of insulin by humans. [2004 c 153 § 103.]

Retroactive effective date—Effective date—2004 c 153: See note following RCW 82.08.0293.

**82.12.995 Exemptions—Certain limited purpose public corporations, commissions, and authorities.** (1) The provisions of this chapter do not apply with respect to the use of tangible personal property and services provided by a public corporation, commission, or authority created under RCW 35.21.660 or 35.21.730 to an eligible entity.

(2) For purposes of this section, "eligible entity" means a limited liability company, a limited partnership, or a single asset entity, described in RCW 82.04.615. [2007 c 381 § 3.]

**82.12.998 Exemptions—Weatherization of a residence.** (1) The provisions of this chapter do not apply to the use of tangible personal property used in the weatherization of a residence under the weatherization assistance program under chapter 70.164 RCW. The exemption only applies to tangible personal property that becomes a component of the residence.

(2) "Residence" and "weatherization" have the meanings provided in RCW 70.164.020. [2008 c 92 § 2.]

## Chapter 82.14 RCW

### LOCAL RETAIL SALES AND USE TAXES

#### Sections

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*Changes in tax law—Liability:* RCW 82.08.064, 82.14.055, and 82.32.430.

*Direct pay permits:* RCW 82.32.087.

*High capacity transportation systems—Sales and use tax:* RCW 81.104.170.

**82.14.010 Legislative finding—Purpose.** The legislature finds that the several counties and cities of the state lack adequate sources of revenue to carry out essential county and municipal purposes. The legislature further finds that the most efficient and appropriate methods of deriving revenues for such purposes is to vest additional taxing powers in the governing bodies of counties and cities which they may or may not implement. The legislature intends, by enacting this chapter, to provide the means by which essential county and municipal purposes can be financially served should they choose to employ them. [1970 ex.s. c 94 § 1.]

**82.14.020 Definitions.** (*Contingency, see note following RCW 82.04.530.*) For purposes of this chapter:

- (1) "City" means a city or town;
- (2) The meaning ascribed to words and phrases in chapters 82.04, 82.08 and 82.12 RCW, as now or hereafter amended, insofar as applicable, shall have full force and effect with respect to taxes imposed under authority of this chapter;
- (3) "Taxable event" shall mean any retail sale, or any use, upon which a state tax is imposed pursuant to chapter 82.08 or 82.12 RCW, as they now exist or may hereafter be amended: PROVIDED, HOWEVER, That the term shall not include a retail sale taxable pursuant to RCW 82.08.150, as now or hereafter amended;
- (4) "Treasurer or other legal depository" shall mean the treasurer or legal depository of a county or city. [2007 c 6 § 502; (2005 c 514 § 112 repealed by 2007 c 54 § 2); 2005 c 514 § 111; (2003 c 168 § 503 repealed by 2007 c 54 § 2); 2003 c 168 § 502. Prior: 2002 c 367 § 6; 2002 c 67 § 7; 2001 c 186 § 3; 1997 c 201 § 1; 1983 2nd ex.s. c 3 § 31; 1982 c 211 § 1; 1981 c 144 § 4; 1970 ex.s. c 94 § 3.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Severability—Effective date—2002 c 367:** See notes following RCW 82.04.060.

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**Finding—Purpose—Effective date—2001 c 186:** See notes following RCW 82.08.0202.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Intent—Severability—Effective date—1981 c 144:** See notes following RCW 82.16.010.

**82.14.030 Sales and use taxes authorized—Additional taxes authorized—Maximum rates.** (1) The governing body of any county or city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, impose a sales and use tax in accordance with the terms of this chapter. Such tax shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW, upon the occurrence of any taxable event within the county or city as the case may be. Except as provided in RCW 82.14.230, this sales and use tax shall not apply to natural or manufactured gas. The rate of such tax imposed by a county shall be five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax imposed by a city shall not exceed five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). However, in the event a county imposes a sales and use tax under this subsection, the rate of such tax imposed under this subsection by any city therein shall not exceed four hundred and twenty-five one-thousandths of one percent.

(2) In addition to the tax authorized in subsection (1) of this section, the governing body of any county or city may by resolution or ordinance impose an additional sales and use tax in accordance with the terms of this chapter. Such additional tax shall be collected upon the same taxable events upon which the tax imposed under subsection (1) of this section is imposed. The rate of such additional tax imposed by a county shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such additional tax imposed by a city shall be up to five-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). However, in the event a county imposes a sales and use tax under the authority of this subsection at a rate equal to or greater than the rate imposed under the authority of this subsection by a city within the county, the county shall receive fifteen percent of the city tax. In the event that the county imposes a sales and use tax under the authority of this subsection at a rate which is less than the rate imposed under this subsection by a city within the county, the county shall receive that amount of revenues from the city tax equal to fifteen percent of the rate of tax imposed by the county under the authority of this subsection. The authority to impose a tax under this subsection is intended in part to compensate local government for any losses from the phase-out of the property tax on business inventories. [2008 c 86 § 101; 1989 c 384 § 6; 1982 1st ex.s. c 49 § 17; 1970 ex.s. c 94 § 4.]

**Severability—2008 c 86:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2008 c 86 § 601.]

**Savings—2008 c 86:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2008 c 86 § 602.]

**Part headings not law—2008 c 86:** "Part headings used in this act are not any part of the law." [2008 c 86 § 603.]

**Intent—Effective date—1989 c 384:** See notes following RCW 82.12.022.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

*Additional tax for high capacity transportation service: RCW 81.104.170.*

*Imposition of additional tax on sale of real property in lieu of tax under RCW 82.14.030(2): RCW 82.46.010(3).*

**82.14.032 Alteration of tax rate pursuant to government service agreement.** The rate of sales and use tax imposed by a city under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 11.]

**82.14.034 Alteration of county's share of city's tax receipts pursuant to government service agreement.** The percentage of a city's sales and use tax receipts that a county receives under RCW 82.14.030 (1) and (2) may be altered pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 12.]

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**82.14.036 Imposition or alteration of additional taxes—Referendum petition to repeal—Procedure—Exclusive method.** Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.14.030(2) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in \*RCW 29.13.010 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or altering the rate under RCW 82.14.030(2) to a referendum vote.

Any county or city tax authorized under RCW 82.14.030(2) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [1983 c 99 § 2.]

**\*Reviser's note:** RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

**Severability—1983 c 99:** See note following RCW 82.14.200.

**82.14.040 County ordinance to contain credit provision.** (1) Any county ordinance adopted under RCW 82.14.030(1) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(1) for the full amount of any city sales or use tax imposed under RCW 82.14.030(1) upon the same taxable event.

(2) Any county ordinance adopted under RCW 82.14.030(2) shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax imposed under RCW 82.14.030(2) for the full amount of any city sales or use tax imposed under RCW 82.14.030(2) upon the same taxable

event up to the additional tax imposed by the county under RCW 82.14.030(2). [1982 1st ex.s. c 49 § 18; 1970 ex.s. c 94 § 5.]

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.14.045 Sales and use taxes for public transportation systems.** (1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a county with a population of one million or more pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems or public transportation limited to persons with special needs under RCW 36.57.130 and 36.57A.180, and in lieu of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation or public transportation limited to persons with special needs under RCW 36.57.130 and 36.57A.180, and if approved by a majority of persons voting thereon, impose a sales and use tax in accordance with the terms of this chapter. Where an authorizing proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without additional approval of the voters of such county as otherwise required by this section.

The tax authorized by this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, six-tenths, seven-tenths, eight-tenths, or nine-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2)(a) In the event a metropolitan municipal corporation imposes a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to impose

and/or collect taxes under RCW 35.95.040 or this section, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority imposes a sales and use tax under this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to impose or collect taxes under RCW 35.95.040 or this section.

(c) In the event a public transportation benefit area imposes a sales and use tax under this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to impose or collect taxes under RCW 35.95.040 or this section. [2008 c 86 § 102; 2001 c 89 § 3; 2000 2nd sp.s. c 4 § 16; 1998 c 321 § 7 (Referendum Bill No. 49, approved November 3, 1998); 1991 c 363 § 158. Prior: 1984 c 112 § 1; 1983 c 3 § 216; 1980 c 163 § 1; 1975 1st ex.s. c 270 § 6; 1971 ex.s. c 296 § 2.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Purpose—1998 c 321:** "The purpose of this act is to reallocate the general fund portion of the state's motor vehicle excise tax revenues among the taxpayers, local governments, and the state's transportation programs. By reallocating motor vehicle excise taxes, the state revenue portion can be dedicated to increased transportation funding purposes. Since the general fund currently has a budget surplus, due to a strong economy, the legislature feels that this reallocation is an appropriate short-term solution to the state's transportation needs and is a first step in meeting longer-term transportation funding needs. These reallocated funds must be used to provide relief from traffic congestion, improve freight mobility, and increase traffic safety.

In reallocating general fund resources, the legislature also ensures that other programs funded from the general fund are not adversely impacted by the reallocation of surplus general fund revenues. The legislature also adopts this act to continue the general fund revenue and expenditure limitations contained in chapter 43.135 RCW after this one-time transfer of funds.

In order to develop a long-term and comprehensive solution to the state's transportation problems, a joint committee will be created to study the state's transportation needs and the appropriate sources of revenue necessary to implement the state's long-term transportation needs as provided in \*section 22 of this act." [1998 c 321 § 1 (Referendum Bill No. 49, approved November 3, 1998).]

**\*Reviser's note:** Section 22 of this act was vetoed by the governor.

**Severability—1998 c 321:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 321 § 45 (Referendum Bill No. 49, approved November 3, 1998).]

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** "(1) Sections 1 through 3, 5 through 21, 44, and 45 of this act take effect January 1, 1999.

(2) Section 4 of this act takes effect July 1, 1999, and applies to registrations that are due or become due in July 1999, and thereafter." [1998 c 321 § 46 (Referendum Bill No. 49, approved November 3, 1998).]

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** "The secretary of state shall submit sections 1 through 21 and 44 through 46 of this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation." [1998 c 321 § 49 (Referendum Bill No. 49, approved November 3, 1998).]

**Purpose—Captions now law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**Legislative finding, declaration—1971 ex.s. c 296:** "The legislature finds that adequate public transportation systems are necessary to the eco-

conomic, industrial and cultural development of the urban areas of this state and the health, welfare and prosperity of persons who reside or are employed in such areas or who engage in business therein and such systems are increasingly essential to the functioning of the urban highways of the state. The legislature further finds and declares that fares and tolls for the use of public transportation systems cannot maintain such systems in solvent financial conditions and at the same time meet the need to serve those who cannot reasonably afford or use other forms of transportation. The legislature further finds and declares that additional and alternate means of financing adequate public transportation service are necessary for the cities, metropolitan municipal corporations and counties of this state which provide such service." [1971 ex.s. c 296 § 1.]

**Severability—1971 ex.s. c 296:** "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 296 § 5.]

**82.14.0455 Sales and use tax for transportation benefit districts.** (1) Subject to the provisions in RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose a sales and use tax in accordance with the terms of this chapter. The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the district. The rate of tax shall not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. The tax may not be imposed for a period exceeding ten years. This tax may be extended for a period not exceeding ten years with an affirmative vote of the voters voting at the election.

(2) Money received from the tax imposed under this section must be spent in accordance with the requirements of chapter 36.73 RCW. [2006 c 311 § 16; 2005 c 336 § 15.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**82.14.046 Sales and use tax equalization payments from local transit taxes.** Beginning with distributions made to municipalities under \*RCW 82.44.150 on January 1, 1996, municipalities as defined in RCW 35.58.272 imposing local transit taxes, which for purposes of this section include the sales and use tax under RCW 82.14.045, the business and occupation tax under RCW 35.95.040, and excise taxes under RCW 35.95.040, shall be eligible for sales and use tax equalization payments from motor vehicle excise taxes distributed under \*RCW 82.44.150 as follows:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each municipality imposing local transit taxes and the statewide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW for the previous calendar year calculated for a sales and use tax rate of one-tenth percent. For purposes of this section, the department of revenue shall determine a local transit tax rate for each municipality for the previous calendar year. The tax rate shall be equivalent to the sales and use tax rate for the municipality that would have generated an amount of revenue equal to the amount of local transit taxes collected by the municipality.

(2) For each tenth of one percent of the local transit tax rate, the state treasurer shall apportion to each municipality

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receiving less than eighty percent of the statewide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW as determined by the department of revenue under subsection (1) of this section, an amount when added to the per capita level of revenues received the previous calendar year by the municipality, to equal eighty percent of the statewide weighted average per capita level of revenues determined under subsection (1) of this section. In no event may the sales and use tax equalization distribution to a municipality in a single calendar year exceed: (a) Fifty percent of the amount of local transit taxes collected during the prior calendar year; or (b) the maximum amount of revenue that could have been collected at a local transit tax rate of three-tenths percent in the prior calendar year.

(3) For a municipality established after January 1, 1995, sales and use tax equalization distributions shall be made according to the procedures in this subsection. Sales and use tax equalization distributions to eligible new municipalities shall be made at the same time as distributions are made under subsection (2) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new municipality has received a full year's worth of local transit tax revenues as of the January sales and use tax equalization distribution.

(a) Whether a newly established municipality determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October sales and use tax equalization distribution shall depend on the date the system first imposes local transit taxes.

(i) A newly established municipality imposing local transit taxes taking effect during the first calendar quarter shall be eligible to receive funds under this subsection beginning with the July sales and use tax equalization distribution of that year.

(ii) A newly established municipality imposing local transit taxes taking effect during the second calendar quarter shall be eligible to receive funds under this subsection beginning with the October sales and use tax equalization distribution of that year.

(iii) A newly established municipality imposing local transit taxes taking effect during the third calendar quarter shall be eligible to receive funds under this subsection beginning with the January sales and use tax equalization distribution of the next year.

(iv) A newly established municipality imposing local transit taxes taking effect during the fourth calendar quarter shall be eligible to receive funds under this subsection beginning with the April sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new municipality should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from local transit taxes that the new municipality would have received had the municipality received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (2) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the local transit taxes have been imposed.

(c) The department of revenue shall advise the state treasurer of the amounts calculated under (b) of this subsection and the state treasurer shall distribute these amounts to the new municipality from the motor vehicle excise tax deposited into the transportation fund under \*RCW 82.44.110.

(4) A municipality whose governing body implements a tax change that reduces its local transit tax rate after January 1, 1994, may not receive distributions under this section. [1998 c 321 § 37 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 298 § 1; 1994 c 241 § 2.]

**\*Reviser's note:** RCW 82.44.150 and 82.44.110 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 35.58.410.

**Contingency—1995 c 298:** Funding was provided for 1995 c 298 in 1995 2nd sp.s. c 14 § 413.

#### **82.14.048 Sales and use taxes for public facilities districts.**

(1) The governing board of a public facilities district under chapter 36.100 or 35.57 RCW may submit an authorizing proposition to the voters of the district, and if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed two-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under the authority of this section shall be used for the purpose of providing funds for the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of its public facilities. [2008 c 86 § 103; 1999 c 165 § 12; 1995 c 396 § 6; 1991 c 207 § 1.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Severability—1999 c 164:** See RCW 35.57.900.

**Severability—1995 c 396:** See note following RCW 36.100.010.

#### **82.14.0485 Sales and use tax for baseball stadium—Counties with population of one million or more—Deduction from tax otherwise required—"Baseball stadium" defined.**

(1) The legislative authority of a county with a population of one million or more may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.017 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Moneys collected under this section shall only be used for the purpose of paying the principal and interest payments on bonds issued by a county to construct a baseball stadium.

(4) No tax may be collected under this section before January 1, 1996, and no tax may be collected under this section unless the taxes under RCW 82.14.360 are being collected. The tax imposed in this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax is first collected.

(5) As used in this section, "baseball stadium" means a baseball stadium with natural turf and a retractable roof or canopy, together with associated parking facilities, constructed in the largest city in a county with a population of one million or more. [1995 3rd sp.s. c 1 § 101.]

**Part headings not law—1995 3rd sp.s. c 1:** "Part headings as used in this act constitute no part of the law." [1995 3rd sp.s. c 1 § 309.]

**Effective date—1995 3rd sp.s. c 1:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [October 17, 1995]." [1995 3rd sp.s. c 1 § 310.]

*Baseball stadium construction agreement:* RCW 36.100.037.

*State contribution for baseball stadium limited:* RCW 82.14.0486.

#### **82.14.0486 State contribution for baseball stadium limited.**

Sections 101 through 105, chapter 1, Laws of 1995 3rd sp. sess. constitute the entire state contribution for a baseball stadium, as defined in RCW 82.14.0485. The state will not make any additional contributions based on revised cost or revenue estimates, cost overruns, unforeseen circumstances, or any other reason. [1995 3rd sp.s. c 1 § 106.]

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

#### **82.14.049 Sales and use tax for public sports facilities—Tax upon retail rental car rentals.**

The legislative authority of any county may impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall be one percent of the selling price in the case of a sales tax or rental value of the vehicle in the case of a use tax. Proceeds of the tax shall not be used to subsidize any professional sports team and shall be used solely for the following purposes:

(1) Acquiring, constructing, maintaining, or operating public sports stadium facilities;

(2) Engineering, planning, financial, legal, or professional services incidental to public sports stadium facilities;

(3) Youth or amateur sport activities or facilities; or

(4) Debt or refinancing debt issued for the purposes of subsection (1) of this section.

At least seventy-five percent of the tax imposed under this section shall be used for the purposes of subsections (1),

(2), and (4) of this section. In a county of one million or more, at least seventy-five percent of the tax imposed under this section shall be used to retire the debt on the stadium under RCW 67.28.180(2)(b)(ii), until that debt is fully retired. [2008 c 264 § 4; 1997 c 220 § 502 (Referendum Bill No. 48, approved June 17, 1997); 1992 c 194 § 3.]

**Findings—Intent—Effective date—2008 c 264:** See notes following RCW 67.28.180.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Legislative intent—1992 c 194:** See note following RCW 82.08.020.

**Effective dates—1992 c 194:** See note following RCW 46.04.466.

**82.14.0494 Sales and use tax for stadium and exhibition center—Deduction from tax otherwise required—Transfer and deposit of revenues. (Contingent expiration date.)** (1) The legislative authority of a county that has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.050 may impose a sales and use tax in accordance with this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall be 0.016 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3) Before the issuance of bonds in RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be transferred to the public stadium authority. After bonds are issued under RCW 43.99N.020, all revenues collected on behalf of the county under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(4) The definitions in RCW 36.102.010 apply to this section.

(5) This section expires on the earliest of the following dates:

(a) December 31, 1999, if the conditions for issuance of bonds under RCW 43.99N.020 have not been met before that date;

(b) The date on which all bonds issued under RCW 43.99N.020 have been retired; or

(c) Twenty-three years after the date the tax under this section is first imposed. [1997 c 220 § 204 (Referendum Bill No. 48, approved June 17, 1997).]

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

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**82.14.050 Administration and collection—Local sales and use tax account.** The counties, cities, and transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440, regional transportation investment districts, and transportation benefit districts under chapter 36.73 RCW shall contract, prior to the effective date of a resolution or ordinance imposing a sales and use tax, the administration and collection to the state department of revenue, which shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by this chapter that is collected by the department of revenue shall be deposited by the state department of revenue in the local sales and use tax account hereby created in the state treasury. Moneys in the local sales and use tax account may be spent only for distribution to counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts imposing a sales and use tax. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW, as they now exist or may hereafter be amended, shall, insofar as they are applicable to state sales and use taxes, be applicable to taxes imposed pursuant to this chapter. Counties, cities, transportation authorities, public facilities districts, and regional transportation investment districts may not conduct independent sales or use tax audits of sellers registered under the streamlined sales tax agreement. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local sales and use tax account shall be credited to the local sales and use tax account and distributed to the counties, cities, transportation authorities, public facilities districts, public transportation benefit areas, regional transportation investment districts, and transportation benefit districts monthly. [2005 c 336 § 20. Prior: 2003 c 168 § 201; 2003 c 83 § 208; 2002 c 56 § 406; 1999 c 165 § 14; 1991 sp.s. c 13 § 34; 1991 c 207 § 2; 1990 2nd ex.s. c 1 § 201; 1985 c 57 § 81; 1981 2nd ex.s. c 4 § 10; 1971 ex.s. c 296 § 3; 1970 ex.s. c 94 § 6.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Severability—1999 c 164:** See RCW 35.57.900.

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

**Applicability—1990 2nd ex.s. c 1 §§ 201-204:** "Sections 201 through 204 of this act shall not be effective for earnings on balances prior to July 1, 1990, regardless of when a distribution is made." [1990 2nd ex.s. c 1 § 205.]

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

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

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**Legislative finding, declaration—Severability—1971 ex.s. c 296:** See notes following RCW 82.14.045.

**82.14.055 Tax changes.** (1) Except as provided in subsections (2), (3), and (4) of this section, a local sales and use

tax change shall take effect (a) no sooner than seventy-five days after the department receives notice of the change and (b) only on the first day of January, April, July, or October.

(2) In the case of a local sales and use tax that is a credit against the state sales tax or use tax, a local sales and use tax change shall take effect (a) no sooner than thirty days after the department receives notice of the change and (b) only on the first day of a month.

(3)(a) A local sales and use tax rate increase imposed on services applies to the first billing period starting on or after the effective date of the increase.

(b) A local sales and use tax rate decrease imposed on services applies to bills rendered on or after the effective date of the decrease.

(c) For the purposes of this subsection (3), "services" means retail services such as installing and constructing and retail services such as telecommunications, but does not include services such as tattooing.

(4) For the purposes of this section, "local sales and use tax change" means enactment or revision of local sales and use taxes under this chapter or any other statute, including changes resulting from referendum or annexation. [2003 c 168 § 206; 2001 c 320 § 7; 2000 c 104 § 2.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Findings—Intent—2000 c 104:** "The legislature finds that retailers have an important role in the state's tax system by collecting sales or use tax from consumers and remitting it to the state. Frequent changes to the tax system place a burden on these businesses. To alleviate that burden and to improve the accuracy of tax collection, it is the intent of the legislature to provide that changes to sales and use tax may be made four times a year and that the department of revenue be provided adequate time to give advance notice to retailers of any such change. Changes in sales and use tax rates that are the result of annexation are also restricted to this time period, for uniformity and simplification. Additionally, retailers who rely on technology developed and provided by the department of revenue, such as the department's geographic information system, to calculate tax rates shall be held harmless from errors resulting from such use." [2000 c 104 § 1.]

**Effective date—2000 c 104:** "This act takes effect July 1, 2000." [2000 c 104 § 7.]

*Statewide sales and use tax changes: RCW 82.08.064.*

**82.14.060 Distributions to counties, cities, transportation authorities, public facilities districts, and transportation benefit districts—Imposition at excess rates, effect.** Monthly the state treasurer shall make distribution from the local sales and use tax account to the counties, cities, transportation authorities, public facilities districts, and transportation benefit districts the amount of tax collected on behalf of each taxing authority, less the deduction provided for in RCW 82.14.050. The state treasurer shall make the distribution under this section without appropriation.

In the event that any ordinance or resolution imposes a sales and use tax at a rate in excess of the applicable limits contained herein, such ordinance or resolution shall not be considered void in toto, but only with respect to that portion of the rate which is in excess of the applicable limits contained herein. [2005 c 336 § 21; 1991 c 207 § 3; 1990 2nd ex.s. c 1 § 202; 1981 2nd ex.s. c 4 § 11; 1971 ex.s. c 296 § 4; 1970 ex.s. c 94 § 7.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 82.14.050.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**Legislative finding, declaration—Severability—1971 ex.s. c 296:** See notes following RCW 82.14.045.

**82.14.070 Uniformity—Rule making—Model ordinance.** It is the intent of this chapter that any local sales and use tax adopted pursuant to this chapter be identical to the state sales and use tax, unless otherwise prohibited by federal law, and with other local sales and use taxes adopted pursuant to this chapter. It is further the intent of this chapter that the local sales and use tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state sales or use tax upon the same taxable event. The rule making powers of the state department of revenue contained in RCW 82.08.060 and 82.32.300 shall be applicable to this chapter. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model resolution and ordinance. [2003 c 168 § 202; 2000 c 104 § 5; 1970 ex.s. c 94 § 10.]

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Findings—Intent—Effective date—2000 c 104:** See notes following RCW 82.14.055.

**82.14.080 Deposit of tax prior to due date—Credit against future tax or assessment—When fund designation permitted—Use of tax revenues received in connection with large construction projects.** The taxes provided by this chapter may be deposited by any taxpayer prior to the due date thereof with the treasurer or other legal depository for the benefit of the funds to which they belong to be credited against any future tax or assessment that may be levied or become due from the taxpayer: PROVIDED, That the taxpayer may with the concurrence of the legislative authority designate a particular fund of such county or city against which such prepayment of tax or assessment is made. Such prepayment of taxes or assessments shall not be considered to be a debt for the purpose of the limitation of indebtedness imposed by law on a county or city.

By agreement made pursuant to chapter 39.34 RCW, counties or cities may utilize tax revenues received under the authority of this chapter in connection with large construction projects, including energy facilities as defined in RCW 80.50.020, for any purpose within their power or powers, privileges or authority exercised or capable of exercise by such counties or cities including, but not limited to, the purpose of the mitigation of socioeconomic impacts that may be caused by such large construction projects: PROVIDED, That the taxable event need not take place within the jurisdiction where the socioeconomic impact occurs if an intergovernmental agreement provides for redistribution. [1982 c 211 § 2.]

**82.14.090 Payment of tax prior to taxable event—When permitted—Deposit with treasurer—Credit against future tax—When fund designation permitted.** When permitted by resolution or ordinance, any tax author-

rized by this chapter may be paid prior to the taxable event to which it may be attributable. Such prepayment shall be made by deposit with the treasurer or other legal depository for the benefit of the funds to which they belong. They shall be credited by any county or city against any future tax that may become due from a taxpayer: PROVIDED, That the taxpayer with the concurrence of the legislative authority may designate a particular fund of such county or city against which such prepayment of tax is made. Prepayment of taxes under this section shall not relieve any taxpayer from remitting the full amount of any tax imposed under the authority of this chapter upon the occurrence of the taxable event. [1982 c 211 § 3.]

**82.14.200 County sales and use tax equalization account—Allocation procedure.** There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in \*RCW 82.44.110. Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for the unincorporated area of each county and the statewide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1, 1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment. Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties

as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under subsections (2) through (5) of this section in any calendar year shall not exceed an amount equal to seventy percent of the statewide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions

shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion an amount to the county public health account created in RCW 70.05.125 equal to the adjustment under RCW 70.05.125(2)(b).

(9) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) and (8) of this section, then the additional revenues shall be credited and transferred as follows:

(a) Fifty percent to the public facilities construction loan revolving account under RCW 43.160.080; and

(b) Fifty percent to the distressed county public facilities construction loan account under \*\*RCW 43.160.220, or so much thereof as will not cause the balance in the account to exceed twenty-five million dollars. Any remaining funds shall be deposited into the public facilities construction loan revolving account.

(10) During the 2003-2005 fiscal biennium, the legislature may transfer from the county sales and use tax equalization account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 941; 1998 c 321 § 8 (Referendum Bill No. 49, approved November 3, 1998); 1997 c 333 § 2; 1991 sp.s. c 13 § 15; 1990 c 42 § 313; 1985 c 57 § 82; 1984 c 225 § 5; 1983 c 99 § 1; 1982 1st ex.s. c 49 § 21.]

**Reviser's note:** \*(1) RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

\*\* (2) RCW 43.160.220 was repealed by 2008 c 327 § 17, effective July 1, 2009.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**Effective date—1997 c 333:** See note following RCW 70.05.125.

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

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

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

**Rules—1984 c 225:** See note following RCW 82.14.210.

**Severability—1983 c 99:** "If any provision of this act or chapter 49, Laws of 1982 1st ex. sess. or their application to any person or circumstance is held invalid, the remainder of these acts or the application of the provision to other persons or circumstances is not affected." [1983 c 99 § 10.]

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.14.210 Municipal sales and use tax equalization account—Allocation procedure.** There is created in the state treasury a special account to be known as the "municipal sales and use tax equalization account." Into this account shall be placed such revenues as are provided under \*RCW

82.44.110(1)(e). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each city and the statewide weighted average per capita level of revenues for all cities imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each city not imposing the sales and use tax under RCW 82.14.030(2) an amount from the municipal sales and use tax equalization account equal to the amount distributed to the city under \*\*RCW 82.44.155, multiplied by forty-five fifty-fifths.

(3) Subsequent to the distributions under subsection (2) of this section, and at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the statewide weighted average per capita level of revenues for all cities as determined by the department of revenue under subsection (1) of this section, an amount from the municipal sales and use tax equalization account sufficient, when added to the per capita level of revenues received the previous calendar year by the city, to equal seventy percent of the statewide weighted average per capita level of revenues for all cities determined under subsection (1) of this section, subject to reduction under subsection (6) of this section.

(4) Subsequent to the distributions under subsection (3) of this section, and at such times as distributions are made under \*RCW 82.44.150, the state treasurer shall apportion to each city imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a third distribution from the municipal sales and use tax equalization account. The distribution to each qualifying city shall be equal to the distribution to the city under subsection (3) of this section, subject to the reduction under subsection (6) of this section. To qualify for the distributions under this subsection, the city must impose the tax under RCW 82.14.030(2) for the entire calendar year. Cities imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) For a city with an official incorporation date after January 1, 1990, municipal sales and use tax equalization distributions shall be made according to the procedures in this subsection. Municipal sales and use tax equalization distributions to eligible new cities shall be made at the same time as distributions are made under subsections (3) and (4) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new city has received a full year's worth of revenues under RCW 82.14.030(1) as of the January municipal sales and use tax equalization distribution.

(a) Whether a newly incorporated city determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October municipal sales and use tax equalization distribution shall depend on

the date the city first imposes the tax authorized under RCW 82.14.030(1).

(i) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of January 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of that year.

(ii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of February 1st, March 1st, or April 1st shall be eligible to receive funds under this subsection beginning with the July municipal sales and use tax equalization distribution of that year.

(iii) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of May 1st, June 1st, or July 1st shall be eligible to receive funds under this subsection beginning with the October municipal sales and use tax equalization distribution of that year.

(iv) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of August 1st, September 1st, or October 1st shall be eligible to receive funds under this subsection beginning with the January municipal sales and use tax equalization distribution of the next year.

(v) A newly incorporated city imposing the tax authorized under RCW 82.14.030(1) effective as of November 1st or December 1st shall be eligible to receive funds under this subsection beginning with the April municipal sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new city should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from the tax authorized under RCW 82.14.030(1) that the new city would have received had the city received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (3) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the tax authorized under RCW 82.14.030(1) is imposed.

(c) A new city imposing the tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution calculated under (b) of this subsection shall receive another distribution from the municipal sales and use tax equalization account. This distribution shall be equal to the calculation made under (b)(ii) of this subsection, prorated by the number of months the city imposes the tax authorized under RCW 82.14.030(2) at the full rate.

(d) The department of revenue shall advise the state treasurer of the amounts calculated under (b) and (c) of this subsection and the state treasurer shall distribute these amounts to the new city from the municipal sales and use tax equalization account subject to the limitations imposed in subsection (6) of this section.

(e) Revenues estimated under this subsection shall not affect the calculation of the statewide weighted average per capita level of revenues for all cities made under subsection (1) of this section.

(6) If inadequate revenues exist in the municipal sales and use tax equalization account to make the distributions

under subsection (3), (4), or (5) of this section, then the distributions under subsections (3), (4), and (5) of this section shall be reduced ratably among the qualifying cities. At such time during the year as additional funds accrue to the municipal sales and use tax equalization account, additional distributions shall be made under subsections (3), (4), and (5) of this section to the cities.

(7) If the level of revenues in the municipal sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, then the additional revenues shall be apportioned among the several cities within the state ratably on the basis of population as last determined by the office of financial management: PROVIDED, That no such distribution shall be made to those cities receiving a distribution under subsection (2) of this section.

(8) During the 2003-2005 fiscal biennium, the legislature may transfer from the municipal sales and use tax equalization account to the state general fund such amounts as reflect the excess fund balance in the account. [2003 1st sp.s. c 25 § 942; 1996 c 64 § 1; 1991 sp.s. c 13 § 16; 1990 2nd ex.s. c 1 § 701; 1990 c 42 § 314; 1985 c 57 § 83; 1984 c 225 § 2; 1982 1st ex.s. c 49 § 22.]

**Reviser's note:** \*(1) RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

\*\*\*(2) RCW 82.44.155 was repealed by 2006 c 318 § 10.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—1996 c 64:** "This act shall take effect July 1, 1996." [1996 c 64 § 2.]

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

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

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

**Intent—1984 c 225:** "It is the intent of the legislature to provide for the allocation of moneys by the department of revenue from the municipal sales and use tax equalization account to cities and towns initially incorporated on or after January 1, 1983." [1984 c 225 § 1.]

**Applicability—1984 c 225:** "Sections 1 and 2 of this act apply to distributions for calendar year 1984 and thereafter which are made to cities and towns that were initially incorporated on or after January 1, 1983, and that impose the tax authorized by RCW 82.14.030(1)." [1984 c 225 § 3.]

**Rules—1984 c 225:** "The department of revenue shall adopt rules as necessary to implement this act." [1984 c 225 § 7.]

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.14.212 Transfer of funds pursuant to government service agreement.** Funds that are distributed to counties or cities pursuant to RCW 82.14.200 or 82.14.210 may be transferred by the recipient county or city to another unit of local government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 13.]

**82.14.215 Apportionment and distribution—Withholding revenue for noncompliance.** The governor may notify and direct the state treasurer to withhold the revenues to which the county or city is entitled under this chapter if a

county or city is found to be in noncompliance pursuant to RCW 36.70A.340. [1991 sp.s. c 32 § 35.]

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**82.14.220 Figures for apportionments and distributions under RCW 82.14.200 and 82.14.210.** The apportionments and distributions by the state treasurer under RCW 82.14.200 and 82.14.210 shall be based on figures supplied by the department of revenue. [1984 c 225 § 4.]

**Rules—1984 c 225:** See note following RCW 82.14.210.

**82.14.230 Natural or manufactured gas—Cities may impose use tax.** (1) The governing body of any city, while not required by legislative mandate to do so, may, by resolution or ordinance for the purposes authorized by this chapter, fix and impose on every person a use tax for the privilege of using natural gas or manufactured gas in the city as a consumer.

(2) The tax shall be imposed in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the tax on natural gas businesses under RCW 35.21.870 in the city in which the article is used. The "value of the article used," does not include any amounts that are paid for the hire or use of a natural gas business in transporting the gas subject to tax under this subsection if those amounts are subject to tax under RCW 35.21.870.

(3) The tax imposed under this section shall not apply to the use of natural or manufactured gas if the person who sold the gas to the consumer has paid a tax under RCW 35.21.870 with respect to the gas for which exemption is sought under this subsection.

(4) There shall be a credit against the tax levied under this section in an amount equal to any tax paid by:

(a) The person who sold the gas to the consumer when that tax is a gross receipts tax similar to that imposed pursuant to RCW 35.21.870 by another state with respect to the gas for which a credit is sought under this subsection; or

(b) The person consuming the gas upon which a use tax similar to the tax imposed by this section was paid to another state with respect to the gas for which a credit is sought under this subsection.

(5) The use tax hereby imposed shall be paid by the consumer. The administration and collection of the tax hereby imposed shall be pursuant to RCW 82.14.050. [1989 c 384 § 2.]

**Intent—Effective date—1989 c 384:** See notes following RCW 82.12.022.

**82.14.300 Local government criminal justice assistance—Finding.** The legislature finds and declares that local government criminal justice systems are in need of assistance. Many counties and cities are unable to provide sufficient funding for additional police protection, mitigation of congested court systems, public safety education, and relief of overcrowded jails.

In order to ensure public safety, it is necessary to provide fiscal assistance to help local governments to respond immediately to these criminal justice problems, while initiating a review of the criminal justice needs of cities and counties and the resources available to address those needs.

To provide for a more efficient and effective response to these problems, the legislature encourages cities and counties to coordinate strategies against crime and use multijurisdictional and innovative approaches in addressing criminal justice problems. [1995 c 312 § 83; 1990 2nd ex.s. c 1 § 1.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Severability—1990 2nd ex.s. c 1:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 2nd ex.s. c 1 § 1104.]

**82.14.310 County criminal justice assistance account—Transfers from general fund—Distributions based on crime rate and population—Limitations.** (1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at such times as distributions are made under \*RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the administrative office of the courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number

of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil or juvenile justice system occurs, and which includes (a) domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and (b) during the 2001-2003 fiscal biennium, juvenile dispositional hearings relating to petitions for at-risk youth, truancy, and children in need of services. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund. [2005 c 282 § 49; 2001 2nd sp.s. c 7 § 915; 1999 c 309 § 920; 1998 c 321 § 11 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 11; 1993 sp.s. c 21 § 1; 1991 c 311 § 1; 1990 2nd ex.s. c 1 § 102.]

**\*Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.14.045.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**Effective dates—1993 sp.s. c 21:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993, except for section 4 of this act, which shall take effect immediately [May 28, 1993], and sections 1 through 3, 5, and 7 of this act, which shall take effect January 1, 1994." [1993 sp.s. c 21 § 10.]

**Severability—1991 c 311:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 311 § 8.]

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**82.14.320 Municipal criminal justice assistance account—Transfers from general fund—Distributions criteria and formula—Limitations.** (1) The municipal criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall

(2008 Ed.)

transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the statewide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the statewide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (7) of this section, shall be distributed at such times as distributions are made under \*RCW 82.44.150. The distributions shall be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the statewide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed shall be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(6) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such

as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(7) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund. [1998 c 321 § 12 (Referendum Bill No. 49, approved November 3, 1998). Prior: 1995 c 398 § 12; 1995 c 312 § 84; 1993 sp.s. c 21 § 2; 1992 c 55 § 1; prior: 1991 sp.s. c 26 § 1; 1991 sp.s. c 13 § 30; 1990 2nd ex.s. c 1 § 104.]

**\*Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Effective dates—1993 sp.s. c 21:** See note following RCW 82.14.310.

**Severability—1992 c 55:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 55 § 2.]

**Retroactive application—1991 sp.s. c 26:** "The changes contained in section 1, chapter 26, Laws of 1991 sp. sess. are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 sp.s. c 26 § 3.]

**Severability—1991 sp.s. c 26:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 26 § 4.]

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

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**82.14.330 Municipal criminal justice assistance account—Transfers from general fund—Distributions based on crime rate, population, and innovation—Limitations.** (1) Beginning in fiscal year 2000, the state treasurer shall transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for

that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the statewide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall be distributed at such times as distributions are made under \*RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) Ten percent shall be distributed on a per capita basis to cities that contract with another governmental agency for the majority of the city's law enforcement services. Cities that subsequently qualify for this distribution shall notify the department of community, trade, and economic development by November 30th for the upcoming calendar year. The department of community, trade, and economic development shall provide a list of eligible cities to the state treasurer by

December 31st. The state treasurer shall modify the distribution of these funds in the following year. Cities have the responsibility to notify the department of community, trade, and economic development of any changes regarding these contractual relationships. Adjustments in the distribution formula to add or delete cities may be made only for the upcoming calendar year; no adjustments may be made retroactively.

(b) The remaining fifty-four percent shall be distributed to cities and towns by the state treasurer on a per capita basis. These funds shall be used for: (i) Innovative law enforcement strategies; (ii) programs to help at-risk children or child abuse victim response programs; and (iii) programs designed to reduce the level of domestic violence or to provide counseling for domestic violence victims.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under subsection (4) of this section, shall be distributed at the times as distributions are made under \*RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund. [2003 c 90 § 1; 1998 c 321 § 13 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 398 § 13; 1994 c 273 § 22; 1993 sp.s. c 21 § 3; 1991 c 311 § 4; 1990 2nd ex.s. c 1 § 105.]

**\*Reviser's note:** RCW 82.44.150 was repealed by 2003 c 1 (Initiative Measure No. 776, approved November 5, 2002).

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**Effective date—1994 c 273 § 22:** "Section 22 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 273 § 24.]

(2008 Ed.)

**Effective dates—1993 sp.s. c 21:** See note following RCW 82.14.310.

**Retroactive application—1991 c 311:** "The changes contained in sections 2, 3, 4, and 5 of this act are remedial, curative, and clarify ambiguities in prior existing law. These changes shall apply retroactively to July 1, 1990." [1991 c 311 § 6.]

**Severability—1991 c 311:** See note following RCW 82.14.310.

**Effective dates—1990 2nd ex.s. c 1:** See note following RCW 84.52.010.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**82.14.340 Additional sales and use tax for criminal justice purposes—Referendum—Expenditures.** The legislative authority of any county may fix and impose a sales and use tax in accordance with the terms of this chapter, provided that such sales and use tax is subject to repeal by referendum, using the procedures provided in RCW 82.14.036. The referendum procedure provided in RCW 82.14.036 is the exclusive method for subjecting any county sales and use tax ordinance or resolution to a referendum vote.

The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such county. The rate of tax shall equal one-tenth of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax).

When distributing moneys collected under this section, the state treasurer shall distribute ten percent of the moneys to the county in which the tax was collected. The remainder of the moneys collected under this section shall be distributed to the county and the cities within the county ratably based on population as last determined by the office of financial management. In making the distribution based on population, the county shall receive that proportion that the unincorporated population of the county bears to the total population of the county and each city shall receive that proportion that the city incorporated population bears to the total county population.

Moneys received from any tax imposed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

In the expenditure of funds for criminal justice purposes as provided in this section, cities and counties, or any combination thereof, are expressly authorized to participate in agreements, pursuant to chapter 39.34 RCW, to jointly expend funds for criminal justice purposes of mutual benefit. Such criminal justice purposes of mutual benefit include, but

are not limited to, the construction, improvement, and expansion of jails, court facilities, and juvenile justice facilities. [1995 c 309 § 1; 1993 sp.s. c 21 § 6. Prior: 1991 c 311 § 5; 1991 c 301 § 16; 1990 2nd ex.s. c 1 § 901.]

**Effective dates—1993 sp.s. c 21:** See note following RCW 82.14.310.

**Severability—1991 c 311:** See note following RCW 82.14.310.

**Retroactive application—1991 c 311:** See note following RCW 82.14.330.

**Finding—1991 c 301:** See note following RCW 10.99.020.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

*Sales and use tax for high capacity transportation service limited by imposition of tax under RCW 82.14.340: RCW 81.104.170.*

**82.14.350 Sales and use tax for juvenile detention facilities and jails—Colocation.** (1) A county legislative authority in a county with a population of less than one million may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of juvenile detention facilities and jails.

(4) Counties are authorized to develop joint ventures to colocate juvenile detention facilities and to colocate jails. [1995 2nd sp.s. c 10 § 1.]

**82.14.360 Special stadium sales and use taxes.** (1) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon the retail sale or use within the county by restaurants, taverns, and bars of food and beverages that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed five-tenths of one percent of the selling price in the case of a sales tax, or value of the article used in the case of a use tax. The tax authorized under this subsection is in addition to any other taxes authorized by law and shall not be credited against any other tax imposed upon the same taxable event. As used in this section, "restaurant" does not include grocery stores, mini-markets, or convenience stores.

(2) The legislative authority of a county with a population of one million or more may impose a special stadium sales and use tax upon retail car rentals within the county that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of the tax shall not exceed two percent of the selling price in the case of a sales tax, or rental value of the vehicle in the case of a use tax. The tax imposed under this subsection is in addition to any other taxes authorized by law and

shall not be credited against any other tax imposed upon the same taxable event.

(3) The revenue from the taxes imposed under the authority of this section shall be used for the purpose of principal and interest payments on bonds, issued by the county, to acquire, construct, own, remodel, maintain, equip, reequip, repair, and operate a baseball stadium. Revenues from the taxes authorized in this section may be used for design and other preconstruction costs of the baseball stadium until bonds are issued for the baseball stadium. The county shall issue bonds, in an amount determined to be necessary by the public facilities district, for the district to acquire, construct, own, and equip the baseball stadium. The county shall have no obligation to issue bonds in an amount greater than that which would be supported by the tax revenues under this section, RCW 82.14.0485, and 36.38.010(4) (a) and (b). If the revenue from the taxes imposed under the authority of this section exceeds the amount needed for such principal and interest payments in any year, the excess shall be used solely:

(a) For early retirement of the bonds issued for the baseball stadium; and

(b) If the revenue from the taxes imposed under this section exceeds the amount needed for the purposes in (a) of this subsection in any year, the excess shall be placed in a contingency fund which may only be used to pay unanticipated capital costs on the baseball stadium, excluding any cost overruns on initial construction.

(4) The proceeds of any bonds issued for the baseball stadium shall be provided to the district.

(5) As used in this section, "baseball stadium" means "baseball stadium" as defined in RCW 82.14.0485.

(6) The taxes imposed under this section shall expire when the bonds issued for the construction of the baseball stadium are retired, but not later than twenty years after the taxes are first collected. [2008 c 86 § 104; 2000 c 103 § 10; 1995 3rd sp.s. c 1 § 201; 1995 1st sp.s. c 14 § 7.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Severability—Effective dates—1995 1st sp.s. c 14:** See notes following RCW 36.100.010.

**82.14.370 Sales and use tax for public facilities in rural counties.** (1) The legislative authority of a rural county may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall not exceed 0.09 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax, except that for rural counties with population densities between sixty and one hundred persons per square mile, the rate shall not exceed 0.04 percent before January 1, 2000.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of reve-

nue shall perform the collection of such taxes on behalf of the county at no cost to the county.

(3)(a) Moneys collected under this section shall only be used to finance public facilities serving economic development purposes in rural counties and finance personnel in economic development offices. The public facility must be listed as an item in the officially adopted county overall economic development plan, or the economic development section of the county's comprehensive plan, or the comprehensive plan of a city or town located within the county for those counties planning under RCW 36.70A.040. For those counties that do not have an adopted overall economic development plan and do not plan under the growth management act, the public facility must be listed in the county's capital facilities plan or the capital facilities plan of a city or town located within the county.

(b) In implementing this section, the county shall consult with cities, towns, and port districts located within the county and the associate development organization serving the county to ensure that the expenditure meets the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection. Each county collecting money under this section shall report, as follows, to the office of the state auditor, within one hundred fifty days after the close of each fiscal year: (i) A list of new projects begun during the fiscal year, showing that the county has used the funds for those projects consistent with the goals of chapter 130, Laws of 2004 and the requirements of (a) of this subsection; and (ii) expenditures during the fiscal year on projects begun in a previous year. Any projects financed prior to June 10, 2004, from the proceeds of obligations to which the tax imposed under subsection (1) of this section has been pledged shall not be deemed to be new projects under this subsection. No new projects funded with money collected under this section may be for justice system facilities.

(c) The definitions in this section apply throughout this section.

(i) "Public facilities" means bridges, roads, domestic and industrial water facilities, sanitary sewer facilities, earth stabilization, storm sewer facilities, railroad, electricity, natural gas, buildings, structures, telecommunications infrastructure, transportation infrastructure, or commercial infrastructure, and port facilities in the state of Washington.

(ii) "Economic development purposes" means those purposes which facilitate the creation or retention of businesses and jobs in a county.

(iii) "Economic development office" means an office of a county, port districts, or an associate development organization as defined in RCW 43.330.010, which promotes economic development purposes within the county.

(4) No tax may be collected under this section before July 1, 1998. No tax may be collected under this section by a county more than twenty-five years after the date that a tax is first imposed under this section.

(5) For purposes of this section, "rural county" means a county with a population density of less than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2007 c 478 § 1; 2007 c

250 § 1; 2004 c 130 § 2; 2002 c 184 § 1; 1999 c 311 § 101; 1998 c 55 § 6; 1997 c 366 § 3.]

**Reviser's note:** This section was amended by 2007 c 250 § 1 and by 2007 c 478 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2007 c 478:** "This act takes effect August 1, 2007." [2007 c 478 § 2.]

**Intent—2004 c 130:** "It is the intent of the legislature in enacting this 2004 act to reaffirm the original goals of the 1997 act which first provided distressed counties with the local option sales and use tax contained in RCW 82.14.370. The local option tax is now available to all rural counties and the continuing legislative goal for RCW 82.14.370 is to promote the creation, attraction, expansion, and retention of businesses and provide for family wage jobs." [2004 c 130 § 1.]

**Finding—Intent—1999 c 311:** "The legislature finds that while Washington's economy is currently prospering, economic growth continues to be uneven, particularly as between metropolitan and rural areas. This has created in effect two Washingtons: One afflicted by inadequate infrastructure to support and attract investment, another suffering from congestion and soaring housing prices. In order to address these problems, the legislature intends to use resources strategically to build on our state's strengths while addressing threats to our prosperity." [1999 c 311 § 1.]

**Part headings and subheadings not law—1999 c 311:** "Part headings and subheadings used in this act are not any part of the law." [1999 c 311 § 601.]

**Effective date—1999 c 311:** "Sections 1, 101, 201, 301 through 305, 401, 402, 601, and 605 of this act take effect August 1, 1999." [1999 c 311 § 604.]

**Severability—1999 c 311:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 311 § 606.]

**Intent—1997 c 366:** "The legislature recognizes the economic hardship that rural distressed areas throughout the state have undergone in recent years. Numerous rural distressed areas across the state have encountered serious economic downturns resulting in significant job loss and business failure. In 1991 the legislature enacted two major pieces of legislation to promote economic development and job creation, with particular emphasis on worker training, income, and emergency services support, along with community revitalization through planning services and infrastructure assistance. However even though these programs have been of assistance, rural distressed areas still face serious economic problems including: Above-average unemployment rates from job losses and below-average employment growth; low rate of business start-ups; and persistent erosion of vitally important resource-driven industries.

The legislature also recognizes that rural distressed areas in Washington have an abiding ability and consistent will to overcome these economic obstacles by building upon their historic foundations of business enterprise, local leadership, and outstanding work ethic.

The legislature intends to assist rural distressed areas in their ongoing efforts to address these difficult economic problems by providing a comprehensive and significant array of economic tools, necessary to harness the persistent and undaunted spirit of enterprise that resides in the citizens of rural distressed areas throughout the state.

The further intent of this act is to provide:

(1) A strategically designed plan of assistance, emphasizing state, local, and private sector leadership and partnership;

(2) A comprehensive and significant array of business assistance, services, and tax incentives that are accountable and performance driven;

(3) An array of community assistance including infrastructure development and business retention, attraction, and expansion programs that will provide a competitive advantage to rural distressed areas throughout Washington; and

(4) Regulatory relief to reduce and streamline zoning, permitting, and regulatory requirements in order to enhance the capability of businesses to grow and prosper in rural distressed areas." [1997 c 366 § 1.]

**Goals—1997 c 366:** "The primary goals of chapter 366, Laws of 1997 are to:

(1) Promote the ongoing operation of business in rural distressed areas;

(2) Promote the expansion of existing businesses in rural distressed areas;

- (3) Attract new businesses to rural distressed areas;
  - (4) Assist in the development of new businesses from within rural distressed areas;
  - (5) Provide family wage jobs to the citizens of rural distressed areas;
- and
- (6) Promote the development of communities of excellence in rural distressed areas." [1997 c 366 § 2.]

**Severability—1997 c 366:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 366 § 11.]

**Captions and part headings not law—1997 c 366:** "Section captions and part headings used in this act are not any part of the law." [1997 c 366 § 12.]

**82.14.380 Distressed county assistance account—Created—Distributions.** (1) The distressed county assistance account is created in the state treasury. Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in \*RCW 82.44.110. At such times as distributions are made under \*RCW 82.44.150, the state treasurer shall distribute the funds in the distressed county assistance account to each county imposing the sales and use tax authorized under RCW 82.14.370 as of January 1, 1999, in the same proportions as distributions of the tax imposed under RCW 82.14.370 for these counties for the previous quarter.

(2) Funds distributed from the distressed county assistance account shall be expended by the counties for criminal justice and other purposes. [1999 c 311 § 201; 1998 c 321 § 10 (Referendum Bill No. 49, approved November 3, 1998).]

**\*Reviser's note:** RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Finding—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 311:** See notes following RCW 82.14.370.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Effective dates—Application—1998 c 321 §§ 1-21, 44, and 45:** See note following RCW 82.14.045.

**Referral to electorate—1998 c 321 §§ 1-21 and 44-46:** See note following RCW 82.14.045.

**82.14.390 Sales and use tax for regional centers.** (1) Except as provided in subsection (7) of this section, the governing body of a public facilities district (a) created before July 31, 2002, under chapter 35.57 or 36.100 RCW that commences construction of a new regional center, or improvement or rehabilitation of an existing new regional center, before January 1, 2004; (b) created before July 1, 2006, under chapter 35.57 RCW in a county or counties in which there are no other public facilities districts on June 7, 2006, and in which the total population in the public facilities district is greater than ninety thousand that commences construction of a new regional center before February 1, 2007; (c) created under the authority of RCW 35.57.010(1)(d); or (d) created before September 1, 2007, under chapter 35.57 or 36.100 RCW, in a county or counties in which there are no other public facilities districts on July 22, 2007, and in which the total population in the public facilities district is greater than seventy thousand, that commences construction of a new regional center before January 1, 2009, or before January 1, 2011, in the case of a new regional center in a county designated by the president as a disaster area in December 2007,

may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district. The rate of tax shall not exceed 0.033 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax.

(2)(a) The governing body of a public facilities district imposing a sales and use tax under the authority of this section may increase the rate of tax up to 0.037 percent if, within three fiscal years of July 1, 2008, the department determines that, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, a public facilities district's sales and use tax collections for fiscal years after July 1, 2008, have been reduced by a net loss of at least 0.50 percent from the fiscal year before July 1, 2008. The fiscal year in which this section becomes effective is the first fiscal year after July 1, 2008.

(b) The department shall determine sales and use tax collection net losses under this section as provided in RCW 82.14.500 (2) and (3). The department shall provide written notice of its determinations to public facilities districts. Determinations by the department of a public facilities district's sales and use tax collection net losses as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 are final and not appealable.

(c) A public facilities district may increase its rate of tax after it has received written notice from the department as provided in (b) of this subsection. The increase in the rate of tax must be made in 0.001 percent increments and must be the least amount necessary to mitigate the net loss in sales and use tax collections as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. The increase in the rate of tax is subject to RCW 82.14.055.

(3) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department of revenue under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(4) No tax may be collected under this section before August 1, 2000. The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(5) Moneys collected under this section shall only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter approved taxes authorized under chapter 35.57 RCW or nonvoter approved taxes authorized under chapter 36.100 RCW shall not constitute a public or private source. For the purpose of this section, public or private sources includes, but is not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector

partners as part of a public and private partnership agreement negotiated by the public facilities district.

(6) The combined total tax levied under this section shall not be greater than 0.037 percent. If both a public facilities district created under chapter 35.57 RCW and a public facilities district created under chapter 36.100 RCW impose a tax under this section, the tax imposed by a public facilities district created under chapter 35.57 RCW shall be credited against the tax imposed by a public facilities district created under chapter 36.100 RCW.

(7) A public facilities district created under chapter 36.100 RCW is not eligible to impose the tax under this section if the legislative authority of the county where the public facilities district is located has imposed a sales and use tax under RCW 82.14.0485 or 82.14.0494. [2008 c 48 § 1. Prior: 2007 c 486 § 2; 2007 c 6 § 904; 2006 c 298 § 1; 2002 c 363 § 4; 1999 c 165 § 13.]

**Effective date—2008 c 48:** "This act takes effect July 1, 2008." [2008 c 48 § 2.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Severability—1999 c 164:** See RCW 35.57.900.

**82.14.400 Sales and use tax for zoo, aquarium, and wildlife facilities—Authorizing proposition—Distributions.** (1) Upon the joint request of a metropolitan park district, a city with a population of more than one hundred fifty thousand, and a county legislative authority in a county with a national park and a population of more than five hundred thousand and less than one million five hundred thousand, the county shall submit an authorizing proposition to the county voters, fixing and imposing a sales and use tax in accordance with this chapter for the purposes designated in subsection (4) of this section and identified in the joint request. Such proposition must be placed on a ballot for a special or general election to be held no later than one year after the date of the joint request.

(2) The proposition is approved if it receives the votes of a majority of those voting on the proposition.

(3) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal no more than one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(4) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for:

(a) Costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, or improvement of zoo, aquarium, and wildlife preservation and display facilities that are currently accredited by the American zoo and aquarium association; or

(b) Those costs associated with (a) of this subsection and costs related to parks located within a county described in subsection (1) of this section.

(5) The department of revenue shall perform the collection of such taxes on behalf of the county at no cost to the county. In lieu of the charge for the administration and collection of local sales and use taxes under RCW 82.14.050 from which the county is exempt under this subsection (5), a percentage of the tax revenues authorized by this section equal to one-half of the maximum percentage provided in RCW 82.14.050 shall be transferred annually to the department of community, trade, and economic development, or its successor agency, from the funds allocated under subsection (6)(b) of this section for a period of twelve years from the first date of distribution of funds under subsection (6)(b) of this section. The department of community, trade, and economic development, or its successor agency, shall use funds transferred to it pursuant to this subsection (5) to provide, operate, and maintain community-based housing under chapter 43.185 RCW for persons who are mentally ill.

(6) If the joint request and the authorizing proposition include provisions for funding those costs included within subsection (4)(b) of this section, the tax revenues authorized by this section shall be allocated annually as follows:

(a) Fifty percent to the zoo and aquarium advisory authority; and

(b) Fifty percent to be distributed on a per capita basis as set out in the most recent population figures for unincorporated and incorporated areas only within that county, as determined by the office of financial management, solely for parks, as follows: To any metropolitan park district, to cities and towns not contained within a metropolitan park district, and the remainder to the county. Moneys received under this subsection (6)(b) by a county may not be used to replace or supplant existing per capita funding.

(7) Funds shall be distributed annually by the county treasurer to the county, and cities and towns located within the county, in the manner set out in subsection (6)(b) of this section.

(8) Prior to expenditure of any funds received by the county under subsection (6)(b) of this section, the county shall establish a process which considers needs throughout the unincorporated areas of the county in consultation with community advisory councils established by ordinance.

(9) By December 31, 2005, and thereafter, the county or any city with a population greater than eighty thousand must provide at least one dollar match for every two dollars received under this section.

(10) Properties subject to a memorandum of agreement between the federal bureau of land management, the advisory council on historic preservation, and the Washington state historic preservation officer have priority for funding from money received under subsection (6)(b) of this section for implementation of the stipulations in the memorandum of agreement.

(a) At least one hundred thousand dollars of the first four years of allocations under subsection (6)(b) of this section, to be matched by the county or city with one dollar for every two dollars received, shall be used to implement the stipulations of the memorandum of agreement and for other historical, archaeological, architectural, and cultural preservation and improvements related to the properties.

(b) The amount in (a) of this subsection shall come equally from the allocations to the county and to the city in

which the properties are located, unless otherwise agreed to by the county and the city.

(c) The amount in (a) of this subsection shall not be construed to displace or be offered in lieu of any lease payment from a county or city to the state for the properties in question. [2000 c 240 § 1; 1999 c 104 § 1.]

**82.14.410 Sales of lodging tax rate changes.** (1) A local sales and use tax change adopted after December 1, 2000, must provide an exemption for those sales of lodging for which, but for the exemption, the total sales tax rate imposed on sales of lodging would exceed the greater of:

(a) Twelve percent; or

(b) The total sales tax rate that would have applied to the sale of lodging if the sale were made on December 1, 2000.

(2) For the purposes of this section:

(a) "Local sales and use tax change" is defined as provided in RCW 82.14.055.

(b) "Sale of lodging" means the sale of or charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property.

(c) "Total sales tax rate" means the combined rates of all state and local taxes imposed under this chapter and chapters 36.100, 67.28, 67.40, and 82.08 RCW, and any other tax authorized after March 29, 2001, if the tax is in the nature of a sales tax collected from the buyer, but excluding taxes imposed under RCW 81.104.170 before December 1, 2000. [2001 c 6 § 1.]

**Effective date—2001 c 6:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2001]." [2001 c 6 § 2.]

**82.14.415 Sales and use tax for cities to offset municipal service costs to newly annexed areas.** (1) The legislative authority of any city with a population less than four hundred thousand and which is located in a county with a population greater than six hundred thousand that annexes an area consistent with its comprehensive plan required by chapter 36.70A RCW, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the city. The tax may only be imposed by a city if:

(a) The city has commenced annexation of an area under chapter 35.13 or 35A.14 RCW having a population of at least ten thousand people prior to January 1, 2010; and

(b) The city legislative authority determines by resolution or ordinance that the projected cost to provide municipal services to the annexation area exceeds the projected general revenue that the city would otherwise receive from the annexation area on an annual basis.

(2) The tax authorized under this section is a credit against the state tax under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of such taxes on behalf of the city at no cost to the city and shall remit the tax to the city as provided in RCW 82.14.060.

(3) The maximum rate of tax any city may impose under this section shall be 0.2 percent for the total number of

annexed areas the city may annex. The rate of the tax imposed under this section is 0.1 percent for each annexed area population that is greater than ten thousand and less than twenty thousand. The rate of the tax imposed under this section shall be 0.2 percent for an annexed area which the population is greater than twenty thousand.

(4) The tax imposed by this section shall only be imposed at the beginning of a fiscal year and shall continue for no more than ten years from the date the tax is first imposed. Tax rate increases due to additional annexed areas shall be effective on July 1st of the fiscal year following the fiscal year in which the annexation occurred, provided that notice is given to the department as set forth in subsection (8) of this section.

(5) All revenue collected under this section shall be used solely to provide, maintain, and operate municipal services for the annexation area.

(6) The revenues from the tax authorized in this section may not exceed that which the city deems necessary to generate revenue equal to the difference between the city's cost to provide, maintain, and operate municipal services for the annexation area and the general revenues that the cities would otherwise expect to receive from the annexation during a year. If the revenues from the tax authorized in this section and the revenues from the annexation area exceed the costs to the city to provide, maintain, and operate municipal services for the annexation area during a given year, the city shall notify the department and the tax distributions authorized in this section shall be suspended for the remainder of the year.

(7) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the legislative authority of a city shall adopt an ordinance that includes the following:

(a) The rate of tax under this section that shall be imposed within the city; and

(b) The threshold amount for the first fiscal year following the annexation and passage of the ordinance.

(8) The tax shall cease to be distributed to the city for the remainder of the fiscal year once the threshold amount has been reached. No later than March 1st of each year, the city shall provide the department with a new threshold amount for the next fiscal year, and notice of any applicable tax rate changes. Distributions of tax under this section shall begin again on July 1st of the next fiscal year and continue until the new threshold amount has been reached or June 30th, whichever is sooner. Any revenue generated by the tax in excess of the threshold amount shall belong to the state of Washington. Any amount resulting from the threshold amount less the total fiscal year distributions, as of June 30th, shall not be carried forward to the next fiscal year.

(9) The following definitions apply throughout this section unless the context clearly requires otherwise:

(a) "Annexation area" means an area that has been annexed to a city under chapter 35.13 or 35A.14 RCW. "Annexation area" includes all territory described in the city resolution.

(b) "Department" means the department of revenue.

(c) "Municipal services" means those services customarily provided to the public by city government.

(d) "Fiscal year" means the year beginning July 1st and ending the following June 30th.

(e) "Threshold amount" means the maximum amount of tax distributions as determined by the city in accordance with subsection (6) of this section that the department shall distribute to the city generated from the tax imposed under this section in a fiscal year. [2006 c 361 § 1.]

**Severability—2006 c 361:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 361 § 2.]

**82.14.420 Sales and use tax for emergency communication systems and facilities.** (1) A county legislative authority may submit an authorizing proposition to the county voters, and if the proposition is approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter for the purposes designated in subsection (3) of this section.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of sales tax, or value of the article used, in the case of a use tax.

(3) Moneys received from any tax imposed under this section shall be used solely for the purpose of providing funds for costs associated with financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, reequipping, and improvement of emergency communication systems and facilities.

(4) Counties are authorized to develop joint ventures to collocate emergency communication systems and facilities.

(5) Prior to submitting the tax authorization in subsection (2) of this section to the voters in a county that provides emergency communication services to a governmental agency pursuant to a contract, the parties to the contract shall review and negotiate or affirm the terms of the contract.

(6) Prior to submitting the tax authorized in subsection (2) of this section to the voters, a county with a population of more than five hundred thousand in which any city over fifty thousand operates emergency communication systems and facilities shall enter into an interlocal agreement with the city to determine distribution of the revenue provided in this section. [2002 c 176 § 1.]

**82.14.430 Sales and use tax for regional transportation investment district.** (1) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a sales and use tax of up to 0.1 percent of the selling price or value of the article used in the case of a use tax. The tax authorized by this section is in addition to the tax authorized by RCW 82.14.030 and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing district. Motor vehicles are exempt from the sales and use tax imposed under this subsection.

(2) If approved by the majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may impose a tax on the use of a motor vehicle within a regional transportation investment

district. The tax applies to those persons who reside within the regional transportation investment district. The rate of the tax may not exceed 0.1 percent of the value of the motor vehicle. The tax authorized by this subsection is in addition to the tax authorized under RCW 82.14.030 and must be imposed and collected at the time a taxable event under RCW 82.08.020(1) or 82.12.020 takes place. All revenue received under this subsection must be deposited in the local sales and use tax account and distributed to the regional transportation investment district according to RCW 82.14.050. The following provisions apply to the use tax in this subsection:

(a) Where persons are taxable under chapter 82.08 RCW, the seller shall collect the use tax from the buyer using the collection provisions of RCW 82.08.050.

(b) Where persons are taxable under chapter 82.12 RCW, the use tax must be collected using the provisions of RCW 82.12.045.

(c) "Motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010.

(d) "Person" has the meaning given in RCW 82.04.030.

(e) The value of a motor vehicle must be determined under RCW 82.12.010.

(f) Except as specifically stated in this subsection (2), chapters 82.12 and 82.32 RCW apply to the use tax. The use tax is a local tax imposed under the authority of chapter 82.14 RCW, and chapter 82.14 RCW applies fully to the use tax.

(3) In addition to fulfilling the notice requirements under RCW 82.14.055(1), and unless waived by the department, a regional transportation investment district shall provide the department of revenue with digital mapping and legal descriptions of areas in which the tax will be collected. [2006 c 311 § 17; 2002 c 56 § 405.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.14.440 Sales and use tax for passenger-only ferry service.** Public transportation benefit areas providing passenger-only ferry service as provided in RCW 36.57A.200 whose boundaries (1) are on the Puget Sound, but (2) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved by a majority of persons voting, fix and impose a sales and use tax in accordance with the terms of this chapter, solely for the purpose of providing passenger-only ferry service.

The tax authorized by this section is in addition to other taxes authorized by law and must be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of a taxable event within the taxing district. The maximum rate of the tax must be approved by the voters and may not exceed four-tenths of one percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. [2003 c 83 § 207.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**82.14.450 Sales and use tax for counties and cities.**

(1) A county legislative authority may submit an authorizing proposition to the county voters at a primary or general election and, if the proposition is approved by a majority of persons voting, impose a sales and use tax in accordance with the terms of this chapter. The title of each ballot measure must clearly state the purposes for which the proposed sales and use tax will be used. Funds raised under this tax shall not supplant existing funds used for these purposes. For purposes of this subsection, existing funds means the actual operating expenditures for the calendar year in which the ballot measure is approved by voters. Actual operating expenditures excludes lost federal funds, lost or expired state grants or loans, extraordinary events not likely to reoccur, changes in contract provisions beyond the control of the county or city receiving the services, and major nonrecurring capital expenditures. The rate of tax under this section shall not exceed three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county.

(3) The retail sale or use of motor vehicles, and the lease of motor vehicles for up to the first thirty-six months of the lease, are exempt from tax imposed under this section.

(4) One-third of all money received under this section shall be used solely for criminal justice purposes. For the purposes of this subsection, "criminal justice purposes" means additional police protection, mitigation of congested court systems, or relief of overcrowded jails or other local correctional facilities.

(5) Money received under this section shall be shared between the county and the cities as follows: Sixty percent shall be retained by the county and forty percent shall be distributed on a per capita basis to cities in the county. [2007 c 380 § 1; 2003 1st sp.s. c 24 § 2.]

**Finding—Intent—2003 1st sp.s. c 24:** "The legislature finds that local governments in the state of Washington face enormous challenges in the area of criminal justice and public health. It is the legislature's intent to allow general local governments to raise revenues in order to better protect the health and safety of Washington state and its residents. It is further the intent of the legislature to provide such local governments relief from regulatory burdens that do not harm the public health and safety of the citizens of the state as a means of minimizing the need to generate new revenues authorized under this act." [2003 1st sp.s. c 24 § 1.]

**Effective date—2003 1st sp.s. c 24:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 24 § 6.]

**Severability—2003 1st sp.s. c 24:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 24 § 7.]

**82.14.460 Sales and use tax for chemical dependency or mental health treatment services or therapeutic courts.**

(1) A county legislative authority may authorize, fix, and impose a sales and use tax in accordance with the terms of this chapter.

(2) The tax authorized in this section shall be in addition to any other taxes authorized by law and shall be collected

from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the county. The rate of tax shall equal one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(3) Moneys collected under this section shall be used solely for the purpose of providing for the operation or delivery of new or expanded chemical dependency or mental health treatment programs and services and for the operation or delivery of new or expanded therapeutic court programs and services. For the purposes of this section, "programs and services" includes, but is not limited to, treatment services, case management, and housing that are a component of a coordinated chemical dependency or mental health treatment program or service.

(4) Moneys collected under this section shall not be used to supplant existing funding for these purposes, provided that nothing in this section shall be interpreted to prohibit the use of moneys collected under this section for the replacement of lapsed federal funding previously provided for the operation or delivery of services and programs as provided in this section. [2008 c 157 § 2; 2005 c 504 § 804.]

**Findings—Intent—2008 c 157:** "The legislature finds it necessary to clarify the original intent regarding eligible expenditures of the sales and use tax provided in RCW 82.14.460. The legislature intended that upon the original effective date of RCW 82.14.460, the moneys collected under RCW 82.14.460 would be permitted to be used for the purposes as provided in RCW 82.14.460 as clarified by section 2, chapter 157, Laws of 2008." [2008 c 157 § 1.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**82.14.465 Hospital benefit zones—Sales and use tax—Definitions.**

(1) A city, town, or county that creates a benefit zone and finances public improvements pursuant to chapter 39.100 RCW may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the city, town, or county. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1) in the case of a sales tax or the rate provided in RCW 82.12.020(5) in the case of a use tax, less the aggregate rates of any other taxes imposed on the same events that are credited against the state taxes imposed under chapters 82.08 and 82.12 RCW. The tax rate shall be no higher than what is reasonably necessary for the local government to receive its entire annual state contribution in a ten-month period of time.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the city, town, or county at no cost to the city, town, or county.

(3) No tax may be imposed under this section before July 1, 2007. Before imposing a tax under this section, the city,

town, or county shall first have received tax allocation revenues during the preceding calendar year. The tax imposed under this section shall expire on the earlier of the date: (a) The tax allocation revenues are no longer used for public improvements and public improvement costs; (b) the bonds issued under the authority of chapter 39.100 RCW are retired, if the bonds are issued; or (c) that is thirty years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a city, town, or county imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The amount of tax received by the local government in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax distributions totals the amount of the state contribution;

(ii) The amount of tax distributions totals the amount of local public sources, dedicated in the previous calendar year to finance public improvements authorized under chapter 39.100 RCW, expended in the previous year for public improvement costs or used to pay for other bonds issued to pay for public improvements; or

(iii) The amount of revenue from taxes imposed under this section by all cities, towns, and counties totals the annual state credit limit as provided in RCW 82.32.700(3);

(d) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(e) Any revenue generated by the tax in excess of the amounts specified in (b) and (c) of this subsection shall belong to the state of Washington.

(5) If both a county and a city or town impose a tax under this section, the tax imposed by the city, town, or county shall be credited as follows:

(a) If the county has created a benefit zone before the city or town, the tax imposed by the county shall be credited against the tax imposed by the city or town, the purpose of such credit is to give priority to the county tax; and

(b) If the city or town has created a benefit zone before the county, the tax imposed by the city or town shall be credited against the tax imposed by the county, the purpose of such credit is to give priority to the city or town tax.

(6) The department shall determine the amount of tax distributions attributable to each city, town, and county imposing a sales and use tax under this section and shall advise a city, town, or county when the tax will cease to be distributed for the remainder of the fiscal year as provided in subsection (4)(c) of this section. Determinations by the department of the amount of taxes attributable to a city, town, or county are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax revenues in excess of the amounts specified in subsection (4)(b) and (c) of this section to the state treasurer who shall deposit the moneys in the general fund.

(2008 Ed.)

(7) The definitions in this subsection apply throughout this section and RCW 82.14.470 unless the context clearly requires otherwise.

(a) "Base year" means the calendar year immediately following the creation of a benefit zone.

(b) "Benefit zone" has the same meaning as provided in RCW 39.100.010.

(c) "Excess local excise taxes" has the same meaning as provided in RCW 39.100.050.

(d) "Excess state excise taxes" means the amount of excise taxes received by the state during the measurement year from taxable activity within the benefit zone over and above the amount of excise taxes received by the state during the base year from taxable activity within the benefit zone. However, if a local government creates the benefit zone and reasonably determines that no activity subject to tax under chapters 82.08 and 82.12 RCW occurred in the twelve months immediately preceding the creation of the benefit zone within the boundaries of the area that became the benefit zone, "excess state excise taxes" means the entire amount of state excise taxes the state receives during a calendar year period beginning with the calendar year immediately following the creation of the benefit zone and continuing with each measurement year thereafter.

(e) "State excise taxes" means revenues derived from state retail sales and use taxes under chapters 82.08 and 82.12 RCW, less the amount of tax distributions from all local retail sales and use taxes imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW except for the local tax authorized in this section.

(f) "Fiscal year" has the same meaning as provided in RCW 39.100.030.

(g) "Measurement year" means a calendar year, beginning with the calendar year following the base year and each calendar year thereafter, that is used annually to measure the amount of excess state excise taxes and excess local excise taxes.

(h) "State contribution" means the lesser of two million dollars or an amount equal to excess state excise taxes received by the state during the preceding calendar year.

(i) "Tax allocation revenues" has the same meaning as provided in RCW 39.100.010.

(j) "Public improvements" and "public improvement costs" have the same meanings as provided in RCW 39.100.010.

(k) "Local public sources" includes, but is not limited to, private monetary contributions, assessments, dedicated local government funds, and tax allocation revenues. "Local public sources" does not include local government funds derived from any state loan or state grant, any local tax that is credited against the state sales and use taxes, or any other state funds. [2007 c 266 § 7; 2006 c 111 § 7.]

**Finding—Application—Effective date—2007 c 266:** See notes following RCW 39.100.010.

**Effective date—2006 c 111:** See RCW 39.100.900.

**82.14.470 Hospital benefit zones—Local public sources dedicated to finance public improvements—Reporting requirements.** (1)(a)(i) Moneys collected from

the taxes imposed under RCW 82.14.465 shall be used only for the following purposes:

(A) Principal and interest payments on bonds issued under the authority of RCW 39.100.060;

(B) Principal and interest payments on other bonds issued by the local government to finance public improvements; or

(C) Payments for public improvement costs.

(ii) Moneys collected and used as provided in (a)(i) of this subsection must be matched with an amount from local public sources dedicated through December 31st of the previous calendar year to finance public improvements authorized under chapter 39.100 RCW.

(b) Local public sources are dedicated to finance public improvements if they: (i) Are actually expended to pay public improvement costs or debt service on bonds issued for public improvements; or (ii) are required by law or an agreement to be used exclusively to pay public improvement costs or debt service on bonds issued for public improvements.

(2) A local government shall inform the department by the first day of March of the amount of local public sources dedicated in the preceding calendar year to finance public improvements authorized under chapter 39.100 RCW.

(3) If a local government fails to comply with subsection (2) of this section, no tax may be imposed under RCW 82.14.465 in the subsequent fiscal year.

(4) A local government shall provide a report to the department and the state auditor by March 1st of each year. A local government shall make a good faith effort to provide information required for the report.

The report shall contain the following information:

(a) The amount of tax allocation revenues, taxes under RCW 82.14.465, and local public sources received by the local government during the preceding calendar year, and a summary of how these revenues were expended; and

(b) The names of any businesses known to the local government that have located within the benefit zone as a result of the public improvements undertaken by the local government and financed in whole or in part with hospital benefit zone financing.

(5) The department shall make a report available to the public and the legislature by June 1st of each year. The report shall include a list of public improvements undertaken by local governments and financed in whole or in part with hospital benefit zone financing, and it shall also include a summary of the information provided to the department by local governments under subsection (4) of this section. [2007 c 266 § 8; 2006 c 111 § 8.]

**Finding—Application—Effective date—2007 c 266:** See notes following RCW 39.100.010.

**Effective date—2006 c 111:** See RCW 39.100.900.

**82.14.475 Sales and use tax for the local infrastructure financing tool program. (Expires June 30, 2039.)** (1) A sponsoring local government, and any cosponsoring local government, that has been approved by the board to use local infrastructure financing may impose a sales and use tax in accordance with the terms of this chapter and subject to the criteria set forth in this section. Except as provided in this section, the tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by

the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the taxing jurisdiction of the sponsoring local government or cosponsoring local government. The rate of tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The rate of tax may be changed only on the first day of a fiscal year as needed. Notice of rate changes must be provided to the department on the first day of March to be effective on July 1st of the next fiscal year.

(2) The tax authorized under subsection (1) of this section shall be credited against the state taxes imposed under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the sponsoring local government or cosponsoring local government at no cost to the sponsoring local government or cosponsoring local government and shall remit the taxes as provided in RCW 82.14.060.

(3)(a) No tax may be imposed under the authority of this section:

(i) Before July 1, 2008;

(ii) Before approval by the board under RCW 39.102.040; and

(iii) Before the sponsoring local government has received local excise tax allocation revenues, local property tax allocation revenues, or both, during the preceding calendar year.

(b) The tax imposed under this section shall expire when the bonds issued under the authority of RCW 39.102.150 are retired, but not more than twenty-five years after the tax is first imposed.

(4) An ordinance adopted by the legislative authority of a sponsoring local government or cosponsoring local government imposing a tax under this section shall provide that:

(a) The tax shall first be imposed on the first day of a fiscal year;

(b) The cumulative amount of tax received by the sponsoring local government, and any cosponsoring local government, in any fiscal year shall not exceed the amount of the state contribution;

(c) The tax shall cease to be distributed for the remainder of any fiscal year in which either:

(i) The amount of tax received by the sponsoring local government, and any cosponsoring local government, equals the amount of the state contribution;

(ii) The amount of revenue from taxes imposed under this section by all sponsoring and cosponsoring local governments equals the annual state contribution limit; or

(iii) The amount of tax received by the sponsoring local government equals the amount of project award granted in the approval notice described in RCW 39.102.040;

(d) Neither the local excise tax allocation revenues nor the local property tax allocation revenues may constitute more than eighty percent of the total local funds as described in RCW 39.102.020(29)(c). This requirement applies beginning January 1st of the fifth calendar year after the calendar year in which the sponsoring local government begins allocating local excise tax allocation revenues under RCW 39.102.110;

(e) The tax shall be distributed again, should it cease to be distributed for any of the reasons provided in (c) of this subsection, at the beginning of the next fiscal year, subject to the restrictions in this section; and

(f) Any revenue generated by the tax in excess of the amounts specified in (c) of this subsection shall belong to the state of Washington.

(5) If a county and city cosponsor a revenue development area, the combined rates of the city and county tax shall not exceed the rate provided in RCW 82.08.020(1), less the aggregate rates of any other local sales and use taxes imposed on the same taxable events that are credited against the state sales and use taxes imposed under chapters 82.08 and 82.12 RCW. The combined amount of distributions received by both the city and county may not exceed the state contribution.

(6) The department shall determine the amount of tax receipts distributed to each sponsoring local government, and any cosponsoring local government, imposing sales and use tax under this section and shall advise a sponsoring or cosponsoring local government when tax distributions for the fiscal year equal the amount of state contribution for that fiscal year as provided in subsection (8) of this section. Determinations by the department of the amount of tax distributions attributable to each sponsoring or cosponsoring local government are final and shall not be used to challenge the validity of any tax imposed under this section. The department shall remit any tax receipts in excess of the amounts specified in subsection (4)(c) of this section to the state treasurer who shall deposit the money in the general fund.

(7) If a sponsoring or cosponsoring local government fails to comply with RCW 39.102.140, no tax may be distributed in the subsequent fiscal year until such time as the sponsoring or cosponsoring local government complies and the department calculates the state contribution amount for such fiscal year.

(8) Each year, the amount of taxes approved by the department for distribution to a sponsoring or cosponsoring local government in the next fiscal year shall be equal to the state contribution and shall be no more than the total local funds as described in RCW 39.102.020(29)(c). The department shall consider information from reports described in RCW 39.102.140 when determining the amount of state contributions for each fiscal year. A sponsoring or cosponsoring local government shall not receive, in any fiscal year, more revenues from taxes imposed under the authority of this section than the amount approved annually by the department. The department shall not approve the receipt of more distributions of sales and use tax under this section to a sponsoring or cosponsoring local government than is authorized under subsection (4) of this section.

(9) The amount of tax distributions received from taxes imposed under the authority of this section by all sponsoring and cosponsoring local governments is limited annually to not more than seven million five hundred thousand dollars.

(10) The definitions in RCW 39.102.020 apply to this section unless the context clearly requires otherwise.

(11) If a sponsoring local government is a federally recognized Indian tribe, the distribution of the sales and use tax authorized under this section shall be authorized through an interlocal agreement pursuant to chapter 39.34 RCW.

(12) Subject to RCW 39.102.195, the tax imposed under the authority of this section may be applied either to provide for the payment of debt service on bonds issued under RCW 39.102.150 by the sponsoring local government or to pay public improvement costs on a pay-as-you-go basis, or both.

(13) The tax imposed under the authority of this section shall cease to be imposed if the sponsoring local government or cosponsoring local government fails to issue bonds under the authority of RCW 39.102.150 by June 30th of the fifth fiscal year in which the local tax authorized under this section is imposed. [2007 c 229 § 8; 2006 c 181 § 401.]

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

**Captions and part headings not law—Severability—Construction—Effective date—Expiration date—2006 c 181:** See RCW 39.102.900 through 39.102.904.

**82.14.480 Sales and use tax for health sciences and services authorities. (Expires January 1, 2023.)** (1) The legislative authority of a local jurisdiction that has created a health sciences and services authority under RCW 35.104.030 may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the local jurisdiction. The rate of the tax shall not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department of revenue shall perform the collection of the tax on behalf of the authority at no cost to the authority.

(3) The amounts received under this section may only be used in accordance with RCW 35.104.060 or to finance and retire the indebtedness incurred pursuant to RCW 35.104.070, in whole or in part.

(4) This section expires January 1, 2023. [2007 c 251 § 11.]

**Captions not law—Severability—2007 c 251:** See notes following RCW 34.104.010.

**82.14.485 Sales and use taxes for regional centers.** (1) In a county with a population under three hundred thousand, the governing body of a public facilities district, which is created before August 1, 2001, under chapter 35.57 RCW or before January 1, 2000, under chapter 36.100 RCW, in which the total population in the public facilities district is greater than ninety thousand and less than one hundred thousand that commences improvement or rehabilitation of an existing regional center, to be used for community events, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances and having two thousand or fewer permanent seats, before January 1, 2009, may impose a sales and use tax in accordance with the terms of this chapter. The tax is in addition to other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the public facilities district.

The rate of tax for a public facilities district created prior to August 1, 2001, under chapter 35.57 RCW, may not exceed 0.025 percent of the selling price in the case of a sales tax or value of the article used in the case of a use tax. The rate of tax, for a public facilities district created prior to January 1, 2000, under chapter 36.100 RCW, may not exceed 0.020 percent of the selling price in the case of a sales tax or the value of the article used in the case of a use tax.

(2) The tax imposed under subsection (1) of this section shall be deducted from the amount of tax otherwise required to be collected or paid over to the department under chapter 82.08 or 82.12 RCW. The department shall perform the collection of such taxes on behalf of the county at no cost to the public facilities district.

(3) The tax imposed in this section shall expire when the bonds issued for the construction of the regional center and related parking facilities are retired, but not more than twenty-five years after the tax is first collected.

(4) Moneys collected under this section shall only be used for the purposes set forth in RCW 35.57.020 and must be matched with an amount from other public or private sources equal to thirty-three percent of the amount collected under this section, provided that amounts generated from nonvoter-approved taxes authorized under chapter 35.57 RCW may not constitute a public or private source. For the purpose of this section, public or private sources include, but are not limited to cash or in-kind contributions used in all phases of the development or improvement of the regional center, land that is donated and used for the siting of the regional center, cash or in-kind contributions from public or private foundations, or amounts attributed to private sector partners as part of a public and private partnership agreement negotiated by the public facilities district. [2007 c 486 § 3.]

**82.14.490 Sourcing—Sales and use taxes.** Sales and use taxes authorized under this chapter shall be sourced in accordance with RCW 82.32.730. [2007 c 6 § 503.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.14.495 Streamlined sales and use tax mitigation account—Creation.** (1) The streamlined sales and use tax mitigation account is created in the state treasury. The state treasurer shall transfer into the account from the general fund amounts as directed in RCW 82.14.500. Expenditures from the account may be used only for the purpose of mitigating the negative fiscal impacts to local taxing jurisdictions as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(2) Beginning July 1, 2008, the state treasurer, as directed by the department, shall distribute the funds in the streamlined sales and use tax mitigation account to local taxing jurisdictions in accordance with RCW 82.14.500.

(3) The definitions in this subsection apply throughout this section and RCW 82.14.390 and 82.14.500.

(a) "Agreement" means the same as in RCW 82.32.020.

(b) "Local taxing jurisdiction" means counties, cities, transportation authorities under RCW 82.14.045, public facilities districts under chapters 36.100 and 35.57 RCW, public transportation benefit areas under RCW 82.14.440,

and regional transit authorities under chapter 81.112 RCW, that impose a sales and use tax.

(c) "Loss" or "losses" means the local sales and use tax revenue reduction to a local taxing jurisdiction resulting from the sourcing provisions in \*RCW 82.14.020 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(d) "Net loss" or "net losses" means a loss offset by any voluntary compliance revenue.

(e) "Voluntary compliance revenue" means the local sales tax revenue gain to each local taxing jurisdiction reported to the department from persons registering through the central registration system authorized under the agreement.

(f) "Working day" has the same meaning as in RCW 82.45.180. [2007 c 6 § 902.]

**\*Reviser's note:** The reference to RCW 82.14.020 appears to be erroneous. Reference to section 503 of this act, codified as RCW 82.14.490, was apparently intended.

**Findings—Intent—2007 c 6:** "(1) The legislature finds and declares that:

(a) Washington state's participation as a member state in the streamlined sales and use tax agreement benefits the state, all its local taxing jurisdictions, and its retailing industry, by increasing state and local revenues, improving the state's business climate, and standardizing and simplifying the state's tax structure;

(b) Participation in the streamlined sales and use tax agreement is a matter of statewide concern and is in the best interests of the state, the general public, and all local jurisdictions that impose a sales and use tax under applicable law;

(c) Participation in the streamlined sales and use tax agreement requires the adoption of the agreement's sourcing provisions, which change the location in which a retail sale of delivered tangible personal property occurs for local sales tax purposes from the point of origin to the point of destination;

(d) Changes in the local sales tax sourcing law provisions to conform with the streamlined sales and use tax agreement will cause sales tax revenues to shift among local taxing jurisdictions. The legislature finds that there will be an unintended adverse impact on local taxing jurisdictions that receive less revenues because local tax revenues will be redistributed, with revenue increases for some jurisdictions and reductions for others, due solely to changes in local sales tax sourcing rules to be implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020, even though no local taxing jurisdiction has changed its tax rate or tax base;

(e) The purpose of providing mitigation to such jurisdictions is to mitigate the unintended revenue redistribution effect of the sourcing law changes among local governments;

(f) It is in the best interest of the state and all its subdivisions to mitigate the adverse effects of amending the local sales tax sourcing provisions to be in conformance with the streamlined sales and use tax agreement;

(g) Additionally, changes in sourcing laws may have negative implications for industry sectors such as warehousing and manufacturing, as well as jurisdictions that house a concentration of these industries and have made zoning decisions, infrastructure investments, bonding decisions, and land use policy decisions based on point of origin sales tax rules in place before July 1, 2008, and the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 is intended to help offset those negative implications; and

(h) It is important that the state of Washington maintain its supply of industrial land for present and future economic development activities, and local governments taking advantage of the mitigation provided by RCW 82.14.495, 82.14.500, 82.14.390, and 44.28.815 should strive to maintain the supply of industrial land available for economic development efforts.

(2) The legislature intends that the streamlined sales and use tax mitigation account established in RCW 82.14.495 have the sole objective of mitigating, for negatively affected local taxing jurisdictions, the net local sales tax revenue reductions incurred as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020." [2007 c 6 § 901.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**82.14.500 Streamlined sales and use tax mitigation account—Funding—Determination of losses.** (1) In order to mitigate local sales tax revenue net losses as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title, the state treasurer shall transfer into the streamlined sales and use tax mitigation account from the general fund the sum of thirty-one million six hundred thousand dollars on July 1, 2008. On July 1, 2009, and each July 1st thereafter, the state treasurer shall transfer into the streamlined sales and use tax mitigation account from the general fund the sum required to mitigate actual net losses as determined under this section.

(2) Beginning July 1, 2008, and continuing until the department determines annual losses under subsection (3) of this section, the department shall determine the amount of local sales tax net loss each local taxing jurisdiction experiences as a result of the sourcing provisions of the streamlined sales and use tax agreement under this title each calendar quarter. The department shall determine losses by analyzing and comparing data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008, on a calendar quarter basis. The department’s analysis may be revised and supplemented in consultation with the oversight committee as provided in subsection (4) of this section. To determine net losses, the department shall reduce losses by the amount of voluntary compliance revenue for the calendar quarter analyzed. Beginning December 31, 2008, distributions shall be made quarterly from the streamlined sales and use tax mitigation account by the state treasurer, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing its net losses for the previous calendar quarter. Distributions shall be made on the last working day of each calendar quarter and shall cease when distributions under subsection (3) of this section begin.

(3)(a) By December 31, 2009, or such later date the department in consultation with the oversight committee determines that sufficient data is available, the department shall determine each local taxing jurisdiction’s annual loss. The department shall determine annual losses by comparing at least twelve months of data from tax return information and tax collections for each local taxing jurisdiction before and after July 1, 2008. The department shall not be required to determine annual losses on a recurring basis, but may make any adjustments to annual losses as it deems proper as a result of the annual reviews provided in (b) of this subsection. Beginning the calendar quarter in which the department determines annual losses, and each calendar quarter thereafter, distributions shall be made from the streamlined sales and use tax mitigation account by the state treasurer on the last working day of the calendar quarter, as directed by the department, to each local taxing jurisdiction, other than public facilities districts for losses in respect to taxes imposed under the authority of RCW 82.14.390, in an amount representing one-fourth of the jurisdiction’s annual loss reduced by voluntary compliance revenue reported during the previous calendar quarter.

(b) The department’s analysis of annual losses shall be reviewed by December 1st of each year and may be revised (2008 Ed.)

and supplemented in consultation with the oversight committee as provided in subsection (4) of this section.

(4) The department shall convene an oversight committee to assist in the determination of losses. The committee shall include one representative of one city whose revenues are increased, one representative of one city whose revenues are reduced, one representative of one county whose revenues are increased, one representative of one county whose revenues are decreased, one representative of one transportation authority under RCW 82.14.045 whose revenues are increased, and one representative of one transportation authority under RCW 82.14.045 whose revenues are reduced, as a result of RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020. Beginning July 1, 2008, the oversight committee shall meet quarterly with the department to review and provide additional input and direction on the department’s analyses of losses. Local taxing jurisdictions may also present to the oversight committee additional information to improve the department’s analyses of the jurisdiction’s loss. Beginning January 1, 2010, the oversight committee shall meet at least annually with the department by December 1st.

(5) The rule-making provisions of chapter 34.05 RCW do not apply to this section. [2007 c 6 § 903.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.14.820 Warehouse and grain elevators and distribution centers—Exemption does not apply.** The exemptions in RCW 82.08.820 and 82.12.820 are for the state portion of the sales and use tax and do not extend to the tax imposed in this chapter. [1997 c 450 § 4.]

**Findings—Intent—Report—Effective date—1997 c 450:** See notes following RCW 82.08.820.

**82.14.900 Severability—1970 ex.s. c 94.** No determination that one or more provisions of this 1970 amendatory act, or any part thereof, are invalid shall affect the validity of the remaining provisions. [1970 ex.s. c 94 § 9.]

**Chapter 82.14A RCW**

**CITIES AND TOWNS—LICENSE FEES AND TAXES ON FINANCIAL INSTITUTIONS**

Sections

- 82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates.
- 82.14A.020 Division of gross income of business between cities, towns and unincorporated areas.
- 82.14A.030 Effective date of resolutions or ordinances.
- 82.14A.900 Effective date—1972 ex.s. c 134.

**82.14A.010 License fees or taxes on financial institutions—Restrictions—Application of chapter 82.04 RCW—Rates.** The governing body of any city or town which imposes a license fee or tax, by ordinance or resolution, may pursuant to RCW 82.14A.010 through 82.14A.030 only, fix and impose a license fee or tax on national banks, state banks, trust companies, mutual savings banks, building and loan associations, savings and loan associations, and other financial institutions for the act or privilege of engaging

in business: PROVIDED, That the definitions, deductions and exemptions set forth in chapter 82.04 RCW, insofar as they shall be applicable shall be applied to a license fee or tax imposed by any city or town, if such fee or tax is measured by the gross income of the business: PROVIDED, FURTHER, That the rate of such license fee or tax shall not exceed the rate imposed upon other service type business activity: AND PROVIDED FURTHER, That nothing in RCW 82.14A.010 through 82.14A.030 shall extend the regulatory power of any city or town. [1972 ex.s. c 134 § 2.]

**82.14A.020 Division of gross income of business between cities, towns and unincorporated areas.** For purposes of RCW 82.14A.010, the state department of revenue is hereby authorized and directed to promulgate, pursuant to the provisions of chapter 34.05 RCW, rules establishing uniform methods of division of gross income of the business of a single taxpayer between those cities, towns and unincorporated areas in which such taxpayer has a place of business. [1972 ex.s. c 134 § 3.]

**82.14A.030 Effective date of resolutions or ordinances.** No resolution or ordinance or any amendment thereto adopted pursuant to RCW 82.14A.010 shall be effective, except on the first day of a calendar month. [1972 ex.s. c 134 § 5.]

**82.14A.900 Effective date—1972 ex.s. c 134.** Sections 2 through 5 of this 1972 amendatory act shall take effect July 1, 1972. [1972 ex.s. c 134 § 8.]

### Chapter 82.14B RCW COUNTIES—TAX ON TELEPHONE ACCESS LINE USE

#### Sections

82.14B.010	Findings.
82.14B.020	Definitions.
82.14B.030	County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—Amount—State enhanced 911 excise tax—Amount.
82.14B.040	Collection of tax.
82.14B.042	Payment and collection of taxes—Penalties for violations.
82.14B.050	Use of proceeds.
82.14B.060	Administration and collection by county—Ordinance.
82.14B.061	Administration by department—Extending reporting periods.
82.14B.070	Emergency service communication districts—Authorized—Consolidation—Dissolution.
82.14B.090	Emergency service communication districts—Emergency service communication system—Financing—Excise tax.
82.14B.100	Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060.
82.14B.150	Filing of tax returns—Credit or refund for bad debts.
82.14B.160	Exemption—Activities immune from taxation under constitutions.
82.14B.200	Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions.
82.14B.210	Personal liability upon termination, dissolution, or abandonment of business—Exemptions—Notice—Applicability—Collections.
82.14B.900	Severability—1981 c 160.

**82.14B.010 Findings.** The legislature finds that the state and counties should be provided with an additional revenue source to fund enhanced 911 emergency communication systems throughout the state on a multicounty, county-

wide, or district-wide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to impose an excise tax on the use of switched access lines. [1991 c 54 § 9; 1981 c 160 § 1.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

#### **82.14B.020 Definitions.** As used in this chapter:

(1) "Emergency services communication system" means a multicounty, countywide, or districtwide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, database, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(8) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.16.010.

(9) "Place of primary use" has the meaning ascribed to it in RCW 82.04.065. [2007 c 54 § 16; 2007 c 6 § 1009; 2002 c 341 § 7; 1998 c 304 § 2; 1994 c 96 § 2; 1991 c 54 § 10; 1981 c 160 § 2.]

**Reviser's note:** This section was amended by 2007 c 6 § 1009 and by 2007 c 54 § 16, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Findings—1998 c 304:** "The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to enhance the 911 telephone system for switched access lines statewide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030." [1998 c 304 § 1.]

**Effective dates—1998 c 304:** "This act takes effect January 1, 1999, except section 14 of this act which takes effect July 1, 1998." [1998 c 304 § 15.]

**Finding—Intent—1994 c 96:** "(1) The legislature finds that:

(a) Emergency services communication systems, including enhanced 911 telephone systems, are currently funded with revenues from state and local excise taxes imposed on the use of switched access lines;

(b) Users of cellular communication systems and other similar wireless telecommunications systems do not use switched access lines and are not currently subject to these excise taxes; and

(c) The volume of 911 calls by users of cellular communications systems and other similar wireless telecommunications systems has increased in recent years.

(2) The intent of this act is to acknowledge the recommendations regarding 911 emergency communication system funding as detailed in the report to the legislature dated November 1993, entitled "Taxation of Cellular Communications in Washington State," to authorize imposition and collection of the twenty-five cent county tax discussed in chapter 6 of that report, and to require the department of revenue to continue the \*study of such funding as detailed in the report." [1994 c 96 § 1.]

**\*Reviser's note:** See 1992 c 218 and 1994 c 96 § 6.

**Effective dates—1994 c 96:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994], except section 5 of this act shall take effect January 1, 1995." [1994 c 96 § 8.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

### **82.14B.030 County enhanced 911 excise tax on use of switched access lines and radio access lines authorized—**

**Amount—State enhanced 911 excise tax—Amount. (Contingency, see note following RCW 82.04.530.)** (1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each

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switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county enhanced 911 excise tax on the use of radio access lines whose place of primary use is located within the county in an amount not exceeding fifty cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the subscribers who paid the tax. The ordinance shall further provide that to the extent the subscribers who paid the tax cannot be identified or located, the tax paid by those subscribers shall be returned to the county.

(3) A state enhanced 911 excise tax is imposed on all switched access lines in the state. The amount of tax shall not exceed twenty cents per month for each switched access line. The tax shall be uniform for each switched access line. The tax imposed under this subsection shall be remitted to the department of revenue by local exchange companies on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) A state enhanced 911 excise tax is imposed on all radio access lines whose place of primary use is located within the state in an amount of twenty cents per month for each radio access line. The tax shall be uniform for each radio access line. The tax imposed under this section shall be remitted to the department of revenue by radio communications service companies, including those companies that resell radio access lines, on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(5) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax imposed by subsection (3) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year. [2007 c 54 § 17; 2007 c 6 § 1024. Prior: 2002 c 341 § 8; 2002 c 67 § 8; 1998 c 304 § 3; 1994 c 96 § 3; 1991 c 54 § 11; 1981 c 160 § 3.]

**Reviser's note:** This section was amended by 2007 c 6 § 1024 and by 2007 c 54 § 17, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**Finding—Intent—Effective dates—1994 c 96:** See notes following RCW 82.14B.020.

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**82.14B.040 Collection of tax.** The state enhanced 911 tax and the county enhanced 911 tax on switched access lines shall be collected from the subscriber by the local exchange company providing the switched access line. The state enhanced 911 tax and the county 911 tax on radio access lines shall be collected from the subscriber by the radio communications service company providing the radio access line to the subscriber. The amount of the tax shall be stated separately on the billing statement which is sent to the subscriber. [2002 c 341 § 9; 1998 c 304 § 4; 1994 c 96 § 4; 1991 c 54 § 12; 1981 c 160 § 4.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**Finding—Intent—Effective dates—1994 c 96:** See notes following RCW 82.14B.020.

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**82.14B.042 Payment and collection of taxes—Penalties for violations.** (1) The state enhanced 911 excise taxes imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line or the radio communications service company providing the radio access line, and each local exchange company and each radio communications service company shall collect from the subscriber the full amount of the taxes payable. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company are deemed to be held in trust by the local exchange company or the radio communications service company until paid to the department. Any local exchange company or radio communications service company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company or radio communications service company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company or the radio communications service company is personally liable to the state for the amount of the tax, unless the local exchange company or the radio communications service

company has taken from the buyer in good faith a properly executed resale certificate under RCW 82.14B.200.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, or to the department, constitutes a debt from the subscriber to the local exchange company or the radio communications service company. Any local exchange company or radio communications service company that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state enhanced 911 excise taxes required by this chapter to be collected by the local exchange company or the radio communications service company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company or the radio communications service company the state enhanced 911 excise taxes imposed by this chapter and the local exchange company or the radio communications service company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company or the radio communications service company, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061. [2002 c 341 § 10; 2000 c 106 § 2; 1998 c 304 § 9.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.050 Use of proceeds.** The proceeds of any tax collected under this chapter shall be used by the county only for the emergency services communication system. [1981 c 160 § 5.]

**82.14B.060 Administration and collection by county—Ordinance.** A county legislative authority imposing a tax under this chapter shall establish by ordinance all necessary and appropriate procedures for the administration and collection of the tax, which ordinance shall provide for reimbursement to the telephone companies for actual costs of administration and collection of the tax imposed. The ordinance shall also provide that the due date for remittance of the tax collected shall be on or before the last day of the month following the month in which the tax liability accrues. [1998 c 304 § 5; 1981 c 160 § 6.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.061 Administration by department—Extending reporting periods.** (1) The department of revenue shall administer and shall adopt such rules as may be necessary to enforce and administer the state enhanced 911 excise taxes imposed by this chapter. Chapter 82.32 RCW, with the exception of RCW 82.32.045, 82.32.145, and 82.32.380,

applies to the administration, collection, and enforcement of the state enhanced 911 excise taxes.

(2) The state enhanced 911 excise taxes imposed by this chapter, along with reports and returns on forms prescribed by the department, are due at the same time the taxpayer reports other taxes under RCW 82.32.045. If no other taxes are reported under RCW 82.32.045, the taxpayer shall remit tax on an annual basis in accordance with RCW 82.32.045.

(3) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year.

(4) The state enhanced 911 excise taxes imposed by this chapter are in addition to any taxes imposed upon the same persons under chapters 82.08 and 82.12 RCW. [2002 c 341 § 11; 2000 c 106 § 3; 1998 c 304 § 6.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.070 Emergency service communication districts—Authorized—Consolidation—Dissolution.** In lieu of providing a county-wide system of emergency service communication, the legislative authority of a county may establish one or more less than county-wide emergency service communication districts within the county for the purpose of providing and funding emergency service communication systems. An emergency service communication district is a quasi-municipal corporation, shall constitute a body corporate, and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

The county legislative authority shall be the governing body of an emergency service communication district. The county treasurer shall act as the ex officio treasurer of the emergency services communication district. The electors of an emergency service communication district are all registered voters residing within the district.

A county legislative authority proposing to consolidate existing emergency service communication districts shall conduct a hearing at the time and place specified in a notice published at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the emergency service communication districts. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the consolidation of the emergency service communication districts. Following the hearing, the county legislative authority may consolidate the emergency service communication districts, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. The county legislative authority shall specify the manner in which consolidation is to be accomplished.

A county legislative authority proposing to dissolve an existing emergency service communication district shall conduct a hearing at the time and place specified in a notice pub-

lished at least once, not less than ten days prior to the hearing, in a newspaper of general circulation within the emergency service communication district. All hearings shall be public and the county legislative authority shall hear objections from any person affected by the dissolution of the emergency service communication district. Following the hearing, the county legislative authority may dissolve the emergency service communication district, if the county legislative authority finds the action to be in the public interest and adopts a resolution providing for the action. The county legislative authority shall specify the manner in which dissolution is to be accomplished and shall supervise the liquidation of any assets and the satisfaction of any outstanding indebtedness. [1994 c 54 § 1; 1987 c 17 § 1.]

**82.14B.090 Emergency service communication districts—Emergency service communication system—Financing—Excise tax.** An emergency service communication district is authorized to finance and provide an emergency service communication system and to finance the system by imposing the excise tax authorized in RCW 82.14B.030. [1991 c 54 § 13; 1987 c 17 § 3.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**82.14B.100 Emergency service communication districts—Application of RCW 82.14B.040 through 82.14B.060.** RCW 82.14B.040 through 82.14B.060 apply to any emergency service communication district established under RCW 82.14B.070 and 82.14B.090. [1991 c 54 § 14; 1987 c 17 § 4.]

**Referral to electorate—1991 c 54:** See note following RCW 38.52.030.

**82.14B.150 Filing of tax returns—Credit or refund for bad debts.** (1) A local exchange company or radio communications service company shall file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A local exchange company or radio communications service company filing returns on a cash receipts basis is not required to pay tax on debt subject to credit or refund under subsection (2) of this section.

(2) A local exchange company or radio communications service company is entitled to a credit or refund for state enhanced 911 excise taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003. [2004 c 153 § 309; 1998 c 304 § 7.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.160 Exemption—Activities immune from taxation under constitutions.** The taxes imposed by this chapter do not apply to any activity that the state or county is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States. [1998 c 304 § 8.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.200 Burden of proof that sale is not to subscriber—Effect of resale certificate—Liability if no retail certificate—Penalties—Exceptions.** (1) Unless a local exchange company or a radio communications service company has taken from the buyer a resale certificate or equivalent document under RCW 82.04.470, the burden of proving that a sale of the use of a switched access line or radio access line was not a sale to a subscriber is upon the person who made the sale.

(2) If a local exchange company or a radio communications service company does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the local exchange company or the radio communications service company remains liable for the tax as provided in RCW 82.14B.042, unless the local exchange company or the radio communications service company can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of the state enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state enhanced 911 excise taxes due but not paid as a result of the improper use of a resale certificate. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2002 c 341 § 12; 1998 c 304 § 10.]

**Severability—Effective date—2002 c 341:** See notes following RCW 38.52.501.

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.210 Personal liability upon termination, dissolution, or abandonment of business—Exemptions—Notice—Applicability—Collections.** (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of state enhanced 911 excise tax funds collected and held in trust under RCW 82.14B.042, or who is charged with the responsibility for the filing of returns or the payment of state enhanced 911 excise tax funds collected and held in trust under RCW 82.14B.042, is personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person willfully fails to pay or to cause to be paid any state enhanced 911 excise taxes due from the corporation under this chapter. For the purposes of this section, any state enhanced 911 excise taxes that have been paid but not collected are deductible from the state enhanced 911 excise taxes collected but not paid. For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for taxes collected that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

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(3) Persons liable under subsection (1) of this section are exempt from liability if nonpayment of the state enhanced 911 excise tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160 through 82.32.200.

(5) This section applies only if the department has determined that there is no reasonable means of collecting the state enhanced 911 excise tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in chapter 82.32 RCW apply to collections under this section. [1998 c 304 § 11.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**82.14B.900 Severability—1981 c 160.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 160 § 7.]

## Chapter 82.16 RCW PUBLIC UTILITY TAX

### Sections

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*Commute trip reduction incentives:* Chapter 82.70 RCW.

*Public utility districts, privilege tax:* Chapter 54.28 RCW.

**82.16.010 Definitions.** For the purposes of this chapter, unless otherwise required by the context:

(1) "Railroad business" means the business of operating any railroad, by whatever power operated, for public use in

the conveyance of persons or property for hire. It shall not, however, include any business herein defined as an urban transportation business.

(2) "Express business" means the business of carrying property for public hire on the line of any common carrier operated in this state, when such common carrier is not owned or leased by the person engaging in such business.

(3) "Railroad car business" means the business of operating stock cars, furniture cars, refrigerator cars, fruit cars, poultry cars, tank cars, sleeping cars, parlor cars, buffet cars, tourist cars, or any other kinds of cars used for transportation of property or persons upon the line of any railroad operated in this state when such railroad is not owned or leased by the person engaging in such business.

(4) "Water distribution business" means the business of operating a plant or system for the distribution of water for hire or sale.

(5) "Light and power business" means the business of operating a plant or system for the generation, production or distribution of electrical energy for hire or sale and/or for the wheeling of electricity for others.

(6) "Telegraph business" means the business of affording telegraphic communication for hire.

(7) "Gas distribution business" means the business of operating a plant or system for the production or distribution for hire or sale of gas, whether manufactured or natural.

(8) "Motor transportation business" means the business (except urban transportation business) of operating any motor propelled vehicle by which persons or property of others are conveyed for hire, and includes, but is not limited to, the operation of any motor propelled vehicle as an auto transportation company (except urban transportation business), common carrier or contract carrier as defined by RCW 81.68.010 and 81.80.010: PROVIDED, That "motor transportation business" shall not mean or include the transportation of logs or other forest products exclusively upon private roads or private highways.

(9) "Urban transportation business" means the business of operating any vehicle for public use in the conveyance of persons or property for hire, insofar as (a) operating entirely within the corporate limits of any city or town, or within five miles of the corporate limits thereof, or (b) operating entirely within and between cities and towns whose corporate limits are not more than five miles apart or within five miles of the corporate limits of either thereof. Included herein, but without limiting the scope hereof, is the business of operating passenger vehicles of every type and also the business of operating cartage, pickup, or delivery services, including in such services the collection and distribution of property arriving from or destined to a point within or without the state, whether or not such collection or distribution be made by the person performing a local or interstate line-haul of such property.

(10)(a) "Public service business" means any of the businesses defined in subsections (1), (2), (3), (4), (5), (6), (7), (8), and (9) of this section or any business subject to control by the state, or having the powers of eminent domain and the duties incident thereto, or any business hereafter declared by the legislature to be of a public service nature, except telephone business and low-level radioactive waste site operating companies as redefined in RCW 81.04.010. It includes,

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among others, without limiting the scope hereof: Airplane transportation, boom, dock, ferry, pipe line, toll bridge, toll logging road, water transportation and wharf businesses.

(b) The definitions in this subsection (10)(b) apply throughout this subsection (10).

(i) "Competitive telephone service" has the same meaning as in RCW 82.04.065.

(ii) "Network telephone service" means the providing by any person of access to a telephone network, telephone network switching service, toll service, or coin telephone services, or the providing of telephonic, video, data, or similar communication or transmission for hire, via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" includes the provision of transmission to and from the site of an internet provider via a telephone network, toll line or channel, cable, microwave, or similar communication or transmission system. "Network telephone service" does not include the providing of competitive telephone service, the providing of cable television service, the providing of broadcast services by radio or television stations, nor the provision of internet service as defined in RCW 82.04.297, including the reception of dial-in connection, provided at the site of the internet service provider.

(iii) "Telephone business" means the business of providing network telephone service. It includes cooperative or farmer line telephone companies or associations operating an exchange.

(iv) "Telephone service" means competitive telephone service or network telephone service, or both, as defined in (b)(i) and (ii) of this subsection.

(11) "Tugboat business" means the business of operating tugboats, towboats, wharf boats or similar vessels in the towing or pushing of vessels, barges or rafts for hire.

(12) "Gross income" means the value proceeding or accruing from the performance of the particular public service or transportation business involved, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

(13) The meaning attributed, in chapter 82.04 RCW, to the term "tax year," "person," "value proceeding or accruing," "business," "engaging in business," "in this state," "within this state," "cash discount" and "successor" shall apply equally in the provisions of this chapter. [2007 c 6 § 1023; 1996 c 150 § 1; 1994 c 163 § 4; 1991 c 272 § 14; 1989 c 302 § 203. Prior: 1989 c 302 § 102; 1986 c 226 § 1; 1983 2nd ex.s. c 3 § 32; 1982 2nd ex.s. c 9 § 1; 1981 c 144 § 2; 1965 ex.s. c 173 § 20; 1961 c 293 § 12; 1961 c 15 § 82.16.010; prior: 1959 ex.s. c 3 § 15; 1955 c 389 § 28; 1949 c 228 § 10; 1943 c 156 § 10; 1941 c 178 § 12; 1939 c 225 § 20; 1937 c 227 § 11; 1935 c 180 § 37; Rem. Supp. 1949 § 8370-37.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—1996 c 150:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 150 § 3.]

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Finding, purpose—1989 c 302:** See note following RCW 82.04.120.

**Effective date—1986 c 226:** "This act shall take effect July 1, 1986." [1986 c 226 § 3.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective date—1982 2nd ex.s. c 9:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 9 § 4.]

**Intent—1981 c 144:** "The legislature recognizes that there have been significant changes in the nature of the telephone business in recent years. Once solely the domain of regulated monopolies, the telephone business has now been opened up to competition with respect to most of its services and equipment. As a result of this competition, the state and local excise tax structure in the state of Washington has become discriminatory when applied to regulated telephone company transactions that are similar in nature to those consummated by nonregulated competitors. Telephone companies are forced to operate at a significant state and local tax disadvantage when compared to these nonregulated competitors.

To remedy this situation, it is the intent of the legislature to place telephone companies and nonregulated competitors of telephone companies on an equal excise tax basis with regard to the providing of similar goods and services. Therefore competitive telephone services shall for excise tax purposes only, unless otherwise provided, be treated as retail sales under the applicable state and local business and occupation and sales and use taxes. This shall not affect any requirement that regulated telephone companies have under Title 80 RCW, unless otherwise provided.

Nothing in this act affects the authority and responsibility of the Washington utilities and transportation commission to set fair, just, reasonable, and sufficient rates for telephone service." [1981 c 144 § 1.]

**Severability—1981 c 144:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 144 § 12.]

**Effective date—1981 c 144:** "This act shall take effect on January 1, 1982." [1981 c 144 § 13.]

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.16.020 Public utility tax imposed—Additional tax imposed—Deposit of moneys.** (1) There is levied and there shall be collected from every person a tax for the act or privilege of engaging within this state in any one or more of the businesses herein mentioned. The tax shall be equal to the gross income of the business, multiplied by the rate set out after the business, as follows:

(a) Express, sewerage collection, and telegraph businesses: Three and six-tenths percent;

(b) Light and power business: Three and sixty-two one-hundredths percent;

(c) Gas distribution business: Three and six-tenths percent;

(d) Urban transportation business: Six-tenths of one percent;

(e) Vessels under sixty-five feet in length, except tugboats, operating upon the waters within the state: Six-tenths of one percent;

(f) Motor transportation, railroad, railroad car, and tugboat businesses, and all public service businesses other than ones mentioned above: One and eight-tenths of one percent;

(g) Water distribution business: Four and seven-tenths percent.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section.

(3) Twenty percent of the moneys collected under subsection (1) of this section on water distribution businesses and sixty percent of the moneys collected under subsection (1) of this section on sewerage collection businesses shall be deposited in the public works assistance account created in RCW 43.155.050. [1996 c 150 § 2; 1989 c 302 § 204; 1986 c 282 § 14; 1985 c 471 § 10; 1983 2nd ex.s. c 3 § 13; 1982 2nd ex.s. c 5 § 1; 1982 1st ex.s. c 35 § 5; 1971 ex.s. c 299 § 12; 1967 ex.s. c 149 § 24; 1965 ex.s. c 173 § 21; 1961 c 293 § 13; 1961 c 15 § 82.16.020. Prior: 1959 ex.s. c 3 § 16; 1939 c 225 § 19; 1935 c 180 § 36; RRS § 8370-36.]

**Effective date—1996 c 150:** See note following RCW 82.16.010.

**Finding, purpose—1989 c 302:** See note following RCW 82.04.120.

**Severability—1986 c 282:** See RCW 82.18.900.

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Effective date—1982 2nd ex.s. c 5:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect August 1, 1982." [1982 2nd ex.s. c 5 § 2.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.16.030 Taxable under each schedule if within its purview.** Every person engaging in businesses which are within the purview of two or more of schedules of RCW 82.16.020(1), shall be taxable under each schedule applicable to the businesses engaged in. [1989 c 302 § 205; 1982 1st ex.s. c 35 § 6; 1961 c 15 § 82.16.030. Prior: 1935 c 180 § 38; RRS § 8370-38.]

**Finding, purpose—1989 c 302:** See note following RCW 82.04.120.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.16.040 Exemption.** The provisions of this chapter shall not apply to persons engaging in one or more businesses taxable under this chapter whose total gross income is less than two thousand dollars for a monthly period or portion thereof. Any person claiming exemption under this section may be required to file returns even though no tax may be due. If the total gross income for a taxable monthly period is two thousand dollars, or more, no exemption or deductions from the gross operating revenue is allowed by this provision. [1996 c 111 § 4; 1961 c 15 § 82.16.040. Prior: 1959 ex.s. c 3 § 17; 1959 c 197 § 27; 1935 c 180 § 39; RRS § 8370-39.]

**Findings—Purpose—Effective date—1996 c 111:** See notes following RCW 82.32.030.

**82.16.0421 Exemptions—Sales to electrolytic processing businesses. (Expires June 30, 2011.)** (1) For the purposes of this section:

(a) "Chlor-alkali electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a chlor-alkali electrolytic process to split the electrochemical bonds of sodium chloride and water to make chlorine and sodium hydroxide. A "chlor-alkali electrolytic processing business"

does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(b) "Sodium chlorate electrolytic processing business" means a person who is engaged in a business that uses more than ten average megawatts of electricity per month in a sodium chlorate electrolytic process to split the electrochemical bonds of sodium chloride and water to make sodium chlorate and hydrogen. A "sodium chlorate electrolytic processing business" does not include direct service industrial customers or their subsidiaries that contract for the purchase of power from the Bonneville power administration as of June 10, 2004.

(2) Effective July 1, 2004, the tax levied under this chapter does not apply to sales of electricity made by a light and power business to a chlor-alkali electrolytic processing business or a sodium chlorate electrolytic processing business for the electrolytic process if the contract for sale of electricity to the business contains the following terms:

(a) The electricity to be used in the electrolytic process is separately metered from the electricity used for general operations of the business;

(b) The price charged for the electricity used in the electrolytic process will be reduced by an amount equal to the tax exemption available to the light and power business under this section; and

(c) Disallowance of all or part of the exemption under this section is a breach of contract and the damages to be paid by the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business are the amount of the tax exemption disallowed.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the electrolytic process.

(4) In order to claim an exemption under this section, the chlor-alkali electrolytic processing business or the sodium chlorate electrolytic processing business must provide the light and power business with an exemption certificate in a form and manner prescribed by the department.

(5)(a) This section does not apply to sales of electricity made after December 31, 2010.

(b) This section expires June 30, 2011. [2004 c 240 § 1.]

**82.16.045 Exemptions and credits—Pollution control facilities.** See chapter 82.34 RCW.

**82.16.046 Exemptions—Operation of state route No. 16.** The provisions of this chapter do not apply to amounts received from operating state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW. [1998 c 179 § 5.]

**Finding—1998 c 179:** See note following RCW 35.21.718.

**82.16.047 Exemptions—Ride sharing.** This chapter does not apply to any funds received in the course of commuter ride sharing or ride sharing for persons with special transportation needs in accordance with RCW 46.74.010. [1999 c 358 § 12; 1979 c 111 § 18.]

(2008 Ed.)

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Severability—1979 c 111:** See note following RCW 46.74.010.

**82.16.0491 Credit—Contributions to an electric utility rural economic development revolving fund.** (*Effective until July 1, 2009.*) (1) The following definitions apply to this section:

(a) "Qualifying project" means a project designed to achieve job creation or business retention, to add or upgrade nonelectrical infrastructure, to add or upgrade health and safety facilities, to accomplish energy and water use efficiency improvements, including renewable energy development, or to add or upgrade emergency services in any designated qualifying rural area.

(b) "Qualifying rural area" means:

(i) A rural county, which on the date that a contribution is made to an electric utility rural economic development revolving fund is a county with a population density of less than one hundred persons per square mile as determined by the office of financial management; or

(ii) Any geographic area in the state that receives electricity from a light and power business with twelve thousand or fewer customers.

(c) "Electric utility rural economic development revolving fund" means a fund devoted exclusively to funding qualifying projects in qualifying rural areas.

(d) "Local board" is (i) a board of directors with at least, but not limited to, three members representing local businesses and community groups who have been appointed by the sponsoring electric utility to oversee and direct the activities of the electric utility rural economic development revolving fund; or (ii) a board of directors of an existing associate development organization serving the qualifying rural area who have been designated by the sponsoring electrical utility to oversee and direct the activities of the electric utility rural economic development revolving fund.

(2) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to fifty percent of contributions made in any fiscal year directly to an electric utility rural economic development revolving fund. The credit shall be taken in a form and manner as required by the department. The credit under this section shall not exceed twenty-five thousand dollars per fiscal year per light and power business. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years, except that this limitation does not apply to expenditures made between January 1, 2004, and March 31, 2004, which expenditures may be used to earn a credit through December 30, 2004.

(3) The right to earn tax credits under this section expires June 30, 2011.

(4) To qualify for the credit in subsection (2) of this section, the light and power business shall establish, or have a local board establish with the business's contribution, an electric utility rural economic development revolving fund which is governed by a local board whose members shall reside or work in the qualifying rural area served by the light and power business. Expenditures from the electric utility

rural economic development revolving fund shall be made solely on qualifying projects, and the local board shall have authority to determine all criteria and conditions for the expenditure of funds from the electric utility rural economic development revolving fund, and for the terms and conditions of repayment.

(5) Any funds repaid to the electric utility rural economic development revolving fund by recipients shall be made available for additional qualifying projects.

(6) If at any time the electric utility rural economic development revolving fund is dissolved, any moneys claimed as a tax credit under this section shall either be granted to a qualifying project or refunded to the state within two years of termination.

(7) The total amount of credits that may be used in any fiscal year shall not exceed three hundred fifty thousand dollars in any fiscal year. The department shall allow the use of earned credits on a first-come, first-served basis. Unused earned credits may be carried over to subsequent years.

(8) The following provisions apply to expenditures under subsection (2) of this section made between January 1, 2004, and March 31, 2004:

(a) Credits earned from such expenditures are not considered in computing the statewide limitation set forth in subsection (7) of this section for the period July 1, 2004, through December 31, 2004; and

(b) For the fiscal year ending June 30, 2005, the credit allowed under this section for light and power businesses making expenditures is limited to thirty-seven thousand five hundred dollars. [2004 c 238 § 1; 1999 c 311 § 402.]

**Finding—2004 c 238:** "(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(2) The goal of the tax credit available to light and power businesses for contributing to an electric utility rural economic development revolving fund in RCW 82.16.0491 is to support qualifying projects that create or retain jobs, add or upgrade health and safety facilities, facilitate energy and water conservation, or develop renewable sources of energy in a qualified area. The goal of this tax credit is achieved when the investment of the revolving funds established under RCW 82.16.0491 have generated capital investment in an amount of four million seven hundred fifty thousand dollars or more within a five-year period." [2004 c 238 § 2.]

**Effective date—2004 c 238:** "This act takes effect July 1, 2004." [2004 c 238 § 3.]

**Findings—Intent—1999 c 311:** "The legislature finds that it is necessary to employ multiple approaches to revitalize the economy of Washington state's rural areas. The legislature also finds that where possible, Washington state should develop programs which can complement other private, state, and federal programs. It is the intent of section 402 of this act to complement such rural economic development efforts by creating a public utility tax offset program to help establish locally based electric utility revolving fund programs to be used for economic development and job creation." [1999 c 311 § 401.]

**Part headings and subheadings not law—Effective date—Severability—1999 c 311:** See notes following RCW 82.14.370.

**82.16.0491 Credit—Contributions to an electric utility rural economic development revolving fund. (Effective July 1, 2009.)** (1) The following definitions apply to this section:

(a) "Qualifying project" means a project designed to achieve job creation or business retention, to add or upgrade nonelectrical infrastructure, to add or upgrade health and safety facilities, to accomplish energy and water use efficiency improvements, including renewable energy development, or to add or upgrade emergency services in any designated qualifying rural area.

(b) "Qualifying rural area" means:

(i) A rural county as defined in RCW 82.14.370; or

(ii) Any geographic area in the state that receives electricity from a light and power business with twelve thousand or fewer customers.

(c) "Electric utility rural economic development revolving fund" means a fund devoted exclusively to funding qualifying projects in qualifying rural areas.

(d) "Local board" is (i) a board of directors with at least, but not limited to, three members representing local businesses and community groups who have been appointed by the sponsoring electric utility to oversee and direct the activities of the electric utility rural economic development revolving fund; or (ii) a board of directors of an existing associate development organization serving the qualifying rural area who have been designated by the sponsoring electrical utility to oversee and direct the activities of the electric utility rural economic development revolving fund.

(2) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to fifty percent of contributions made in any fiscal year directly to an electric utility rural economic development revolving fund. The credit shall be taken in a form and manner as required by the department. The credit under this section shall not exceed twenty-five thousand dollars per fiscal year per light and power business. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years, except that this limitation does not apply to expenditures made between January 1, 2004, and March 31, 2004, which expenditures may be used to earn a credit through December 30, 2004.

(3) The right to earn tax credits under this section expires June 30, 2011.

(4) To qualify for the credit in subsection (2) of this section, the light and power business shall establish, or have a local board establish with the business's contribution, an electric utility rural economic development revolving fund which is governed by a local board whose members shall reside or work in the qualifying rural area served by the light and power business. Expenditures from the electric utility rural economic development revolving fund shall be made solely on qualifying projects, and the local board shall have authority to determine all criteria and conditions for the expenditure of funds from the electric utility rural economic development revolving fund, and for the terms and conditions of repayment.

(5) Any funds repaid to the electric utility rural economic development revolving fund by recipients shall be made available for additional qualifying projects.

(6) If at any time the electric utility rural economic development revolving fund is dissolved, any moneys claimed as a tax credit under this section shall either be

granted to a qualifying project or refunded to the state within two years of termination.

(7) The total amount of credits that may be used in any fiscal year shall not exceed three hundred fifty thousand dollars in any fiscal year. The department shall allow the use of earned credits on a first-come, first-served basis. Unused earned credits may be carried over to subsequent years.

(8) The following provisions apply to expenditures under subsection (2) of this section made between January 1, 2004, and March 31, 2004:

(a) Credits earned from such expenditures are not considered in computing the statewide limitation set forth in subsection (7) of this section for the period July 1, 2004, through December 31, 2004; and

(b) For the fiscal year ending June 30, 2005, the credit allowed under this section for light and power businesses making expenditures is limited to thirty-seven thousand five hundred dollars. [2008 c 131 § 4; 2004 c 238 § 1; 1999 c 311 § 402.]

**Effective date—2008 c 131:** See note following RCW 43.160.020.

**Finding—2004 c 238:** "(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(2) The goal of the tax credit available to light and power businesses for contributing to an electric utility rural economic development revolving fund in RCW 82.16.0491 is to support qualifying projects that create or retain jobs, add or upgrade health and safety facilities, facilitate energy and water conservation, or develop renewable sources of energy in a qualified area. The goal of this tax credit is achieved when the investment of the revolving funds established under RCW 82.16.0491 have generated capital investment in an amount of four million seven hundred fifty thousand dollars or more within a five-year period." [2004 c 238 § 2.]

**Effective date—2004 c 238:** "This act takes effect July 1, 2004." [2004 c 238 § 3.]

**Findings—Intent—1999 c 311:** "The legislature finds that it is necessary to employ multiple approaches to revitalize the economy of Washington state's rural areas. The legislature also finds that where possible, Washington state should develop programs which can complement other private, state, and federal programs. It is the intent of section 402 of this act to complement such rural economic development efforts by creating a public utility tax offset program to help establish locally based electric utility revolving fund programs to be used for economic development and job creation." [1999 c 311 § 401.]

**Part headings and subheadings not law—Effective date—Severability—1999 c 311:** See notes following RCW 82.14.370.

**82.16.0495 Credit—Electricity sold to a direct service industrial customer.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Direct service industrial customer" means a person who is an industrial customer that contracts for the purchase of power from the Bonneville Power Administration for direct consumption as of May 8, 2001. "Direct service industrial customer" includes a person who is a subsidiary that is more than fifty percent owned by a direct service industrial customer and who receives power from the Bonneville Power Administration pursuant to the parent's contract for power.

(b) "Facility" means a gas turbine electrical generation facility that does not exist on May 8, 2001.

(c) "Average annual employment" means the total employment in this state for a calendar year at the direct ser-

vice industrial customer's location where electricity from the facility will be consumed.

(2) Effective July 1, 2001, a credit is allowed against the tax due under this chapter on sales of electricity made from a facility to a direct service industrial customer if the contract for sale of electricity to a direct service industrial customer contains the following terms:

(a) Sales of electricity from the facility to the direct service industrial customer will be made for ten consecutive years or more;

(b) The price charged for the electricity will be reduced by an amount equal to the tax credit; and

(c) Disallowance of all or part of the credit under subsection (5) of this section is a breach of contract and the damages to be paid by the direct service industrial customer to the facility are the amount of tax credit disallowed.

(3) The credit is equal to the gross proceeds from the sale of the electricity to a direct service industrial customer multiplied by the rate in effect at the time of the sale for the public utility tax on light and power businesses under RCW 82.16.020. The credit may be used each reporting period for sixty months following the first month electricity is sold from a facility to a direct service industrial customer. Credit under this section is limited to the amount of tax imposed under this chapter. Refunds shall not be given in place of credits and credits may not be carried over to subsequent calendar years.

(4) Application for credit shall be made before the first sale of electricity from a facility to a direct service industrial customer. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information regarding the location of the facility, identification of the direct service industrial customer who will receive electricity from the facility, the projected date of the first sale of electricity to a direct service industrial customer, the date construction is projected to begin or did begin, and the average annual employment in the state of the direct service industrial customer who will receive electricity from the facility for the six calendar years immediately preceding the year in which the application is made. A copy of the contract for sale of electricity must be attached to the application. The department shall rule on the application within thirty days of receipt.

(5) All or part of the credit shall be disallowed and must be paid if the average of the direct service industrial customer's average annual employment for the five calendar years subsequent to the calendar year containing the first month of sale of electricity from a facility to a direct service industrial customer is less than the six-year average annual employment stated on the application for credit under this section. The direct service industrial customer shall certify to the department and to the facility by June 1st of the sixth calendar year following the calendar year in which the month of first sale occurs the average annual employment for each of the five prior calendar years. All or part of the credit that shall be disallowed and must be paid is commensurate with the decrease in the five-year average of average annual employment as follows:

<u>Decrease in Average Annual Employment Over Five-Year Period</u>	<u>% of Credit to be Paid</u>
Less than 10%	10%
10% or more but less than 25%	25%
25% or more but less than 50%	50%
50% or more but less than 75%	75%
75% or more	100%

(6)(a) Payments on credit that is disallowed shall begin in the sixth calendar year following the calendar year in which the month following the first month of sale of electricity from a facility to a direct service industrial customer occurs. The first payment will be due on or before December 31st with subsequent annual payments due on or before December 31st of the following four years according to the schedule in this subsection.

<u>Payment Year</u>	<u>% of Credit to be Paid</u>
1	10%
2	15%
3	20%
4	25%
5	30%

(b) The department may authorize an accelerated payment schedule upon request of the taxpayer.

(c) Interest shall not be charged on the credit that is disallowed for the sixty-month period the credit may be taken, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed. The debt for credit that is disallowed and must be paid will not be extinguished by insolvency or other failure of the taxpayer. Transfer of ownership of the facility does not affect eligibility for this credit. However, the credit is available to the successor only if the eligibility conditions of this section are met.

(7) The employment security department shall make, and certify to the department of revenue, all determinations of employment under this section as requested by the department. [2001 c 214 § 11.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**82.16.0497 Credit—Light and power business, gas distribution business.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Base credit" means the maximum amount of credit against the tax imposed by this chapter that each light and power business or gas distribution business may take each fiscal year as calculated by the department. The base credit is equal to the proportionate share that the total grants received by each light and power business or gas distribution business in the prior fiscal year bears to the total grants received by all light and power businesses and gas distribution businesses in the prior fiscal year multiplied by five million five hundred thousand dollars for fiscal year 2007, and two million five

hundred thousand dollars for all other fiscal years before and after fiscal year 2007.

(b) "Billing discount" means a reduction in the amount charged for providing service to qualifying persons in Washington made by a light and power business or a gas distribution business. Billing discount does not include grants received by the light and power business or a gas distribution business.

(c) "Grant" means funds provided to a light and power business or gas distribution business by the department of community, trade, and economic development or by a qualifying organization.

(d) "Low-income home energy assistance program" means energy assistance programs for low-income households as defined on December 31, 2000, in the low-income home energy assistance act of 1981 as amended August 1, 1999, 42 U.S.C. Sec. 8623 et seq.

(e) "Qualifying person" means a Washington resident who applies for assistance and qualifies for a grant regardless of whether that person receives a grant.

(f) "Qualifying contribution" means money given by a light and power business or a gas distribution business to a qualifying organization, exclusive of money received in the prior fiscal year from its customers for the purpose of assisting other customers.

(g) "Qualifying organization" means an entity that has a contractual agreement with the department of community, trade, and economic development to administer in a specified service area low-income home energy assistance funds received from the federal government and such other funds that may be received by the entity.

(2) Subject to the limitations in this section, a light and power business or a gas distribution business may take a credit each fiscal year against the tax imposed under this chapter.

(a)(i) A credit may be taken for qualifying contributions if the dollar amount of qualifying contributions for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of qualifying contributions given in fiscal year 2000.

(ii) If no qualifying contributions were given in fiscal year 2000, a credit shall be allowed for the first fiscal year that qualifying contributions are given. Thereafter, credit shall be allowed if the qualifying contributions given exceed one hundred twenty-five percent of qualifying contributions given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of qualifying contributions given in the fiscal year in which the tax credit is taken.

(b)(i) A credit may be taken for billing discounts if the dollar amount of billing discounts for the fiscal year in which the tax credit is taken is greater than one hundred twenty-five percent of the dollar amount of billing discounts given in fiscal year 2000.

(ii) If no billing discounts were given in fiscal year 2000, a credit shall be allowed in the first fiscal year that billing discounts are given. Thereafter, credit shall be allowed if the dollar amount of billing discounts given exceeds one hundred twenty-five percent of billing discounts given in the first fiscal year.

(iii) The amount of credit shall be fifty percent of the dollar amount of the billing discounts given in the fiscal year in which the tax credit is taken.

(c) The total amount of credit that may be taken for qualifying contributions and billing discounts in a fiscal year is limited to the base credit for the same fiscal year.

(3)(a)(i) Except as provided in (a)(ii) of this subsection, the total amount of credit, statewide, that may be taken in any fiscal year shall not exceed two million five hundred thousand dollars.

(ii) The total amount of credit, statewide, that may be taken in fiscal year 2007 shall not exceed five million five hundred thousand dollars.

(b) By May 1st of each year starting in 2002, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in the current fiscal year by each light and power business and gas distribution business.

(4)(a) Not later than June 1st of each year beginning in 2002, the department shall publish the base credit for each light and power business and gas distribution business for the next fiscal year.

(b) Not later than July 1st of each year beginning in 2002, application for credit must be made to the department including but not limited to the following information: Billing discounts given by the applicant in fiscal year 2000; qualifying contributions given by the applicant in the prior fiscal year; the amount of money received in the prior fiscal year from customers for the purpose of assisting other customers; the base credit for the next fiscal year for the applicant; the qualifying contributions anticipated to be given in the next fiscal year; and billing discounts anticipated to be given in the next fiscal year. No credit under this section will be allowed to a light and power business or gas distribution business that does not file the application by July 1st.

(c) Not later than August 1st of each year beginning in 2002, the department shall notify each applicant of the amount of credit that may be taken in that fiscal year.

(d) The balance of base credits not used by other light and power businesses and gas distribution businesses shall be ratably distributed to applicants under the formula in subsection (1)(a) of this section. The total amount of credit that may be taken by an applicant is the base credit plus any ratable portion of unused base credit.

(5) The credit taken under this section is limited to the amount of tax imposed under this chapter for the fiscal year. The credit must be claimed in the fiscal year in which the billing reduction is made. Any unused credit expires. Refunds shall not be given in place of credits.

(6) No credit may be taken for billing discounts made before July 1, 2001. Within two weeks of May 8, 2001, the department of community, trade, and economic development shall notify the department of revenue in writing of the grants received in fiscal year 2001 by each light and power business and gas distribution business. Within four weeks of May 8, 2001, the department of revenue shall publish the base credit for each light and power business and gas distribution business for fiscal year 2002. Within eight weeks of May 8, 2001, application to the department must be made showing the information required in subsection (4)(b) of this section. Within twelve weeks of May 8, 2001, the department shall

notify each applicant of the amount of credit that may be taken in fiscal year 2002. [2006 c 213 § 1; 2001 c 214 § 13.]

**Effective date—2006 c 213:** "This act takes effect July 1, 2006." [2006 c 213 § 2.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**82.16.0498 Credit—Sales of electricity or gas to an aluminum smelter.** (1) A person who is subject to tax under this chapter on gross income from sales of electricity, natural gas, or manufactured gas made to an aluminum smelter is eligible for an exemption from the tax in the form of a credit, if the contract for sale of electricity or gas to the aluminum smelter specifies that the price charged for the electricity or gas will be reduced by an amount equal to the credit.

(2) The credit is equal to the gross income from the sale of the electricity or gas to an aluminum smelter multiplied by the corresponding rate in effect at the time of the sale for the public utility tax under RCW 82.16.020.

(3) The exemption provided for in this section does not apply to amounts received from the remarketing or resale of electricity originally obtained by contract for the smelting process.

(4) For the purposes of this section, "aluminum smelter" has the same meaning as provided in RCW 82.04.217. [2004 c 24 § 13.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**82.16.050 Deductions in computing tax.** In computing tax there may be deducted from the gross income the following items:

(1) Amounts derived by municipally owned or operated public service businesses, directly from taxes levied for the support or maintenance thereof. This subsection may not be construed to exempt service charges which are spread on the property tax rolls and collected as taxes;

(2) Amounts derived from the sale of commodities to persons in the same public service business as the seller, for resale as such within this state. This deduction is allowed only with respect to water distribution, gas distribution or other public service businesses which furnish water, gas or any other commodity in the performance of public service businesses;

(3) Amounts actually paid by a taxpayer to another person taxable under this chapter as the latter's portion of the consideration due for services furnished jointly by both, if the total amount has been credited to and appears in the gross income reported for tax by the former;

(4) The amount of cash discount actually taken by the purchaser or customer;

(5) The amount of bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, on which tax was previously paid under this chapter;

(6) Amounts derived from business which the state is prohibited from taxing under the Constitution of this state or the Constitution or laws of the United States;

(7) Amounts derived from the distribution of water through an irrigation system, for irrigation purposes;

(8) Amounts derived from the transportation of commodities from points of origin in this state to final destination outside this state, or from points of origin outside this state to final destination in this state, with respect to which the carrier grants to the shipper the privilege of stopping the shipment in transit at some point in this state for the purpose of storing, manufacturing, milling, or other processing, and thereafter forwards the same commodity, or its equivalent, in the same or converted form, under a through freight rate from point of origin to final destination;

(9) Amounts derived from the transportation of commodities from points of origin in the state to an export elevator, wharf, dock or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. No deduction is allowed under this subsection when the point of origin and the point of delivery to the export elevator, wharf, dock, or ship side are located within the corporate limits of the same city or town;

(10) Amounts derived from the transportation of agricultural commodities, not including manufactured substances or articles, from points of origin in the state to interim storage facilities in this state for transshipment, without intervening transportation, to an export elevator, wharf, dock, or ship side on tidewater or its navigable tributaries to be forwarded, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations. If agricultural commodities are transshipped from interim storage facilities in this state to storage facilities at a port on tidewater or its navigable tributaries, the same agricultural commodity dealer must operate both the interim storage facilities and the storage facilities at the port.

(a) The deduction under this subsection is available only when the person claiming the deduction obtains a certificate from the agricultural commodity dealer operating the interim storage facilities, in a form and manner prescribed by the department, certifying that:

(i) More than ninety-six percent of all of the type of agricultural commodity delivered by the person claiming the deduction under this subsection and delivered by all other persons to the dealer's interim storage facilities during the preceding calendar year was shipped by vessel in original form to interstate or foreign destinations; and

(ii) Any of the agricultural commodity that is transshipped to ports on tidewater or its navigable tributaries will be received at storage facilities operated by the same agricultural commodity dealer and will be shipped from such facilities, without intervening transportation, by vessel, in their original form, to interstate or foreign destinations.

(b) As used in this subsection, "agricultural commodity" has the same meaning as agricultural product in RCW 82.04.213;

(11) Amounts derived from the production, sale, or transfer of electrical energy for resale within or outside the state or for consumption outside the state;

(12) Amounts derived from the distribution of water by a nonprofit water association and used for capital improvements by that nonprofit water association;

(13) Amounts paid by a sewerage collection business taxable under RCW 82.16.020(1)(a) to a person taxable

under chapter 82.04 RCW for the treatment or disposal of sewage;

(14) Amounts derived from fees or charges imposed on persons for transit services provided by a public transportation agency. For the purposes of this subsection, "public transportation agency" means a municipality, as defined in RCW 35.58.272, and urban public transportation systems, as defined in RCW 47.04.082. Public transportation agencies shall spend an amount equal to the reduction in tax provided by this tax deduction solely to adjust routes to improve access for citizens using food banks and senior citizen services or to extend or add new routes to assist low-income citizens and seniors. [2007 c 330 § 1; 2006 c 336 § 1; 2004 c 153 § 308; 2000 c 245 § 1; 1994 c 124 § 12; 1989 c 302 § 103; 1987 c 207 § 1; 1982 2nd ex.s. c 9 § 3; 1977 ex.s. c 368 § 1; 1967 ex.s. c 149 § 25; 1965 ex.s. c 173 § 22; 1961 c 15 § 82.16.050. Prior: 1959 ex.s. c 3 § 18; 1949 c 228 § 11; 1937 c 227 § 12; 1935 c 180 § 40; Rem. Supp. 1949 § 8370-40.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective date—Application—2000 c 245 § 1:** "(1) Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2000].

(2) Section 1 of this act applies to all amounts due prior to and after March 31, 2000." [2000 c 245 § 3.]

**Finding, purpose—1989 c 302:** See note following RCW 82.04.120.

**Effective date—1982 2nd ex.s. c 9:** See note following RCW 82.16.010.

**82.16.053 Deductions in computing tax—Light and power businesses.** (1) In computing tax under this chapter, a light and power business may deduct from gross income the lesser of the amounts determined under subsections (2) through (4) of this section.

(2)(a) Fifty percent of wholesale power cost paid during the reporting period, if the light and power business has fewer than five and one-half customers per mile of line.

(b) Forty percent of wholesale power cost paid during the reporting period, if the light and power business has more than five and one-half but less than eleven customers per mile.

(c) Thirty percent of the wholesale power cost paid during the reporting period, if the light and power business has more than eleven but less than seventeen customers per mile of line.

(d) Zero if the light and power business has more than seventeen customers per mile of line.

(3) Wholesale power cost multiplied by the percentage by which the average retail electric power rates for the light and power business exceed the state average electric power rate. If more than fifty percent of the kilowatt hours sold by a light and power business are sold to irrigators, then only sales to nonirrigators shall be used to calculate the average electric power rate for that light and power business. For purposes of this subsection, the department shall determine state average electric power rate each year based on the most recent available data and shall inform taxpayers of its determination.

(4) Four hundred thousand dollars per month. [1996 c 145 § 1; 1994 c 236 § 1.]

**Effective date—1996 c 145:** "This act shall take effect July 1, 1996." [1996 c 145 § 2.]

**Effective date—1994 c 236:** "This act shall take effect July 1, 1994." [1994 c 236 § 2.]

**82.16.055 Deductions relating to energy conservation or production from renewable resources.** (1) In computing tax under this chapter there shall be deducted from the gross income:

(a) An amount equal to the cost of production at the plant for consumption within the state of Washington of:

(i) Electrical energy produced or generated from cogeneration as defined in \*RCW 82.35.020; and

(ii) Electrical energy or gas produced or generated from renewable energy resources such as solar energy, wind energy, hydroelectric energy, geothermal energy, wood, wood wastes, municipal wastes, agricultural products and wastes, and end-use waste heat; and

(b) Those amounts expended to improve consumers' efficiency of energy end use or to otherwise reduce the use of electrical energy or gas by the consumer.

(2) This section applies only to new facilities for the production or generation of energy from cogeneration or renewable energy resources or measures to improve the efficiency of energy end use on which construction or installation is begun after June 12, 1980, and before January 1, 1990.

(3) Deductions under subsection (1)(a) of this section shall be allowed for a period not to exceed thirty years after the project is placed in operation.

(4) Measures or projects encouraged under this section shall at the time they are placed in service be reasonably expected to save, produce, or generate energy at a total incremental system cost per unit of energy delivered to end use which is less than or equal to the incremental system cost per unit of energy delivered to end use from similarly available conventional energy resources which utilize nuclear energy or fossil fuels and which the gas or electric utility could acquire to meet energy demand in the same time period.

(5) The department of revenue, after consultation with the utilities and transportation commission in the case of investor-owned utilities and the governing bodies of locally regulated utilities, shall determine the eligibility of individual projects and measures for deductions under this section. [1980 c 149 § 3.]

**\*Reviser's note:** RCW 82.35.020 was repealed by 2005 c 443 § 7, effective July 1, 2006.

**Legislative finding—1980 c 149:** See RCW 80.28.024.

*Utility rate structures encouraging energy conservation and production from renewable resources: RCW 80.28.025.*

**82.16.060 May be taxed under other chapters.** Nothing herein shall be construed to exempt persons taxable under the provisions of this chapter from tax under any other chapters of this title with respect to activities other than those specifically within the provisions of this chapter. [1961 c 15 § 82.16.060. Prior: 1935 c 180 § 41; RRS § 8370-41.]

**82.16.080 Administration.** All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1961 c 15 § 82.16.080. Prior: 1935 c 180 § 43; RRS § 8370-43.]

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**82.16.090 Light or power and gas distribution businesses—Information required on customer billings.** Any customer billing issued by a light or power business or gas distribution business that serves a total of more than twenty thousand customers and operates within the state shall include the following information:

(1) The rates and amounts of taxes paid directly by the customer upon products or services rendered by the light and power business or gas distribution business; and

(2) The rate, origin and approximate amount of each tax levied upon the revenue of the light and power business or gas distribution business and added as a component of the amount charged to the customer. Taxes based upon revenue of the light and power business or gas distribution business to be listed on the customer billing need not include taxes levied by the federal government or taxes levied under chapters 54.28, 80.24, or 82.04 RCW. [1988 c 228 § 1.]

**Effective date—1988 c 228:** "This act shall take effect on January 1, 1989." [1988 c 228 § 2.]

**82.16.100 Solid waste business not subject to chapter.** The business of collection, receipt, transfer, including transportation between any locations, storage, or disposal of solid waste is not subject to this chapter. Any such business activities are subject to taxation under the classification in RCW 82.04.290(2). "Solid waste" for purposes of this section is defined in RCW 82.18.010. [2001 c 320 § 8.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**82.16.110 Renewable energy system cost recovery—Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Customer-generated electricity" means the alternating current electricity that is generated from a renewable energy system located on an individual's, businesses', or local government's real property that is also provided electricity generated by a light and power business. A system located on a leasehold interest does not qualify under this definition. "Customer-generated electricity" does not include electricity generated by a light and power business with greater than one thousand megawatt hours of annual sales or a gas distribution business.

(2) "Economic development kilowatt-hour" means the actual kilowatt-hour measurement of customer-generated electricity multiplied by the appropriate economic development factor.

(3) "Photovoltaic cell" means a device that converts light directly into electricity without moving parts.

(4) "Renewable energy system" means a solar energy system, an anaerobic digester as defined in RCW 82.08.900, or a wind generator used for producing electricity.

(5) "Solar energy system" means any device or combination of devices or elements that rely upon direct sunlight as an energy source for use in the generation of electricity.

(6) "Solar inverter" means the device used to convert direct current to alternating current in a photovoltaic cell system.

(7) "Solar module" means the smallest nondivisible self-contained physical structure housing interconnected photovoltaic cells and providing a single direct current electrical output.

(8) "Standards for interconnection to the electric distribution system" means technical, engineering, operational, safety, and procedural requirements for interconnection to the electric distribution system of a light and power business. [2005 c 300 § 2.]

**Findings—Intent—2005 c 300:** "The legislature finds that the use of renewable energy resources generated from local sources such as solar and wind power benefit our state by reducing the load on the state's electric energy grid, by providing nonpolluting sources of electricity generation, and by the creation of jobs for local industries that develop and sell renewable energy products and technologies.

The legislature finds that Washington state has become a national and international leader in the technologies related to the solar electric markets. The state can support these industries by providing incentives for the purchase of locally made renewable energy products. Locally made renewable technologies benefit and protect the state's environment. The legislature also finds that the state's economy can be enhanced through the creation of incentives to develop additional renewable energy industries in the state.

The legislature intends to provide incentives for the greater use of locally created renewable energy technologies, support and retain existing local industries, and create new opportunities for renewable energy industries to develop in Washington state." [2005 c 300 § 1.]

**Effective date—2005 c 300:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 300 § 8.]

**82.16.120 Renewable energy system cost recovery—Application to light/power business—Certification—Limitations.** (1) Any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year beginning on July 1, 2005, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(2) When light and power businesses serving eighty percent of the total customer load in the state adopt uniform standards for interconnection to the electric distribution system, any individual, business, or local governmental entity, not in the light and power business or in the gas distribution business, may apply to the light and power business serving the situs of the system, each fiscal year, for an investment cost recovery incentive for each kilowatt-hour from a customer-generated electricity renewable energy system installed on its property that is not interconnected to the electric distribution system and from a customer-generated electricity renewable energy system installed on its property that is interconnected to the electric distribution system. Uniform standards for interconnection to the electric distribution system means those standards established by light and power businesses that have ninety percent of total requirements the same. No incentive may be paid for kilowatt-hours generated before July 1, 2005, or after June 30, 2014.

(3)(a) Before submitting for the first time the application for the incentive allowed under this section, the applicant shall submit to the department of revenue and to the climate and rural energy development center at the Washington State University, established under RCW 28B.30.642, a certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) That the electricity produced by the applicant meets the definition of "customer-generated electricity" and that the renewable energy system produces electricity with:

(A) Any solar inverters and solar modules manufactured in Washington state;

(B) A wind generator powered by blades manufactured in Washington state;

(C) A solar inverter manufactured in Washington state;

(D) A solar module manufactured in Washington state;

or

(E) Solar or wind equipment manufactured outside of Washington state;

(iv) That the electricity can be transformed or transmitted for entry into or operation in parallel with electricity transmission and distribution systems;

(v) The date that the renewable energy system received its final electrical permit from the applicable local jurisdiction.

(b) Within thirty days of receipt of the certification the department of revenue shall notify the applicant by mail, or electronically as provided in RCW 82.32.135, whether the renewable energy system qualifies for an incentive under this section. The department may consult with the climate and rural energy development center to determine eligibility for the incentive. System certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(4)(a) By August 1st of each year application for the incentive shall be made to the light and power business serving the situs of the system by certification in a form and manner prescribed by the department that includes, but is not limited to, the following information:

(i) The name and address of the applicant and location of the renewable energy system;

(ii) The applicant's tax registration number;

(iii) The date of the notification from the department of revenue stating that the renewable energy system is eligible for the incentives under this section;

(iv) A statement of the amount of kilowatt-hours generated by the renewable energy system in the prior fiscal year.

(b) Within sixty days of receipt of the incentive certification the light and power business serving the situs of the system shall notify the applicant in writing whether the incentive payment will be authorized or denied. The business may consult with the climate and rural energy development center to determine eligibility for the incentive payment. Incentive certifications and the information contained therein are subject to disclosure under RCW 82.32.330(3)(m).

(c)(i) Persons receiving incentive payments shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of incentive applied for and received. Such records shall be open for examination at any time upon notice by the light and power business that made the payment or by the department. If upon examination of any records or from other information obtained by the business or department it appears that an incentive has been paid in an amount that exceeds the correct amount of incentive payable, the business may assess against

the person for the amount found to have been paid in excess of the correct amount of incentive payable and shall add thereto interest on the amount. Interest shall be assessed in the manner that the department assesses interest upon delinquent tax under RCW 82.32.050.

(ii) If it appears that the amount of incentive paid is less than the correct amount of incentive payable the business may authorize additional payment.

(5) The investment cost recovery incentive may be paid fifteen cents per economic development kilowatt-hour unless requests exceed the amount authorized for credit to the participating light and power business. For the purposes of this section, the rate paid for the investment cost recovery incentive may be multiplied by the following factors:

(a) For customer-generated electricity produced using solar modules manufactured in Washington state, two and four-tenths;

(b) For customer-generated electricity produced using a solar or a wind generator equipped with an inverter manufactured in Washington state, one and two-tenths;

(c) For customer-generated electricity produced using an anaerobic digester, or by other solar equipment or using a wind generator equipped with blades manufactured in Washington state, one; and

(d) For all other customer-generated electricity produced by wind, eight-tenths.

(6) No individual, household, business, or local governmental entity is eligible for incentives for more than two thousand dollars per year.

(7) If requests for the investment cost recovery incentive exceed the amount of funds available for credit to the participating light and power business, the incentive payments shall be reduced proportionately.

(8) The climate and rural energy development center at Washington State University energy program may establish guidelines and standards for technologies that are identified as Washington manufactured and therefore most beneficial to the state's environment.

(9) The environmental attributes of the renewable energy system belong to the applicant, and do not transfer to the state or the light and power business upon receipt of the investment cost recovery incentive. [2007 c 111 § 101; 2005 c 300 § 3.]

**Part headings not law—2007 c 111:** "Part headings used in this act are not any part of the law." [2007 c 111 § 401.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

**82.16.130 Renewable energy system cost recovery—Light/power business tax credit.** (1) A light and power business shall be allowed a credit against taxes due under this chapter in an amount equal to investment cost recovery incentive payments made in any fiscal year under RCW 82.16.120. The credit shall be taken in a form and manner as required by the department. The credit under this section for the fiscal year shall not exceed twenty-five one-hundredths of one percent of the businesses' taxable power sales due under RCW 82.16.020(1)(b) or twenty-five thousand dollars, whichever is greater. The credit may not exceed the tax that would otherwise be due under this chapter. Refunds shall not be granted in the place of credits. Expenditures not used to

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earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(2) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments shall be immediately due and payable. The department shall assess interest but not penalties on the taxes against which the credit was claimed. Interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and shall accrue until the taxes against which the credit was claimed are repaid.

(3) The right to earn tax credits under this section expires June 30, 2015. Credits may not be claimed after June 30, 2016. [2005 c 300 § 4.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

**82.16.140 Renewable energy system cost recovery—Report to legislature.** (1) Using existing sources of information, the department shall report to the house appropriations committee, the house committee dealing with energy issues, the senate committee on ways and means, and the senate committee dealing with energy issues by December 1, 2009. The report shall measure the impacts of chapter 300, Laws of 2005, including the total number of solar energy system manufacturing companies in the state, any change in the number of solar energy system manufacturing companies in the state, and, where relevant, the effect on job creation, the number of jobs created for Washington residents, and such other factors as the department selects.

(2) The department shall not conduct any new surveys to provide the report in subsection (1) of this section. [2005 c 300 § 5.]

**Findings—Intent—Effective date—2005 c 300:** See notes following RCW 82.16.110.

**82.16.300 Exemptions—Custom farming services. (Expires December 31, 2020.)** (1) This chapter shall not apply to any person hauling agricultural products or farm machinery or equipment for a farmer or for a person performing custom farming services, when the person providing the hauling and the farmer or person performing custom farming services are related.

(2) The exemption provided by this section shall not apply to the hauling of any substances or articles manufactured from agricultural products. For the purposes of this subsection, "manufactured" has the same meaning as "to manufacture" in RCW 82.04.120.

(3) The definitions in RCW 82.04.213 and 82.04.625 apply to this section. [2007 c 334 § 2.]

**Effective date—Expiration date—2007 c 334:** See notes following RCW 82.04.625.

## Chapter 82.18 RCW

### SOLID WASTE COLLECTION TAX

(Formerly: Refuse collection tax)

#### Sections

82.18.010	Definitions.
82.18.020	Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040.

82.18.030	Collection of tax.
82.18.040	Collection of tax—Payment to state.
82.18.050	Federal government exempt from tax.
82.18.060	No multiple taxation of single transaction.
82.18.070	Applicability of general administrative provisions.
82.18.080	Enforcement.
82.18.900	Severability—1986 c 282.
82.18.901	Severability—1989 c 431.

*Solid waste management—Reduction and recycling: Chapter 70.95 RCW.*

**82.18.010 Definitions.** For purposes of this chapter:

(1) "Solid waste collection business" means every person who receives solid waste for transfer, storage, or disposal including but not limited to all collection services, public or private dumps, transfer stations, and similar operations.

(2) "Person" shall have the meaning given in RCW 82.04.030 or any later, superseding section.

(3) "Solid waste" means garbage, trash, rubbish, or other material discarded as worthless or not economically viable for further use. The term does not include hazardous or toxic waste nor does it include material collected primarily for recycling or salvage.

(4) "Taxpayer" means that person upon whom the solid waste collection tax is imposed. [1989 c 431 § 78; 1986 c 282 § 6.]

**82.18.020 Solid waste collection tax—Revenue to public works assistance account per RCW 82.18.040.** There is imposed on each person using the solid waste services of a solid waste collection business a solid waste collection tax equal to three and six-tenths percent of the consideration charged for the services. [1989 c 431 § 79; 1986 c 282 § 7.]

**Section captions not law—1989 c 431:** See RCW 70.95.902.

**82.18.030 Collection of tax.** The person collecting the charges made for using the solid waste collection business shall collect the tax imposed in this chapter. If any person charged with collecting the tax fails to bill the taxpayer for the tax, or in the alternative has not notified the taxpayer in writing of the imposition of the tax, or having collected the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the tax. [1989 c 431 § 84; 1986 c 282 § 8.]

**82.18.040 Collection of tax—Payment to state.** Taxes collected under this chapter shall be held in trust until paid to the state. Taxes received by the state shall be deposited in the public works assistance account created in RCW 43.155.050. Any person collecting the tax who appropriates or converts the tax collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. If a taxpayer fails to pay the tax imposed by this chapter to the person charged with collection of the tax and the person charged with collection fails to pay the tax to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the tax.

The tax shall be due from the taxpayer within twenty-five days from the date the taxpayer is billed by the person collecting the tax.

The tax shall be due from the person collecting the tax at the end of the tax period in which the tax is received from the taxpayer. If the taxpayer remits only a portion of the total amount billed for taxes, consideration, and related charges, the amount remitted shall be applied first to payment of the solid waste collection tax and this tax shall have priority over all other claims to the amount remitted. [2000 c 103 § 11; 1989 c 431 § 85; 1986 c 282 § 9.]

**82.18.050 Federal government exempt from tax.** The solid waste collection taxes imposed in this chapter shall not apply to any agency, division, or branch of the federal government or to services rendered under a contract therewith. [1989 c 431 § 86; 1986 c 282 § 10.]

**82.18.060 No multiple taxation of single transaction.** To prevent pyramiding and multiple taxation of a single transaction, the solid waste collection taxes imposed in this chapter shall not apply to any solid waste collection business using the services of another solid waste collection business for the transfer, storage, processing, or disposal of the waste collected during the transaction.

To be eligible for this exemption, a person first must be certified by the department of revenue as a solid waste collection business. [1989 c 431 § 87; 1986 c 282 § 11.]

**82.18.070 Applicability of general administrative provisions.** Chapter 82.32 RCW applies to the taxes imposed under this chapter. [1989 c 431 § 88; 1986 c 282 § 12.]

**82.18.080 Enforcement.** The department of revenue shall have the power to enforce the taxes imposed in this chapter through appropriate rules. [1989 c 431 § 89; 1986 c 282 § 13.]

**82.18.900 Severability—1986 c 282.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 282 § 22.]

**82.18.901 Severability—1989 c 431.** See RCW 70.95.901.

## Chapter 82.19 RCW

### LITTER TAX

#### Sections

82.19.010	Litter tax imposed—Report to the legislature—Time of collection.
82.19.020	Application to certain products.
82.19.030	Rule-making authority tax—Items subject to—Reporting and accounting.
82.19.040	Application of chapters 82.04 and 82.32 RCW—Disposition of revenue.
82.19.050	Exemptions.
82.19.900	Effective date—1992 c 175.

**82.19.010 Litter tax imposed—Report to the legislature—Time of collection.** (1) In addition to any other taxes, there is hereby levied and there shall be collected by the department of revenue from every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer, a litter tax equal to the value of products listed in RCW 82.19.020, including byproducts, manufactured within this state, multiplied by fifteen one-thousandths of one percent in the case of manufacturers, and equal to the gross proceeds of sales of the products listed in RCW 82.19.020 that are sold within this state multiplied by fifteen one-thousandths of one percent in the case of wholesalers and retailers.

(2) The frequency and time of collection of the tax will coincide with the reporting periods by payers of their business and occupation tax. [2008 c 86 § 201; 1998 c 257 § 7; 1992 c 175 § 3; 1971 ex.s. c 307 § 12. Formerly RCW 70.93.120.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**82.19.020 Application to certain products.** To accomplish effective litter control within the state and to allocate a portion of the cost of administering this chapter to those industries whose products, including the packages, wrappings, and containers thereof, are reasonably related to the litter problem, the tax imposed in this chapter shall only apply to the value of products or the gross proceeds of sales of products falling into the following categories:

- (1) Food for human or pet consumption.
- (2) Groceries.
- (3) Cigarettes and tobacco products.
- (4) Soft drinks and carbonated waters.
- (5) Beer and other malt beverages.
- (6) Wine.
- (7) Newspapers and magazines.
- (8) Household paper and paper products.
- (9) Glass containers.
- (10) Metal containers.
- (11) Plastic or fiber containers made of synthetic material.
- (12) Cleaning agents and toiletries.
- (13) Nondrug drugstore sundry products. [1992 c 175 § 4; 1971 ex.s. c 307 § 13. Formerly RCW 70.93.130.]

**82.19.030 Rule-making authority tax—Items subject to—Reporting and accounting.** (1) The department of revenue, by rule, may, if such is required, define those items subject to tax under RCW 82.19.020. In making any such definitions, the department of revenue shall be guided by the following standards:

(a) It is the purpose of this chapter to accomplish effective control of litter within this state;

(b) It is the purpose of this chapter to allocate a portion of the cost of administration of this chapter to those industries manufacturing and/or selling products and the packages, wrappings, or containers thereof which are reasonably related to the litter problem within this state.

(2) Instead of requiring each business to separately account for taxable and nontaxable products under this chapter, the department may provide, by rule, that the tax imposed

in this chapter be reported and paid based on a percentage of total sales for a particular type of business if the department determines that the percentage reasonably approximates the taxable activity of the particular type of business. [1992 c 175 § 5; 1971 ex.s. c 307 § 14. Formerly RCW 70.93.140.]

**82.19.040 Application of chapters 82.04 and 82.32 RCW—Disposition of revenue.** (1) To the extent applicable, all of the definitions of chapter 82.04 RCW and all of the provisions of chapter 82.32 RCW apply to the tax imposed in this chapter.

(2) Taxes collected under this chapter shall be deposited in the waste reduction, recycling, and litter control account under RCW 70.93.180. [2001 c 118 § 6; 1992 c 175 § 6; 1971 ex.s. c 307 § 16. Formerly RCW 70.93.160.]

**82.19.050 Exemptions.** The litter tax imposed in this chapter does not apply to:

(1) The manufacture or sale of products for use and consumption outside the state;

(2) The value of products or gross proceeds of the sales exempt from tax under RCW 82.04.330;

(3) The sale of products for resale by a qualified grocery distribution cooperative to customer-owners of the grocery distribution cooperative. For the purposes of this section, "qualified grocery distribution cooperative" and "customer-owner" have the meanings given in RCW 82.04.298;

(4) The sale of food or beverages by retailers that are sold solely for immediate consumption indoors at the seller's place of business or at a deck or patio at the seller's place of business, or indoors at an eating area that is contiguous to the seller's place of business; or

(5)(a) The sale of prepared food or beverages by caterers where the food or beverages are to be served for immediate consumption in or on individual nonsingle use containers at premises occupied or controlled by the customer.

(b) For the purposes of this subsection, the following definitions apply:

(i) "Prepared food" has the same meaning as provided in RCW 82.08.0293.

(ii) "Nonsingle use container" means a receptacle for holding a single individual's food or beverage that is designed to be used more than once. Nonsingle use containers do not include pizza delivery bags and similar insulated containers that do not directly contact the food. Nonsingle use containers do not include plastic or paper plates or other containers that are disposable.

(iii) "Caterer" means a person contracted to prepare food where the final cooking or serving occurs at a location selected by the customer. [2005 c 289 § 1; 2003 c 120 § 1; 2001 1st sp.s. c 9 § 7; (2001 1st sp.s. c 9 § 8 expired July 22, 2001); 2001 c 118 § 7; 1992 c 175 § 7; 1971 ex.s. c 307 § 17. Formerly RCW 70.93.170.]

**Effective date—2003 c 120:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 120 § 2.]

**Effective dates—2001 1st sp.s. c 9:** See note following RCW 82.04.298.

**Expiration dates—2001 1st sp.s. c 9:** See note following RCW 82.04.290.

**82.19.900 Effective date—1992 c 175.** This act shall take effect July 1, 1992. [1992 c 175 § 11.]

### Chapter 82.21 RCW

#### HAZARDOUS SUBSTANCE TAX— MODEL TOXICS CONTROL ACT

##### Sections

82.21.010	Intent of pollution tax.
82.21.020	Definitions.
82.21.030	Pollution tax.
82.21.040	Exemptions.
82.21.050	Credits.
82.21.900	Short title—1989 c 2.
82.21.905	Captions—1989 c 2.
82.21.910	Construction—1989 c 2.
82.21.915	Existing agreements—1989 c 2.
82.21.920	Effective date—1989 c 2.
82.21.921	Severability—1989 c 2.

**82.21.010 Intent of pollution tax.** It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law. [1989 c 2 § 8 (Initiative Measure No. 97, approved November 8, 1988).]

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

(1) "Hazardous substance" means:

(a) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc;

(b) Petroleum products;

(c) Any pesticide product required to be registered under section 136a of the federal insecticide, fungicide and rodenticide act, 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition shall take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items contain-

ing both: (i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and (ii) one or more substances that are not hazardous substances.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [2002 c 105 § 1; 1989 c 2 § 9 (Initiative Measure No. 97, approved November 8, 1988).]

**Effective date—2002 c 105:** "This act takes effect July 1, 2002." [2002 c 105 § 2.]

**82.21.030 Pollution tax.** (1) A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax shall be seven-tenths of one percent multiplied by the wholesale value of the substance.

(2) Moneys collected under this chapter shall be deposited in the toxics control accounts under RCW 70.105D.070.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. [1989 c 2 § 10 (Initiative Measure No. 97, approved November 8, 1988).]

**82.21.040 Exemptions.** The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(6) Any persons possessing a hazardous substance where such possession first occurred before March 1, 1989. [1989 c 2 § 11 (Initiative Measure No. 97, approved November 8, 1988).]

**82.21.050 Credits.** (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) Which is imposed on the act or privilege of possessing hazardous substances, and which is not generally imposed on other activities or privileges; and

(ii) Which is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof. [1989 c 2 § 12 (Initiative Measure No. 97, approved November 8, 1988).]

**82.21.900 Short title—1989 c 2.** See RCW 70.105D.900.

**82.21.905 Captions—1989 c 2.** See RCW 70.105D.905.

**82.21.910 Construction—1989 c 2.** See RCW 70.105D.910.

**82.21.915 Existing agreements—1989 c 2.** See RCW 70.105D.915.

**82.21.920 Effective date—1989 c 2.** See RCW 70.105D.920.

(2008 Ed.)

**82.21.921 Severability—1989 c 2.** See RCW 70.105D.921.

**Chapter 82.23A RCW**

**PETROLEUM PRODUCTS—UNDERGROUND STORAGE TANK PROGRAM FUNDING**

(Formerly: Tax on petroleum products)

Sections

- 82.23A.005 Intent.
- 82.23A.010 Definitions.
- 82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs.
- 82.23A.030 Exemptions from tax.
- 82.23A.040 Credit authorized.
- 82.23A.900 Effective date—1989 c 383.
- 82.23A.901 Severability—1989 c 383.
- 82.23A.902 Expiration date—1996 c 88.

**82.23A.005 Intent. (Expires June 1, 2013.)** It is the intent of this chapter to impose a tax only once for each petroleum product possessed in this state and to tax the first possession of all petroleum products. This chapter is not intended to exempt any person from tax liability under any other law. [1989 c 383 § 14.]

**82.23A.010 Definitions. (Expires June 1, 2013.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.

(2) "Possession" means the control of a petroleum product located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.

(3) "Previously taxed petroleum product" means a petroleum product in respect to which a tax has been paid under this chapter and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(4) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar products of like quality and character, in accordance with rules of the department.

(5) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [2004 c 203 § 4; 1989 c 383 § 15.]

**82.23A.020 Tax imposed—Revenue to be used for underground petroleum storage tank programs. (Expires June 1, 2013.)** (1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be fifty one-hundredths of one percent multiplied by the wholesale value of the petroleum product.

(2) Moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70.148.020.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70.148.020 (2) and (3). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars. [1991 c 4 § 8; 1990 c 64 § 12; 1989 c 383 § 16.]

**Severability—1991 c 4:** See note following RCW 70.148.120.

**82.23A.030 Exemptions from tax. (Expires June 1, 2013.)** The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed petroleum product. If tax due under this chapter has not been paid with respect to a petroleum product, the department may collect the tax from any person who has had possession of the petroleum product. If the tax is paid by any person other than the first person having taxable possession of a petroleum product, the amount of tax paid shall constitute a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a petroleum product by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Persons or activities which the state is prohibited from taxing under the United States Constitution.

(4) Any persons possessing a petroleum product where such possession first occurred before July 1, 1989.

(5) Any possession of (a) natural gas, (b) petroleum coke, or (c) liquid fuel or fuel gas used in petroleum processing.

(6) Any possession of petroleum products that are exported for use or sale outside this state as fuel.

(7) Any possession of petroleum products packaged for sale to ultimate consumers. [1989 c 383 § 17.]

**82.23A.040 Credit authorized. (Expires June 1, 2013.)** (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter

with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any petroleum product tax paid to another state with respect to the same petroleum product. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that petroleum product. For the purpose of this subsection:

(a) "Petroleum product tax" means a tax:

(i) That is imposed on the act or privilege of possessing petroleum products, and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the value of the petroleum product, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1989 c 383 § 18.]

**82.23A.900 Effective date—1989 c 383. (Expires June 1, 2013.)** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except RCW 82.23A.005 through 82.23A.040 shall take effect July 1, 1989. [1989 c 383 § 22.]

**82.23A.901 Severability—1989 c 383.** See RCW 70.148.901.

**82.23A.902 Expiration date—1996 c 88.** This chapter shall expire on June 1, 2013, coinciding with the expiration of chapter 70.148 RCW. [2006 c 276 § 5; 2000 c 16 § 3; 1996 c 88 § 3.]

## Chapter 82.23B RCW OIL SPILL RESPONSE TAX

### Sections

82.23B.010	Definitions.
82.23B.020	Oil spill response tax—Oil spill administration tax.
82.23B.030	Exemption.
82.23B.040	Credit—Crude oil or petroleum exported or sold for export.
82.23B.045	Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item.
82.23B.050	Rules.
82.23B.060	Imposition of taxes.
82.23B.900	Effective dates—Severability—1991 c 200.
82.23B.901	Savings—1992 c 73.
82.23B.902	Effective dates—1992 c 73.

**82.23B.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Barrel" means a unit of measurement of volume equal to forty-two United States gallons of crude oil or petroleum product.

(2) "Crude oil" means any naturally occurring liquid hydrocarbons at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline.

(3) "Department" means the department of revenue.

(4) "Marine terminal" means a facility of any kind, other than a waterborne vessel, that is used for transferring crude oil or petroleum products to or from a waterborne vessel or barge.

(5) "Navigable waters" means those waters of the state and their adjoining shorelines that are subject to the ebb and flow of the tide, including the Columbia and Snake rivers.

(6) "Person" has the meaning provided in RCW 82.04.030.

(7) "Petroleum product" means any liquid hydrocarbons at atmospheric temperature and pressure that are the product of the fractionation, distillation, or other refining or processing of crude oil, and that are used as, useable as, or may be refined as a fuel or fuel blendstock, including but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and fuels containing a blend of alcohol and petroleum.

(8) "Taxpayer" means the person owning crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal in this state from a waterborne vessel or barge and who is liable for the taxes imposed by this chapter.

(9) "Waterborne vessel or barge" means any ship, barge, or other watercraft capable of travelling on the navigable waters of this state and capable of transporting any crude oil or petroleum product in quantities of ten thousand gallons or more for purposes other than providing fuel for its motor or engine. [1992 c 73 § 6; 1991 c 200 § 801.]

**Severability—1992 c 73:** See RCW 90.56.905.

**82.23B.020 Oil spill response tax—Oil spill administration tax.** (1) An oil spill response tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of one cent per barrel of crude oil or petroleum product received.

(2) In addition to the tax imposed in subsection (1) of this section, an oil spill administration tax is imposed on the privilege of receiving crude oil or petroleum products at a marine terminal within this state from a waterborne vessel or barge operating on the navigable waters of this state. The tax imposed in this section is levied upon the owner of the crude oil or petroleum products immediately after receipt of the same into the storage tanks of a marine terminal from a waterborne vessel or barge at the rate of four cents per barrel of crude oil or petroleum product.

(3) The taxes imposed by this chapter shall be collected by the marine terminal operator from the taxpayer. If any person charged with collecting the taxes fails to bill the taxpayer for the taxes, or in the alternative has not notified the taxpayer in writing of the imposition of the taxes, or having collected the taxes, fails to pay them to the department in the manner prescribed by this chapter, whether such failure is the result of the person's own acts or the result of acts or conditions beyond the person's control, he or she shall, nevertheless, be personally liable to the state for the amount of the taxes. Payment of the taxes by the owner to a marine terminal

operator shall relieve the owner from further liability for the taxes.

(4) Taxes collected under this chapter shall be held in trust until paid to the department. Any person collecting the taxes who appropriates or converts the taxes collected shall be guilty of a gross misdemeanor if the money required to be collected is not available for payment on the date payment is due. The taxes required by this chapter to be collected shall be stated separately from other charges made by the marine terminal operator in any invoice or other statement of account provided to the taxpayer.

(5) If a taxpayer fails to pay the taxes imposed by this chapter to the person charged with collection of the taxes and the person charged with collection fails to pay the taxes to the department, the department may, in its discretion, proceed directly against the taxpayer for collection of the taxes.

(6) The taxes shall be due from the marine terminal operator, along with reports and returns on forms prescribed by the department, within twenty-five days after the end of the month in which the taxable activity occurs.

(7) The amount of taxes, until paid by the taxpayer to the marine terminal operator or to the department, shall constitute a debt from the taxpayer to the marine terminal operator. Any person required to collect the taxes under this chapter who, with intent to violate the provisions of this chapter, fails or refuses to do so as required and any taxpayer who refuses to pay any taxes due under this chapter, shall be guilty of a misdemeanor as provided in chapter 9A.20 RCW.

(8) Upon prior approval of the department, the taxpayer may pay the taxes imposed by this chapter directly to the department. The department shall give its approval for direct payment under this section whenever it appears, in the department's judgment, that direct payment will enhance the administration of the taxes imposed under this chapter. The department shall provide by rule for the issuance of a direct payment certificate to any taxpayer qualifying for direct payment of the taxes. Good faith acceptance of a direct payment certificate by a terminal operator shall relieve the marine terminal operator from any liability for the collection or payment of the taxes imposed under this chapter.

(9) All receipts from the tax imposed in subsection (1) of this section shall be deposited into the state oil spill response account. All receipts from the tax imposed in subsection (2) of this section shall be deposited into the oil spill prevention account.

(10) Within forty-five days after the end of each calendar quarter, the office of financial management shall determine the balance of the oil spill response account as of the last day of that calendar quarter. Balance determinations by the office of financial management under this section are final and shall not be used to challenge the validity of any tax imposed under this chapter. The office of financial management shall promptly notify the departments of revenue and ecology of the account balance once a determination is made. For each subsequent calendar quarter, the tax imposed by subsection (1) of this section shall be imposed during the entire calendar quarter unless:

(a) Tax was imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than nine million dollars; or

(b) Tax was not imposed under subsection (1) of this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than eight million dollars. [2006 c 256 § 2; 2003 1st sp.s. c 13 § 9; 2000 c 69 § 25; 1999 sp.s. c 7 § 1; 1997 c 449 § 2; 1995 c 399 § 214; 1992 c 73 § 7; 1991 c 200 § 802.]

**Effective dates—Application—Savings—2006 c 256:** See notes following RCW 82.32.045.

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**Effective date—1999 sp.s. c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 7, 1999]." [1999 sp.s. c 7 § 4.]

**Effective date—1997 c 449:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 449 § 6.]

**Severability—1992 c 73:** See RCW 90.56.905.

**82.23B.030 Exemption.** The taxes imposed under this chapter shall only apply to the first receipt of crude oil or petroleum products at a marine terminal in this state and not to the later transporting and subsequent receipt of the same oil or petroleum product, whether in the form originally received at a marine terminal in this state or after refining or other processing. [1992 c 73 § 9; 1991 c 200 § 803.]

**Severability—1992 c 73:** See RCW 90.56.905.

**82.23B.040 Credit—Crude oil or petroleum exported or sold for export.** Credit shall be allowed against the taxes imposed under this chapter for any crude oil or petroleum products received at a marine terminal and subsequently exported from or sold for export from the state. [1992 c 73 § 10; 1991 c 200 § 804.]

**Severability—1992 c 73:** See RCW 90.56.905.

**82.23B.045 Refund or credit—Petroleum products used by consumers for nonfuel purpose or used in manufacture of nonfuel item.** (1) Any person having paid the tax imposed by this chapter who uses petroleum products as a consumer for a purpose other than as a fuel may claim refund or credit against the tax imposed under this chapter. For this purpose, the term consumer shall be defined as provided in RCW 82.04.190.

(2) Any person having paid the tax imposed by this chapter who uses petroleum products as a component or ingredient in the manufacture of an item which is not a fuel may claim a refund or credit against the tax imposed by this chapter.

(3) The amount of refund or credit claimed under this section may not exceed the amount of tax paid by the person making such claim on the petroleum products so consumed or used. The refund or credit allowed by this section shall be claimed on such forms and subject to such requirements as the department may prescribe by rule. [1992 c 73 § 8.]

**Severability—1992 c 73:** See RCW 90.56.905.

**82.23B.050 Rules.** The department shall adopt such rules as may be necessary to enforce and administer the provisions of this chapter. Chapter 82.32 RCW applies to the

administration, collection, and enforcement of the taxes levied under this chapter. [1991 c 200 § 808.]

**82.23B.060 Imposition of taxes.** The taxes imposed in this chapter shall take effect October 1, 1991. [1991 c 200 § 809.]

**82.23B.900 Effective dates—Severability—1991 c 200.** See RCW 90.56.901 and 90.56.904.

**82.23B.901 Savings—1992 c 73.** The amendment of RCW 82.23B.010, 82.23B.020, 82.23B.030, and 82.23B.040 by chapter 73, Laws of 1992, shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections or under any rule or order adopted under the sections, nor as affecting any proceeding instituted under the sections. [1992 c 73 § 44.]

**82.23B.902 Effective dates—1992 c 73.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 26, 1992], except sections 6, 7, 9, and 10 of this act shall take effect October 1, 1992. [1992 c 73 § 46.]

## Chapter 82.24 RCW TAX ON CIGARETTES

### Sections

82.24.010	Definitions.
82.24.020	Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.
82.24.026	Additional tax imposed—Deposit into accounts.
82.24.027	Additional tax imposed—Rate—Where deposited.
82.24.028	Additional tax imposed—Rate—Health services account.
82.24.030	Stamps.
82.24.035	Circumstances when no stamp may be affixed—Violation of consumer protection act.
82.24.040	Duty of wholesaler.
82.24.050	Retailer—Possession of unstamped cigarettes.
82.24.060	Stamps—How affixed.
82.24.080	Legislative intent—Taxable event—Tax liability.
82.24.090	Records—Preservation—Reports.
82.24.100	Forgery or counterfeiting of stamps—Penalty.
82.24.110	Other offenses—Penalties.
82.24.120	Violations—Penalties and interest.
82.24.130	Seizure and forfeiture.
82.24.135	Forfeiture procedure.
82.24.140	Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.
82.24.145	Forfeited property—Retention, sale, or destruction—Use of sale proceeds.
82.24.180	Seized property may be returned—Penalty, interest.
82.24.190	Search and seizure.
82.24.210	Redemption of stamps.
82.24.230	Administration.
82.24.235	Rules.
82.24.250	Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.
82.24.260	Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.
82.24.280	Liability from tax increase—Interest and penalties on unpaid tax—Administration.
82.24.290	Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.
82.24.295	Exceptions—Sales by Indian retailer under cigarette tax contract.
82.24.300	Exceptions—Puyallup Tribe of Indians.
82.24.302	Exceptions—Sales by tribal retailers—Yakama Nation.
82.24.500	Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty.

82.24.510	Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.
82.24.520	Wholesaler's license—Fee—Display of license—Bond.
82.24.530	Retailer's license—Vending machines.
82.24.540	Licensee to operate within scope of license—Penalty.
82.24.550	Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.
82.24.551	Enforcement—Appointment of officers of liquor control board.
82.24.552	Enforcement—Administration—Inspection of books and records.
82.24.560	Fees and penalties credited to general fund.
82.24.570	Counterfeit cigarette offenses—Penalties.
82.24.900	Construction—1961 c 15.

*Minors: Chapter 70.155 RCW.*

**82.24.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Board" means the liquor control board.

(2) "Cigarette" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and irrespective of the tobacco being flavored, adulterated, or mixed with any other ingredient, where such roll has a wrapper or cover made of paper or any material, except where such wrapper is wholly or in the greater part made of natural leaf tobacco in its natural state.

(3) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian wholesaler or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country. For purposes of this chapter "Indian country" is defined in the manner set forth in 18 U.S.C. Sec. 1151.

(4) "Precollection obligation" means the obligation of a seller otherwise exempt from the tax imposed by this chapter to collect the tax from that seller's buyer.

(5) "Retailer" means every person, other than a wholesaler, who purchases, sells, offers for sale or distributes any one or more of the articles taxed herein, irrespective of quantity or amount, or the number of sales, and all persons operating under a retailer's registration certificate.

(6) "Retail selling price" means the ordinary, customary or usual price paid by the consumer for each package of cigarettes, less the tax levied by this chapter and less any similar tax levied by this state.

(7) "Stamp" means the stamp or stamps by use of which the tax levy under this chapter is paid or identification is made of those cigarettes with respect to which no tax is imposed.

(8) "Wholesaler" means every person who purchases, sells, or distributes any one or more of the articles taxed herein to retailers for the purpose of resale only.

(9) The meaning attributed, in chapter 82.04 RCW, to the words "person," "sale," "business" and "successor" applies equally in this chapter. [1997 c 420 § 3; 1995 c 278 § 1; 1961 c 15 § 82.24.010. Prior: 1959 c 270 § 9; 1949 c 228 § 14; 1935 c 180 § 83; Rem. Supp. 1949 § 8370-83.]

**Effective date—1995 c 278:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 278 § 17.]

**82.24.020 Tax imposed—Additional taxes for specific purposes—Absorption of tax—Possession defined.**

(2008 Ed.)

(1) There is levied and there shall be collected as provided in this chapter, a tax upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to one and fifteen one-hundredths cents per cigarette.

(2) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to five hundred twenty-five one-thousandths of a cent per cigarette. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3) An additional tax is imposed upon the sale, use, consumption, handling, possession, or distribution of all cigarettes, in an amount equal to two and five one-hundredths cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month.

(4) Wholesalers subject to the payment of this tax may, if they wish, absorb five one-hundredths cents per cigarette of the tax and not pass it on to purchasers without being in violation of this section or any other act relating to the sale or taxation of cigarettes.

(5) For purposes of this chapter, "possession" shall mean both (a) physical possession by the purchaser and, (b) when cigarettes are being transported to or held for the purchaser or his or her designee by a person other than the purchaser, constructive possession by the purchaser or his or her designee, which constructive possession shall be deemed to occur at the location of the cigarettes being so transported or held.

(6) In accordance with federal law and rules prescribed by the department, an enrolled member of a federally recognized Indian tribe may purchase cigarettes from an Indian tribal organization under the jurisdiction of the member's tribe for the member's own use exempt from the applicable taxes imposed by this chapter. Except as provided in subsection (7) of this section, any person, who purchases cigarettes from an Indian tribal organization and who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place, is not exempt from the applicable taxes imposed by this chapter.

(7) If the state enters into a cigarette tax contract or agreement with a federally recognized Indian tribe under chapter 43.06 RCW, the terms of the contract or agreement shall take precedence over any conflicting provisions of this chapter while the contract or agreement is in effect. [2008 c 226 § 3; 2008 c 86 § 301; 2003 c 114 § 1; 1994 sp.s. c 7 § 904 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 307; 1989 c 271 § 504; 1987 c 80 § 1; 1983 2nd ex.s. c 3 § 15; 1982 1st ex.s. c 35 § 8; 1981 c 172 § 6; 1972 ex.s. c 157 § 3; 1971 ex.s. c 299 § 13; 1965 ex.s. c 173 § 23; 1961 ex.s. c 24 § 3; 1961 c 15 § 82.24.020. Prior: 1959 c 270 § 2; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**Reviser's note:** This section was amended by 2008 c 86 § 301 and by 2008 c 226 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Finding—Intent—2008 c 226:** See note following RCW 82.24.080.

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Effective dates—1989 c 271:** See note following RCW 66.28.200.

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Severability—1972 ex.s. c 157:** "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1972 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 157 § 8.]

**82.24.026 Additional tax imposed—Deposit into accounts.** (1) In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette.

(2) The revenue collected under this section shall be deposited as follows:

(a) 21.7 percent shall be deposited into the health services account.

(b) 2.8 percent shall be deposited into the general fund.

(c) 2.3 percent shall be deposited into the violence reduction and drug enforcement account under RCW 69.50.520.

(d) 1.7 percent shall be deposited into the water quality account under RCW 70.146.030.

(e) The remainder shall be deposited into the education legacy trust account. [2008 c 86 § 302; 2005 c 514 § 1102.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.24.027 Additional tax imposed—Rate—Where deposited.** (1) There is hereby levied and there shall be collected by the department of revenue from the persons mentioned in and in the manner provided by this chapter, an additional tax upon the sale, use, consumption, handling, possession, or distribution of cigarettes in an amount equal to four-tenths of a cent per cigarette.

(2) The moneys collected under this section shall be deposited as follows:

(a) For the period beginning July 1, 2001, through June 30, 2021, into the water quality account under RCW 70.146.030; and

(b) For the period beginning July 1, 2021, in the general fund. [2008 c 86 § 303; 1999 c 309 § 925; 1986 c 3 § 12.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Effective dates—1986 c 3:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately except sections 12 through 15 of this act shall take effect April 1, 1986." [1986 c 3 § 18.]

**Severability—1986 c 3:** See RCW 70.146.900.

**82.24.028 Additional tax imposed—Rate—Health services account.** In addition to the tax imposed upon the sale, use, consumption, handling, possession, or distribution of cigarettes set forth in RCW 82.24.020, there is imposed a tax in an amount equal to three cents per cigarette. All revenues collected during any month from this additional tax shall be deposited in the health services account created under RCW 43.72.900 by the twenty-fifth day of the following month. [2008 c 86 § 304; 2002 c 2 § 3 (Initiative Measure No. 773, approved November 6, 2001).]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Intent—2002 c 2 (Initiative Measure No. 773):** See RCW 70.47.002.

**82.24.030 Stamps.** (1) In order to enforce collection of the tax hereby levied, the department of revenue shall design and have printed stamps of such size and denominations as may be determined by the department. The stamps must be affixed on the smallest container or package that will be handled, sold, used, consumed, or distributed, to permit the department to readily ascertain by inspection, whether or not such tax has been paid or whether an exemption from the tax applies.

(2) Except as otherwise provided in this chapter, only a wholesaler shall cause to be affixed on every package of cigarettes, stamps of an amount equaling the tax due thereon or stamps identifying the cigarettes as exempt before he or she sells, offers for sale, uses, consumes, handles, removes, or otherwise disturbs and distributes the same: PROVIDED, That where it is established to the satisfaction of the department that it is impractical to affix such stamps to the smallest container or package, the department may authorize the affixing of stamps of appropriate denomination to a large container or package.

(3) Only wholesalers may purchase or obtain cigarette stamps. Wholesalers shall not sell or provide stamps to any other wholesaler or person.

(4) Each roll of stamps, or group of sheets, shall have a separate serial number, which shall be legible at the point of sale. The department of revenue shall keep records of which wholesaler purchases each roll or group of sheets. If the department of revenue permits wholesalers to purchase partial rolls or sheets, in no case may stamps bearing the same serial number be sold to more than one wholesaler. The remainder of the roll or sheet, if any, shall either be retained for later purchases by the same wholesaler or destroyed.

(5) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 2; 1995 c 278 § 2; 1990 c 216 § 1; 1975 1st ex.s. c 278 § 61; 1961 c 15 § 82.24.030. Prior: 1959 c 270 § 3; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.035 Circumstances when no stamp may be affixed—Violation of consumer protection act.** (1) No stamp may be affixed to, or made upon, any container or package of cigarettes if:

(a) The container or package differs in any respect with the requirements of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) for the placement of labels, warnings, or any other information upon a package of cigarettes that is to be sold within the United States;

(b) The container or package has been imported into the United States after January 1, 2000, in violation of 26 U.S.C. Sec. 5754;

(c) The container or package, including a container of individually stamped containers or packages, is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S.," or similar wording indicating that the manufacturer did not intend that the product be sold in the United States; or

(d) The container or package has been altered by adding or deleting the wording, labels, or warnings described in (a) or (c) of this subsection.

(2) In addition to the penalty and forfeiture provisions otherwise provided for in this chapter, a violation of this section is a deceptive act or practice under the consumer protection act, chapter 19.86 RCW. [1999 c 193 § 5.]

**Intent—Finding—1999 c 193:** "(1) Cigarette smoking presents serious public health concerns to the state and to the citizens of the state. The surgeon general has determined that smoking causes lung cancer, heart disease, and other serious diseases and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(2) It is the policy of the state that consumers be adequately informed about the adverse health effects of cigarette smoking by including warning notices on each package of cigarettes.

(3) It is the policy of the state that manufacturers and importers of cigarettes not make any material misrepresentation of fact regarding the health consequences of using cigarettes, including compliance with applicable federal laws, regulations, and policies.

(4) It is the intent of the legislature to align state law with federal laws, regulations, and policies relating to the manufacture, importation, and marketing of cigarettes, and in particular, the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1331 et seq.) and 26 U.S.C. Sec. 5754.

(5) The legislature finds that consumers and retailers purchasing cigarettes are entitled to be fully informed about any adverse health effects of cigarette smoking by inclusion of warning notices on each package of cigarettes and to be assured through appropriate enforcement measures that cigarettes they purchase were manufactured for consumption within the United States." [1999 c 193 § 1.]

**Severability—1999 c 193:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 193 § 6.]

**Effective date—1999 c 193:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 5, 1999]." [1999 c 193 § 7.]

**82.24.040 Duty of wholesaler.** (1) Except as authorized by this chapter, no person other than a licensed wholesaler shall possess in this state unstamped cigarettes.

(2) No wholesaler in this state may possess within this state unstamped cigarettes except that:

(a) Every wholesaler in the state who is licensed under Washington state law may possess within this state unstamped cigarettes for such period of time after receipt as is reasonably necessary to affix the stamps as required; and

(b) Any wholesaler in the state who is licensed under Washington state law and who furnishes a surety bond in a sum satisfactory to the department, shall be permitted to set aside, without affixing the stamps required by this chapter, such part of the wholesaler's stock as may be necessary for the conduct of the wholesaler's business in making sales to persons in another state or foreign country or to instrumentalities of the federal government. Such unstamped stock shall be kept separate and apart from stamped stock.

(3) Every wholesaler licensed under Washington state law shall, at the time of shipping or delivering any of the articles taxed herein to a point outside of this state or to a federal instrumentality, make a true duplicate invoice of the same which shall show full and complete details of the sale or delivery, whether or not stamps were affixed thereto, and shall transmit such true duplicate invoice to the department, at Olympia, not later than the fifteenth day of the following calendar month. For failure to comply with the requirements of this section, the department may revoke the permission granted to the taxpayer to maintain a stock of goods to which the stamps required by this chapter have not been affixed.

(4) Unstamped cigarettes possessed by a wholesaler under subsection (2) of this section that are transferred by the wholesaler to another facility of the wholesaler within the borders of Washington shall be transferred in compliance with RCW 82.24.250.

(5) Every wholesaler who is licensed by Washington state law shall sell cigarettes to retailers located in Washington only if the retailer has a current cigarette retailer's license or is an Indian tribal organization authorized to possess untaxed cigarettes under this chapter and the rules adopted by the department.

(6) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW. [2003 c 114 § 3; 1995 c 278 § 3; 1990 c 216 § 2; 1969 ex.s. c 214 § 1; 1961 c 15 § 82.24.040. Prior: 1959 c 270 § 4; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.050 Retailer—Possession of unstamped cigarettes.** (1) No retailer in this state may possess unstamped cigarettes within this state unless the person is also a wholesaler in possession of the cigarettes in accordance with RCW 82.24.040.

(2) A retailer may obtain cigarettes only from a wholesaler subject to the provisions of this chapter. [2003 c 114 § 4; 1995 c 278 § 4; 1990 c 216 § 3; 1969 ex.s. c 214 § 2; 1961 c 15 § 82.24.050. Prior: 1959 c 270 § 5; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.060 Stamps—How affixed.** Stamps shall be affixed in such manner that they cannot be removed from the package or container without being mutilated or destroyed, which stamps so affixed shall be evidence of the tax imposed.

In the case of cigarettes contained in individual packages, as distinguished from cartons or larger units, the stamps shall be affixed securely on each individual package. [1961 c 15 § 82.24.060. Prior: 1959 c 270 § 6; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**82.24.080 Legislative intent—Taxable event—Tax liability.** (1) It is the intent and purpose of this chapter to levy a tax on all of the articles taxed under this chapter, sold, used, consumed, handled, possessed, or distributed within this state and to collect the tax from the person who first sells, uses, consumes, handles, possesses (either physically or constructively, in accordance with RCW 82.24.020) or distributes them in the state. It is further the intent and purpose of this chapter that whenever any of the articles taxed under this chapter is given away for advertising or any other purpose, it shall be taxed in the same manner as if it were sold, used, consumed, handled, possessed, or distributed in this state.

(2) It is also the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by subsection (1) of this section but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. A precollection obligation may not be imposed upon a person exempt from the tax who sells, distributes, or transfers possession of cigarettes to another person who, by law, is exempt from the tax imposed by this chapter or upon whom the obligation for collection of the tax may not be imposed. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event.

(3) In the event of an increase in the rate of the tax imposed under this chapter, it is the intent of the legislature that the first person who sells, uses, consumes, handles, possesses, or distributes previously taxed articles after the effective date of the rate increase shall be liable for the additional tax, or its precollection obligation as required by this chapter, represented by the rate increase. The failure to pay the additional tax with respect to the first taxable event after the effective date of a rate increase shall not prevent tax liability for the additional tax from arising from a subsequent taxable event.

(4) It is the intent of the legislature that, in the absence of a cigarette tax contract or agreement under chapter 43.06 RCW, applicable taxes imposed by this chapter be collected on cigarettes sold by an Indian tribal organization to any person who is not an enrolled member of the federally recognized Indian tribe within whose jurisdiction the sale takes place consistent with collection of these taxes generally within the state. The legislature finds that applicable collection and enforcement measures under this chapter are reasonably necessary to prevent fraudulent transactions and place a minimal burden on the Indian tribal organization, pursuant to

the United States supreme court's decision in *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980). [2008 c 226 § 2; 1995 c 278 § 5; 1993 c 492 § 308; 1972 ex.s. c 157 § 4; 1961 c 15 § 82.24.080. Prior: 1959 c 270 § 8; prior: 1949 c 228 § 13, part; 1943 c 156 § 11, part; 1941 c 178 § 13, part; 1939 c 225 § 23, part; 1935 c 180 § 82, part; Rem. Supp. 1949 § 8370-82, part.]

**Finding—Intent—2008 c 226:** "The legislature finds that under Article III of the treaty with the Yakamas of 1855, members of the Yakama Nation have the right to travel upon all public highways. It is the legislature's intent to honor the treaty rights of the Yakama Nation, while protecting the state's interest in collecting and enforcing its cigarette taxes." [2008 c 226 § 1.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Findings—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

**82.24.090 Records—Preservation—Reports.** (1) Every wholesaler or retailer subject to the provisions of this chapter shall keep and preserve for a period of five years an accurate set of records. These records must show all transactions relating to the purchase and sale of any of the articles taxed under this chapter and show all physical inventories performed on those articles, all invoices, and a record of all stamps purchased. All such records and all stock of taxable articles on hand shall be open to inspection at all reasonable times by the department of revenue or its duly authorized agent.

(2) All wholesalers shall within fifteen days after the first day of each month file with the department of revenue a report of all drop shipment sales made by them to retailers within this state during the preceding month. The report shall show the name and address of the retailer to whom the cigarettes were sold, the kind and quantity, and the date of delivery thereof. [1995 c 278 § 6; 1975 1st ex.s. c 278 § 62; 1961 c 15 § 82.24.090. Prior: 1941 c 178 § 14; 1939 c 225 § 24; 1935 c 180 § 84; Rem. Supp. 1941 § 8370-84.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.100 Forgery or counterfeiting of stamps—Penalty.** To forge or counterfeit any stamp of the kind herein provided is a felony. [1961 c 15 § 82.24.100. Prior: 1935 c 180 § 85; RRS § 8370-85.]

**82.24.110 Other offenses—Penalties.** (1) Each of the following acts is a gross misdemeanor and punishable as such:

(a) To sell, except as a licensed wholesaler engaged in interstate commerce as to the article being taxed herein, without the stamp first being affixed;

(b) To sell in Washington as a wholesaler to a retailer who does not possess and is required to possess a current cigarette retailer's license;

(c) To use or have in possession knowingly or intentionally any forged or counterfeit stamps;

(d) For any person other than the department of revenue or its duly authorized agent to sell any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(e) For any person other than the department of revenue, its duly authorized agent, or a licensed wholesaler who has lawfully purchased or obtained them to possess any stamps not affixed to any of the articles taxed herein whether such stamps are genuine or counterfeit;

(f) To violate any of the provisions of this chapter;

(g) To violate any lawful rule made and published by the department of revenue or the board;

(h) To use any stamps more than once;

(i) To refuse to allow the department of revenue or its duly authorized agent, on demand, to make full inspection of any place of business where any of the articles herein taxed are sold or otherwise hinder or prevent such inspection;

(j) For any retailer to have in possession in any place of business any of the articles herein taxed, unless the same have the proper stamps attached;

(k) For any person to make, use, or present or exhibit to the department of revenue or its duly authorized agent, any invoice for any of the articles herein taxed which bears an untrue date or falsely states the nature or quantity of the goods therein invoiced;

(l) For any wholesaler or retailer or his or her agents or employees to fail to produce on demand of the department of revenue all invoices of all the articles herein taxed or stamps bought by him or her or received in his or her place of business within five years prior to such demand unless he or she can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond his or her control;

(m) For any person to receive in this state any shipment of any of the articles taxed herein, when the same are not stamped, for the purpose of avoiding payment of tax. It is presumed that persons other than dealers who purchase or receive shipments of unstamped cigarettes do so to avoid payment of the tax imposed herein;

(n) For any person to possess or transport in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless:

(i) Notice of the possession or transportation has been given as required by RCW 82.24.250; (ii) the person transporting the cigarettes has in actual possession invoices or delivery tickets which show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by any person in this state who is authorized by this chapter to possess unstamped cigarettes in this state;

(o) For any person to possess or receive in this state a quantity of ten thousand cigarettes or less unless the proper stamps required by this chapter have been affixed or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with the requirements of this chapter; and

(p) To possess, sell, distribute, purchase, receive, ship, or transport within this state any container or package of cigarettes that does not comply with this chapter.

(2) It is unlawful for any person knowingly or intentionally to possess or to:

(a) Transport in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless: (i) Proper notice as required by RCW 82.24.250 has been given; (ii) the person transporting the cigarettes actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported; and (iii) the cigarettes are consigned to or purchased by a person in this state who is authorized by this chapter to possess unstamped cigarettes in this state; or

(b) Receive in this state a quantity in excess of ten thousand cigarettes unless the proper stamps required by this chapter are affixed thereto or unless the person is authorized by this chapter to possess unstamped cigarettes in this state and is in compliance with this chapter.

Violation of this subsection (2) shall be punished as a class C felony under Title 9A RCW.

(3) All agents, employees, and others who aid, abet, or otherwise participate in any way in the violation of the provisions of this chapter or in any of the offenses described in this chapter shall be guilty and punishable as principals, to the same extent as any wholesaler or retailer or any other person violating this chapter.

(4) For purposes of this section, "person authorized by this chapter to possess unstamped cigarettes in this state" has the same meaning as in RCW 82.24.250. [2008 c 226 § 4; 2003 c 114 § 5; 1999 c 193 § 2; 1997 c 420 § 4; 1995 c 278 § 7; 1990 c 216 § 4; 1987 c 496 § 1; 1975 1st ex.s. c 278 § 63; 1961 c 15 § 82.24.110. Prior: 1941 c 178 § 15; 1935 c 180 § 86; Rem. Supp. 1941 § 8370-86.]

**Finding—Intent—2008 c 226:** See note following RCW 82.24.080.

**Intent—Finding—Severability—Effective date—1999 c 193:** See notes following RCW 82.24.035.

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.120 Violations—Penalties and interest.** (1) If any person, subject to the provisions of this chapter or any rules adopted by the department of revenue under authority hereof, is found to have failed to affix the stamps required, or to have them affixed as herein provided, or to pay any tax due hereunder, or to have violated any of the provisions of this chapter or rules adopted by the department of revenue in the administration hereof, there shall be assessed and collected from such person, in addition to any tax that may be found due, a remedial penalty equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, plus interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and upon notice mailed to the last known address of the person or provided electronically as provided in RCW 82.32.135. The amount shall become due and payable in thirty days from the date of the notice. If the amount remains unpaid, the department or its duly authorized agent may make immediate demand upon such person for the payment of all such taxes, penalties, and interest.

(2) The department, for good reason shown, may waive or cancel all or any part of penalties imposed, but the taxpayer must pay all taxes due and interest thereon, at the rate

as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) The keeping of any unstamped articles coming within the provisions of this chapter shall be prima facie evidence of intent to violate the provisions of this chapter.

(4) This section does not apply to taxes or tax increases due under RCW 82.24.280. [2007 c 111 § 102; 2006 c 14 § 6; 1996 c 149 § 7; 1995 c 278 § 8; 1990 c 267 § 1; 1975 1st ex.s. c 278 § 64; 1961 c 15 § 82.24.120. Prior: 1949 c 228 § 15; 1939 c 225 § 25; 1935 c 180 § 87; Rem. Supp. 1949 § 8370-87.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Effective date—1990 c 267:** "This act shall take effect January 1, 1991." [1990 c 267 § 3.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.130 Seizure and forfeiture.** (1) The following are subject to seizure and forfeiture:

(a) Subject to RCW 82.24.250, any articles taxed in this chapter that are found at any point within this state, which articles are held, owned, or possessed by any person, and that do not have the stamps affixed to the packages or containers; any container or package of cigarettes possessed or held for sale that does not comply with this chapter; and any container or package of cigarettes that is manufactured, sold, or possessed in violation of RCW 82.24.570.

(b) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) of this subsection, except:

(i) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the cigarettes transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(ii) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner thereof establishes to have been committed or omitted without his or her knowledge or consent;

(iii) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(c) Any vending machine used for the purpose of violating the provisions of this chapter.

(d) Any cigarettes that are stamped, sold, imported, or offered or possessed for sale in this state in violation of RCW

70.158.030(3). For the purposes of this subsection (1)(d), "cigarettes" has the meaning as provided in RCW 70.158.020(3).

(e) All cigarettes sold, delivered, or attempted to be delivered in violation of RCW 70.155.105.

(2) Property subject to forfeiture under this chapter may be seized by any agent of the department authorized to collect taxes, any enforcement officer of the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, the board, or the law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(3) Notwithstanding the foregoing provisions of this section, articles taxed in this chapter which are in the possession of a wholesaler, licensed under Washington state law, for a period of time necessary to affix the stamps after receipt of the articles, shall not be considered contraband unless they are manufactured, sold, or possessed in violation of RCW 82.24.570. [2003 c 114 § 7; 2003 c 113 § 4; 2003 c 25 § 9; 1999 c 193 § 3; 1997 c 420 § 5; 1990 c 216 § 5; 1987 c 496 § 2; 1972 ex.s. c 157 § 5; 1961 c 15 § 82.24.130. Prior: 1941 c 178 § 16; 1935 c 180 § 88; Rem. Supp. 1941 § 8370-88.]

**Reviser's note:** This section was amended by 2003 c 25 § 9, 2003 c 113 § 4, and by 2003 c 114 § 7, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Conflict of law—Severability—Effective date—2003 c 25:** See RCW 70.158.900 and 70.158.901.

**Intent—Finding—Severability—Effective date—1999 c 193:** See notes following RCW 82.24.035.

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

**82.24.135 Forfeiture procedure.** In all cases of seizure of any property made subject to forfeiture under this chapter the department or the board shall proceed as follows:

(1) Forfeiture shall be deemed to have commenced by the seizure. Notice of seizure shall be given to the department or the board immediately if the seizure is made by someone other than an agent of the department or the board authorized to collect taxes.

(2) Upon notification or seizure by the department or the board or upon receipt of property subject to forfeiture under this chapter from any other person, the department or the board shall list and particularly describe the property seized in duplicate and have the property appraised by a qualified person not employed by the department or the board or acting as its agent. Listing and appraisal of the property shall be properly attested by the department or the board and the appraiser, who shall be allowed a reasonable appraisal fee. No appraisal is required if the property seized is judged by the department or the board to be less than one hundred dollars in value.

(3) The department or the board shall cause notice to be served within five days following the seizure or notification

to the department or the board of the seizure on the owner of the property seized, if known, on the person in charge thereof, and on any other person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. The department may also furnish notice electronically as provided in RCW 82.32.135. If service is by mail or notice is provided electronically as provided in RCW 82.32.135, the notice shall also be served by certified mail with return receipt requested. Electronic notification or service by mail shall be deemed complete upon mailing the notice, electronically sending the notice, or electronically notifying the person or persons entitled to the notice that the notice is available to be accessed by the person or persons, within the five-day period following the seizure or notification of the seizure to the department or the board.

(4) If no person notifies the department or the board in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the item seized shall be considered forfeited.

(5) If any person notifies the department or the board, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the director or the director's designee or the board or the board's designee, except that any person asserting a claim or right may bring an action for return of the seized items in the superior court of the county in which such property was seized, if the aggregate value of the article or articles involved is more than five hundred dollars. A hearing and any appeal therefrom shall be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The department or the board shall promptly return the article or articles to the claimant upon a determination that the claimant is the present lawful owner or is lawfully entitled to possession thereof of the items seized. [2007 c 111 § 103; 1998 c 53 § 1; 1987 c 496 § 3.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective date—1998 c 53:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 18, 1998]." [1998 c 53 § 2.]

#### **82.24.140 Forfeiture procedure—Seizures—Notice—Claimant's bond—Court proceedings.**

**Reviser's note:** RCW 82.24.140 was amended by 1987 c 202 § 243 without reference to its repeal by 1987 c 496 § 6. It has been decodified for publication purposes pursuant to RCW 1.12.025.

**82.24.145 Forfeited property—Retention, sale, or destruction—Use of sale proceeds.** When property is forfeited under this chapter the department may:

(1) Retain the property or any part thereof for official use or upon application by any law enforcement agency of this

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state, another state, or the District of Columbia, or of the United States for the exclusive use of enforcing the provisions of this chapter or the laws of any other state or the District of Columbia or of the United States.

(2) Sell the property at public auction to the highest bidder after due advertisement, but the department before delivering any of the goods so seized shall require the person to whom the property is sold to affix the proper amount of stamps. The proceeds of the sale and all moneys forfeited under this chapter shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all moneys shall be deposited in the general fund of the state. Proper expenses of investigation includes costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, cigarettes seized for a violation of RCW 82.24.035 or 70.158.030(3) shall be destroyed. For the purposes of this subsection (3) "cigarettes" has the same meaning as provided in RCW 70.158.020(3). [2003 c 25 § 10; 1999 c 193 § 4; 1987 c 496 § 4.]

**Conflict of law—Severability—Effective date—2003 c 25:** See RCW 70.158.900 and 70.158.901.

**Intent—Finding—Severability—Effective date—1999 c 193:** See notes following RCW 82.24.035.

**82.24.180 Seized property may be returned—Penalty, interest.** (1) The department of revenue may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions thereof.

(2) When any property is returned under this section, the department may return such goods to the parties from whom they were seized if and when such parties affix the proper amount of stamps thereto, and pay to the department as penalty an amount equal to the greater of ten dollars per package of unstamped cigarettes or two hundred fifty dollars, and interest on the amount of the tax at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment, and in such cases, no advertisement shall be made or notices posted in connection with said seizure. [1996 c 149 § 8; 1990 c 267 § 2; 1975 1st ex.s. c 278 § 66; 1961 c 15 § 82.24.180. Prior: 1935 c 180 § 90; RRS § 8370-90.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Effective date—1990 c 267:** See note following RCW 82.24.120.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.190 Search and seizure.** When the department of revenue or the board has good reason to believe that any of the articles taxed herein are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter or regulations issued under authority hereof, it may make affidavit of such fact, describing the place or thing to be searched, before any judge of any court in this state, and such judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department

of revenue commanding him or her diligently to search any building, room in a building, place or vehicle as may be designated in the affidavit and search warrant, and to seize such tobacco so possessed and to hold the same until disposed of by law, and to arrest the person in possession or control thereof. If upon the return of such warrant, it shall appear that any of the articles taxed herein, unlawfully possessed, were seized, the same shall be sold as provided in this chapter. [1997 c 420 § 6; 1987 c 202 § 244; 1975 1st ex.s. c 278 § 67; 1961 c 15 § 82.24.190. Prior: 1949 c 228 § 16; 1935 c 180 § 91; Rem. Supp. 1949 § 8370-91.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.210 Redemption of stamps.** The department of revenue may promulgate rules and regulations providing for the refund to dealers for the cost of stamps affixed to articles taxed herein, which by reason of damage become unfit for sale and are destroyed by the dealer or returned to the manufacturer or jobber. In the case of any articles to which stamps have been affixed, and which articles have been sold and shipped to a regular dealer in such articles in another state, the seller in this state shall be entitled to a refund of the actual amount of the stamps so affixed, less the affixing discount, upon condition that the seller in this state makes affidavit that the articles were sold and shipped outside of the state and that he has received from the purchaser outside the state a written acknowledgment that he has received such articles with the amount of stamps affixed thereto, together with the name and address of such purchaser. The department of revenue may redeem any unused stamps purchased from it at the face value thereof less the affixing discount. A distributor or wholesaler that has lawfully affixed stamps to cigarettes, and subsequently is unable to sell those cigarettes lawfully because the cigarettes are removed from the directory created pursuant to RCW 70.158.030(2), may apply to the department for a refund of the cost of the stamps. [2003 c 25 § 11; 1975 1st ex.s. c 278 § 68; 1961 c 15 § 82.24.210. Prior: 1949 c 228 § 17; 1941 c 178 § 17; 1935 c 180 § 92; Rem. Supp. 1949 § 8370-92.]

**Conflict of law—Severability—Effective date—2003 c 25:** See RCW 70.158.900 and 70.158.901.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.24.230 Administration.** All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter, except the following sections: RCW 82.32.050, 82.32.060, 82.32.070, 82.32.100, and 82.32.270, except as noted otherwise in RCW 82.24.280. [2006 c 14 § 7; 1995 c 278 § 9; 1961 c 15 § 82.24.230. Prior: 1935 c 180 § 95; RRS § 8370-95.]

**Reviser's note:** In an order on motion for reconsideration and request for stay pending appeal dated September 25, 2006, the United States District Court for the Western District ruled that chapter 14, Laws of 2006 is preempted by the Federal Cigarette Labeling and Advertising Act, 15 U.S.C. Sec. 1334(b) only in application of the law to cigarette sampling. (Case No. C06-5223, W.D. Wash. 2006.)

**Finding—Intent—2006 c 14:** See note following RCW 70.155.050.

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.235 Rules.** The department may adopt such rules as are necessary to enforce and administer this chapter. [1995 c 278 § 15.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.250 Transportation of unstamped cigarettes—Invoices and delivery tickets required—Stop and inspect.**

(1) No person other than: (a) A licensed wholesaler in the wholesaler's own vehicle; or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state cigarettes not having the stamps affixed to the packages or containers.

(2) When transporting unstamped cigarettes, such persons shall have in their actual possession or cause to have in the actual possession of those persons transporting such cigarettes on their behalf invoices or delivery tickets for such cigarettes, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the cigarettes so transported.

(3) If unstamped cigarettes are consigned to or purchased by any person in this state such purchaser or consignee must be a person who is authorized by this chapter to possess unstamped cigarettes in this state.

(4) In the absence of the notice of transportation required by this section or in the absence of such invoices or delivery tickets, or, if the name or address of the consignee or purchaser is falsified or if the purchaser or consignee is not a person authorized by this chapter to possess unstamped cigarettes, the cigarettes so transported shall be deemed contraband subject to seizure and sale under the provisions of RCW 82.24.130.

(5) Transportation of cigarettes from a point outside this state to a point in some other state will not be considered a violation of this section provided that the person so transporting such cigarettes has in his possession adequate invoices or delivery tickets which give the true name and address of such out-of-state seller or consignor and such out-of-state purchaser or consignee.

(6) In any case where the department or its duly authorized agent, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting cigarettes in violation of this section, the department, such agent, or such police officer, is authorized to stop such vehicle and to inspect the same for contraband cigarettes.

(7) For purposes of this section, the term "person authorized by this chapter to possess unstamped cigarettes in this state" means:

- (a) A wholesaler, licensed under Washington state law;
- (b) The United States or an agency thereof;
- (c) Any person, including an Indian tribal organization,

who, after notice has been given to the board as provided in this section, brings or causes to be brought into the state unstamped cigarettes, if within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department; and

(d) Any purchaser or consignee of unstamped cigarettes, including an Indian tribal organization, who has given notice to the board in advance of receiving unstamped cigarettes and who within a period of time after receipt of the cigarettes as the department determines by rule to be reasonably necessary for the purpose the person has caused stamps to be affixed in accordance with RCW 82.24.030 or otherwise made payment of the tax required by this chapter in the manner set forth in rules adopted by the department.

Nothing in this subsection (7) shall be construed as modifying RCW 82.24.050 or 82.24.110.

(8) Nothing in this section shall be construed as limiting any otherwise lawful activity under a cigarette tax compact pursuant to chapter 43.06 RCW.

(9) Nothing in this section shall be construed as limiting the right to travel upon all public highways under Article III of the treaty with the Yakamas of 1855. [2008 c 226 § 5; 2003 c 114 § 8; 1997 c 420 § 7; 1995 c 278 § 10; 1990 c 216 § 6; 1972 ex.s. c 157 § 6.]

**Finding—Intent—2008 c 226:** See note following RCW 82.24.080.

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

**82.24.260 Selling or disposal of unstamped cigarettes—Person to pay and remit tax or affix stamps—Liability.** (1) Other than:

(a) A wholesaler required to be licensed under this chapter;

(b) A federal instrumentality with respect to sales to authorized military personnel; or

(c) An Indian tribal organization with respect to sales to enrolled members of the tribe,

a person who is in lawful possession of unstamped cigarettes and who intends to sell or otherwise dispose of the cigarettes shall pay, or satisfy its precollection obligation that is imposed by this chapter, the tax required by this chapter by remitting the tax or causing stamps to be affixed in the manner provided in rules adopted by the department.

(2) When stamps are required to be affixed, the person may deduct from the tax collected the compensation allowable under this chapter. The remittance or the affixing of stamps shall, in the case of cigarettes obtained in the manner set forth in RCW 82.24.250(7)(c), be made at the same time and manner as required in RCW 82.24.250(7)(c).

(3) This section shall not relieve the buyer or possessor of unstamped cigarettes from personal liability for the tax imposed by this chapter.

(4) Nothing in this section shall relieve a wholesaler from the requirements of affixing stamps pursuant to RCW 82.24.040 and 82.24.050. [2003 c 114 § 9; 1995 c 278 § 11; 1987 c 80 § 3; 1986 c 3 § 13. Prior: 1983 c 189 § 3; 1983 c 3 § 217; 1975 1st ex.s. c 22 § 1; 1972 ex.s. c 157 § 7.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Severability—1986 c 3:** See RCW 70.146.900.

**Effective dates—1986 c 3:** See note following RCW 82.24.027.

**Severability—1983 c 189:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 189 § 10.]

**Severability—1972 ex.s. c 157:** See note following RCW 82.24.020.

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**82.24.280 Liability from tax increase—Interest and penalties on unpaid tax—Administration.** (1) Any additional tax liability arising from a tax rate increase under this chapter shall be paid, along with reports and returns prescribed by the department, on or before the last day of the month in which the increase becomes effective.

(2) If not paid by the due date, interest shall apply to any unpaid tax. Interest shall be calculated at the rate as computed under RCW 82.32.050(2) from the date the tax became due until the date of payment.

(3) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount due, including any applicable penalties and interest. The taxpayer shall pay the additional amount within thirty days from the date of the notice, or within such further time as the department may provide.

(4) All of chapter 82.32 RCW applies to tax rate increases except: RCW 82.32.050(1) and 82.32.270. [2007 c 111 § 104; 1996 c 149 § 10; 1995 c 278 § 13.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.290 Exceptions—Federal instrumentalities and purchasers from federal instrumentalities.** The taxes imposed by this chapter do not apply to the sale of cigarettes to:

(1) United States army, navy, air force, marine corps, or coast guard exchanges and commissaries and navy or coast guard ships' stores;

(2) The United States veterans' administration; or

(3) Any authorized purchaser from the federal instrumentalities named in subsection (1) or (2) of this section. [1995 c 278 § 14.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**82.24.295 Exceptions—Sales by Indian retailer under cigarette tax contract.** (1) The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of a cigarette tax contract subject to RCW 43.06.455.

(2) Effective July 1, 2002, wholesalers and retailers subject to the provisions of this chapter shall be allowed compensation for their services in affixing the stamps required under this chapter a sum computed at the rate of six dollars per one thousand stamps purchased or affixed by them. [2001 c 235 § 6.]

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**82.24.300 Exceptions—Puyallup Tribe of Indians.** The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by an Indian retailer during the effective period of

a cigarette tax agreement under RCW 43.06.465. [2005 c 11 § 5.]

**Findings—Intent—Explanatory statement—Effective date—2005 c 11:** See notes following RCW 43.06.465.

**82.24.302 Exceptions—Sales by tribal retailers—Yakama Nation.** The taxes imposed by this chapter do not apply to the sale, use, consumption, handling, possession, or distribution of cigarettes by a tribal retailer during the effective period of a cigarette tax agreement under RCW 43.06.466. [2008 c 228 § 2.]

**Authorization for agreement—Effective date—2008 c 228:** See notes following RCW 43.06.466.

**82.24.500 Business of cigarette purchase, sale, consignment, or distribution—License required—Penalty.** No person may engage in or conduct the business of purchasing, selling, consigning, or distributing cigarettes in this state without a license under this chapter. A violation of this section is a class C felony. [2003 c 114 § 10; 1986 c 321 § 4.]

**Policy—Intent—1986 c 321:** "It is the policy of the legislature to encourage competition by reducing the government's role in price setting. It is the legislature's intent to leave price setting mainly to the forces of the marketplace. In the field of cigarette sales, the legislature finds that the goal of open competition should be balanced against the public policy disallowing use of cigarette sales as loss leaders. To balance these public policies, it is the intent of the legislature to repeal the unfair cigarette sales below cost act and to declare the use of cigarettes as loss leaders as an unfair practice under the consumer protection act." [1986 c 321 § 1.]

**Savings—1986 c 321:** "A cigarette wholesalers or retailers license issued by the department of licensing under RCW 19.91.130 in good standing on the July 1, 1991, constitutes a license under RCW 82.24.500." [1986 c 321 § 11.]

**Effective date—1986 c 321:** "Sections 1 and 4 through 14 of this act shall take effect on July 1, 1991." [1986 c 321 § 15.]

**82.24.510 Wholesaler's and retailer's licenses—Application and issuance—Criminal background check.**

(1) The licenses issuable under this chapter are as follows:

- (a) A wholesaler's license.
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The department of revenue shall adopt rules regarding the regulation of the licenses. The department of revenue may refrain from the issuance of any license under this chapter if the department has reasonable cause to believe that the applicant has wilfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a wholesaler's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its discretion, grant or refuse the wholesaler's license, subject to the provisions of RCW 82.24.550.

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(3) No person may qualify for a wholesaler's license under this section without first undergoing a criminal background check. The background check shall be performed by the liquor control board and must disclose any criminal convictions related to the selling of cigarettes within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. A person who possesses a valid license on July 22, 2001, is subject to this subsection and subsection (2) of this section beginning on the date of the person's master license expiration, and thereafter. If the applicant or licensee also has a license issued under chapter 66.24 RCW, the background check done under the authority of chapter 66.24 RCW satisfies the requirements of this section.

(4) Each such license shall expire on the master license expiration date, and each such license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department of revenue made pursuant thereto. [2001 c 235 § 8; 1986 c 321 § 5.]

**Intent—Finding—2001 c 235:** See RCW 43.06.450.

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.520 Wholesaler's license—Fee—Display of license—Bond.** A fee of six hundred fifty dollars shall accompany each wholesaler's license application or license renewal application. If a wholesaler sells or intends to sell cigarettes at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business. Each license, or certificate thereof, and such other evidence of license as the department of revenue requires, shall be exhibited in the place of business for which it is issued and in such manner as is prescribed for the display of a master license. The department of revenue shall require each licensed wholesaler to file with the department a bond in an amount not less than one thousand dollars to guarantee the proper performance of the duties and the discharge of the liabilities under this chapter. The bond shall be executed by such licensed wholesaler as principal, and by a corporation approved by the department of revenue and authorized to engage in business as a surety company in this state, as surety. The bond shall run concurrently with the wholesaler's license. [1986 c 321 § 6.]

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.530 Retailer's license—Vending machines.** A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate license is required for each separate location at which the retailer operates. A fee of thirty additional dollars for each vending machine shall accompany each application or renewal for a license issued to a retail dealer operating a cigarette vending machine. [1993 c 507 § 15; 1986 c 321 § 7.]

**Finding—Severability—1993 c 507:** See RCW 70.155.005 and 70.155.900.

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

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*Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.*

**82.24.540 Licensee to operate within scope of license—Penalty.** Any person licensed only as a wholesaler, or as a retail dealer, shall not operate in any other capacity unless the additional appropriate license or licenses are first secured. A violation of this section is a misdemeanor. [1986 c 321 § 8.]

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.550 Enforcement—Rules—Notice—Hearing—Reinstatement of license—Appeal.** (1) The board shall enforce the provisions of this chapter. The board may adopt, amend, and repeal rules necessary to enforce the provisions of this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer the provisions of this chapter. The department has full power and authority to revoke or suspend the license or permit of any wholesale or retail cigarette dealer in the state upon sufficient cause appearing of the violation of this chapter or upon the failure of such licensee to comply with any of the provisions of this chapter.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or any rule adopted under this chapter, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and, in the case of a second or further offense, shall suspend the license or licenses for a period of not less than ninety consecutive business days nor more than twelve months, and, in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.26 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules adopted under this chapter.

(6) A person whose license has been suspended or revoked shall not sell cigarettes or tobacco products or permit cigarettes or tobacco products to be sold during the period of such suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form whatever.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation shall be reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may

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hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board.

(8) For purposes of this section, "tobacco products" has the same meaning as in RCW 82.26.010. [2005 c 180 § 19; 1997 c 420 § 8; 1993 c 507 § 17; 1986 c 321 § 9.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Finding—Severability—1993 c 507:** See RCW 70.155.005 and 70.155.900.

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.551 Enforcement—Appointment of officers of liquor control board.** The department shall appoint, as duly authorized agents, enforcement officers of the liquor control board to enforce provisions of this chapter. These officers shall not be considered employees of the department. [1997 c 420 § 10.]

**82.24.552 Enforcement—Administration—Inspection of books and records.** (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of any person transporting cigarettes for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of cigarettes for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband cigarettes.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 2.]

**82.24.560 Fees and penalties credited to general fund.** Except as specified in RCW 70.155.120, all fees and penalties received or collected by the department of revenue pursuant to this chapter shall be paid to the state treasurer, to be credited to the general fund. [1993 c 507 § 18; 1986 c 321 § 10.]

**Finding—Severability—1993 c 507:** See RCW 70.155.005 and 70.155.900.

**Policy—Intent—Savings—Effective date—1986 c 321:** See notes following RCW 82.24.500.

**82.24.570 Counterfeit cigarette offenses—Penalties.** (1) It is unlawful for any person to knowingly manufacture, sell, or possess counterfeit cigarettes. A cigarette is "counterfeit" if:

(a) The cigarette or its packaging bears any reproduction or copy of a trademark, service mark, trade name, label, term, design, or work adopted or used by a manufacturer to identify its own cigarettes; and

(b) The cigarette is not manufactured by the owner or holder of that trademark, service mark, trade name, label,

term, design, or work, or by any authorized licensee of that person.

(2) Any person who violates the provisions of this section is guilty of a class C felony which is punishable by up to five years in prison and a fine of up to ten thousand dollars.

(3) Any person who is convicted of a second or subsequent violation of the provisions of this section is guilty of a class B felony which is punishable by up to ten years in prison and a fine of up to twenty thousand dollars. [2003 c 114 § 6.]

**82.24.900 Construction—1961 c 15.** The provisions of this chapter shall not apply in any case in which the state of Washington is prohibited from taxing under the Constitution of this state or the Constitution or the laws of the United States. [1961 c 15 § 82.24.900. Prior: 1935 c 180 § 94; RRS § 8370-94.]

### Chapter 82.26 RCW

#### TAX ON TOBACCO PRODUCTS

##### Sections

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*Minors: Chapter 70.155 RCW.*

**82.26.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a

pipe or otherwise, or both for chewing and smoking, but shall not include cigarettes as defined in RCW 82.24.010.

(2) "Manufacturer" means a person who manufactures and sells tobacco products.

(3) "Distributor" means (a) any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from without the state any tobacco products for sale, (b) any person who makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) any person engaged in the business of selling tobacco products without this state who ships or transports tobacco products to retailers in this state, to be sold by those retailers, (d) any person engaged in the business of selling tobacco products in this state who handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(4) "Retailer" means any person engaged in the business of selling tobacco products to ultimate consumers.

(5)(a) "Sale" means any transfer, exchange, or barter, in any manner or by any means whatsoever, for a consideration, and includes and means all sales made by any person.

(b) The term "sale" includes a gift by a person engaged in the business of selling tobacco products, for advertising, promoting, or as a means of evading the provisions of this chapter.

(6) "Business" means any trade, occupation, activity, or enterprise engaged in for the purpose of selling or distributing tobacco products in this state.

(7) "Place of business" means any place where tobacco products are sold or where tobacco products are manufactured, stored, or kept for the purpose of sale, including any vessel, vehicle, airplane, train, or vending machine.

(8) "Retail outlet" means each place of business from which tobacco products are sold to consumers.

(9) "Department" means the department of revenue.

(10) "Person" means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, the state and its departments and institutions, political subdivision of the state of Washington, corporation, limited liability company, association, society, any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit, or otherwise. The term excludes any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(11) "Indian country" means the same as defined in chapter 82.24 RCW.

(12) "Actual price" means the total amount of consideration for which tobacco products are sold, valued in money, whether received in money or otherwise, including any charges by the seller necessary to complete the sale such as charges for delivery, freight, transportation, or handling.

(13) "Affiliated" means related in any way by virtue of any form or amount of common ownership, control, operation, or management.

(14) "Board" means the liquor control board.

(15) "Cigar" means a roll for smoking that is of any size or shape and that is made wholly or in part of tobacco, irrespective of whether the tobacco is pure or flavored, adulter-

ated or mixed with any other ingredient, if the roll has a wrapper made wholly or in greater part of tobacco. "Cigar" does not include a cigarette.

(16) "Cigarette" has the same meaning as in RCW 82.24.010.

(17) "Manufacturer's representative" means a person hired by a manufacturer to sell or distribute the manufacturer's tobacco products, and includes employees and independent contractors.

(18)(a) "Taxable sales price" means:

(i) In the case of a taxpayer that is not affiliated with the manufacturer, distributor, or other person from whom the taxpayer purchased tobacco products, the actual price for which the taxpayer purchased the tobacco products;

(ii) In the case of a taxpayer that purchases tobacco products from an affiliated manufacturer, affiliated distributor, or other affiliated person, and that sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers, the actual price for which that taxpayer sells those tobacco products to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iii) In the case of a taxpayer that sells tobacco products only to affiliated distributors or affiliated retailers, the price, determined as nearly as possible according to the actual price, that other distributors sell similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers;

(iv) In the case of a taxpayer that is a manufacturer selling tobacco products directly to ultimate consumers, the actual price for which the taxpayer sells those tobacco products to ultimate consumers;

(v) In the case of a taxpayer that has acquired tobacco products under a sale as defined in subsection (5)(b) of this section, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers; or

(vi) In any case where (a)(i) through (v) of this subsection do not apply, the price, determined as nearly as possible according to the actual price, that the taxpayer or other distributors sell the same tobacco products or similar tobacco products of like quality and character to unaffiliated distributors, unaffiliated retailers, or ultimate consumers.

(b) For purposes of (a)(i) and (ii) of this subsection only, "person" includes both persons as defined in subsection (10) of this section and any person immune from state taxation, including the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(c) The department may adopt rules regarding the determination of taxable sales price under this subsection.

(19) "Taxpayer" means a person liable for the tax imposed by this chapter.

(20) "Unaffiliated distributor" means a distributor that is not affiliated with the manufacturer, distributor, or other person from whom the distributor has purchased tobacco products.

(21) "Unaffiliated retailer" means a retailer that is not affiliated with the manufacturer, distributor, or other person from whom the retailer has purchased tobacco products.

[2005 c 180 § 2; 2002 c 325 § 1; 1995 c 278 § 16; 1975 1st ex.s. c 278 § 70; 1961 c 15 § 82.26.010. Prior: 1959 ex.s. c 5 § 11.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** "This act takes effect July 1, 2002." [2002 c 325 § 6.]

**Effective date—1995 c 278:** See note following RCW 82.24.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

### **82.26.020 Tax imposed—Deposit of tax revenue.** (1)

There is levied and there shall be collected a tax upon the sale, handling, or distribution of all tobacco products in this state at the following rate:

(a) Seventy-five percent of the taxable sales price of cigars, not to exceed fifty cents per cigar; or

(b) Seventy-five percent of the taxable sales price of all tobacco products that are not cigars.

(2) Taxes under this section shall be imposed at the time the distributor (a) brings, or causes to be brought, into this state from without the state tobacco products for sale, (b) makes, manufactures, fabricates, or stores tobacco products in this state for sale in this state, (c) ships or transports tobacco products to retailers in this state, to be sold by those retailers, or (d) handles for sale any tobacco products that are within this state but upon which tax has not been imposed.

(3) The moneys collected under this section shall be deposited as follows:

(a) Thirty-seven percent in the general fund;

(b) Fifty percent in the health services account created under RCW 43.72.900; and

(c) Thirteen percent in the water quality account under RCW 70.146.030 for the period beginning July 1, 2005, through June 30, 2021, and in the general fund for the period beginning July 1, 2021. [2005 c 180 § 3; 2002 c 325 § 2; 1993 c 492 § 309; 1983 2nd ex.s. c 3 § 16; 1982 1st ex.s. c 35 § 9; 1975 1st ex.s. c 278 § 71; 1971 ex.s. c 299 § 77; 1965 ex.s. c 173 § 25; 1961 c 15 § 82.26.020. Prior: 1959 ex.s. c 5 § 12.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** See note following RCW 82.26.010.

**Finding—Intent—1993 c 492:** See notes following RCW 43.20.050.

**Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492:** See RCW 43.72.910 through 43.72.915.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.26.030 Legislative intent—Purpose.** It is the intent and purpose of this chapter to levy a tax on all tobacco products sold, used, consumed, handled, or distributed within this state and to collect the tax from the distributor as defined in RCW 82.26.010. It is the further intent and purpose of this chapter to impose the tax once, and only once, on all tobacco products for sale in this state, but nothing in this chapter shall

be construed to exempt any person taxable under any other law or under any other tax imposed under Title 82 RCW. It is the further intent and purpose of this chapter that the distributor who first possesses the tobacco product in this state shall be the distributor liable for the tax and that in most instances the tax will be based on the actual price that the distributor paid for the tobacco product, unless the distributor is affiliated with the seller. [2005 c 180 § 1; 2002 c 325 § 4; 1961 c 15 § 82.26.030. Prior: 1959 ex.s. c 5 § 13.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Effective date—2002 c 325:** See note following RCW 82.26.010.

**82.26.040 When tax not applicable under laws of United States.** The tax imposed by RCW 82.26.020 shall not apply with respect to any tobacco products which under the Constitution and laws of the United States may not be made the subject of taxation by this state. [1961 c 15 § 82.26.040. Prior: 1959 ex.s. c 5 § 14.]

**82.26.060 Books and records to be preserved—Entry and inspection by department.** (1) Every distributor shall keep at each place of business complete and accurate records for that place of business, including itemized invoices, of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made.

(2) These records shall show the names and addresses of purchasers, the inventory of all tobacco products, and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. All invoices and other records required by this section to be kept shall be preserved for a period of five years from the date of the invoices or other documents or the date of the entries appearing in the records.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees, may enter any place of business of a distributor, without a search warrant, and inspect the premises, the records required to be kept under this chapter, and the tobacco products contained therein, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making such examination, the registration certificate issued under RCW 82.32.030 of the distributor at such premises shall be subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation, by the department. [2005 c 180 § 4; 1975 1st ex.s. c 278 § 73; 1961 c 15 § 82.26.060. Prior: 1959 ex.s. c 5 § 16.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.070 Preservation of invoices of sales to other than ultimate consumer.** Every person required to be licensed under this chapter who sells tobacco products to persons other than the ultimate consumer shall render with each sale itemized invoices showing the seller's name and address, the purchaser's name and address, the date of sale, and all

prices. The person shall preserve legible copies of all such invoices for five years from the date of sale. [2005 c 180 § 7; 1961 c 15 § 82.26.070. Prior: 1959 ex.s. c 5 § 17.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.080 Retailer invoices—Requirements—Inspection.** (1) Every retailer shall procure itemized invoices of all tobacco products purchased. The invoices shall show the seller's name and address, the date of purchase, and all prices and discounts.

(2) The retailer shall keep at each retail outlet copies of complete, accurate, and legible invoices for that retail outlet or place of business. All invoices required to be kept under this section shall be preserved for five years from the date of purchase.

(3) At any time during usual business hours the department, board, or its duly authorized agents or employees may enter any retail outlet without a search warrant, and inspect the premises for invoices required to be kept under this section and the tobacco products contained in the retail outlet, to determine whether or not all the provisions of this chapter are being fully complied with. If the department, board, or any of its agents or employees, are denied free access or are hindered or interfered with in making the inspection, the registration certificate issued under RCW 82.32.030 of the retailer at the premises is subject to revocation, and any licenses issued under this chapter or chapter 82.24 RCW are subject to suspension or revocation by the department. [2005 c 180 § 5; 1975 1st ex.s. c 278 § 74; 1961 c 15 § 82.26.080. Prior: 1959 ex.s. c 5 § 18.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.090 Records of shipments, deliveries from public warehouse of first destination—Preservation—Inspection.** Records of all deliveries or shipments of tobacco products from any public warehouse of first destination in this state shall be kept by the warehouse and be available to the department of revenue for inspection. They shall show the name and address of the consignee, the date, the quantity of tobacco products delivered, and such other information as the department may require. These records shall be preserved for five years from the date of delivery of the tobacco products. [1975 1st ex.s. c 278 § 75; 1961 c 15 § 82.26.090. Prior: 1959 ex.s. c 5 § 19.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.100 Reports and returns.** Every taxpayer shall report and make returns as provided in RCW 82.32.045. [2005 c 180 § 8; 1983 c 3 § 218; 1961 c 15 § 82.26.100. Prior: 1959 ex.s. c 5 § 20.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.105 Inspection of books, documents, or records of carriers.** (1) For the purposes of obtaining information concerning any matter relating to the administration or enforcement of this chapter, the department, the board, or any of its agents may inspect the books, documents, or records of

any person transporting tobacco products for sale to any person or entity in the state, and books, documents, or records containing any information relating to the transportation or possession of tobacco products for sale in the possession of a specific common carrier as defined in RCW 81.80.010 doing business in this state, or books, documents, and records of vehicle rental agencies whose vehicles are being rented for the purpose of transporting contraband tobacco products.

(2) If a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the department, the board, or its agent, then the department or the board may seek an order in superior court compelling production of the books, records, or documents. [2007 c 221 § 3; 2005 c 180 § 6.]

**Effective date—2005 c 180:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 180 § 25.]

#### **82.26.110 When credit may be obtained for tax paid.**

(1)(a) Where tobacco products upon which the tax imposed by this chapter has been reported and paid are shipped or transported outside this state by the distributor to a person engaged in the business of selling tobacco products, to be sold by that person, or are returned to the manufacturer by the distributor or destroyed by the distributor, or are sold by the distributor to the United States or any of its agencies or instrumentalities, or are sold by the distributor to any Indian tribal organization, credit of such tax may be made to the distributor in accordance with rules prescribed by the department.

(b) For purposes of this subsection, the following definitions apply:

(i) "Indian distributor" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of distributor under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(ii) "Indian retailer" means a federally recognized Indian tribe or tribal entity that would otherwise meet the definition of retailer under RCW 82.26.010, if federally recognized Indian tribes and tribal entities were not excluded from the definition of person in RCW 82.26.010.

(iii) "Indian tribal organization" means a federally recognized Indian tribe, or tribal entity, and includes an Indian distributor or retailer that is owned by an Indian who is an enrolled tribal member conducting business under tribal license or similar tribal approval within Indian country.

(2) Credit allowed under this section shall be determined based on the tax rate in effect for the period for which the tax imposed by this chapter, for which a credit is sought, was paid. [2007 c 221 § 4; 2005 c 180 § 9; 1975 1st ex.s. c 278 § 76; 1961 c 15 § 82.26.110. Prior: 1959 ex.s. c 5 § 21.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.26.120 Administration.** All of the provisions contained in chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [1963 ex.s. c 28 § 5.]

with respect to taxes imposed under the provisions of this chapter. [1963 ex.s. c 28 § 5.]

**Effective date—1963 ex.s. c 28:** See note following RCW 82.04.030.

**82.26.121 Enforcement—Appointment of officers of liquor control board.** The department shall appoint, as duly authorized agents, enforcement officers of the liquor control board to enforce provisions of this chapter. These officers shall not be considered employees of the department. [1997 c 420 § 11.]

**82.26.130 Invoices—Nonpayment—Penalties and interest.** (1) The department shall by rule establish the invoice detail required under RCW 82.26.060 for a distributor under RCW 82.26.010(3)(d) and for those invoices required to be provided to retailers under RCW 82.26.070.

(2) If a retailer fails to keep invoices as required under chapter 82.32 RCW, the retailer is liable for the tax owed on any uninvoiced tobacco products but not penalties and interest, except as provided in subsection (3) of this section.

(3) If the department finds that the nonpayment of tax by the retailer was willful or if in the case of a second or plural nonpayment of tax by the retailer, penalties and interest shall be assessed in accordance with chapter 82.32 RCW. [2002 c 325 § 5.]

**Effective date—2002 c 325:** See note following RCW 82.26.010.

**82.26.140 Transport of tobacco products—Requirements—Vehicle inspection.** (1) No person other than (a) a licensed distributor in the distributor's own vehicle, a manufacturer's representative authorized to sell or distribute tobacco products in this state under RCW 82.26.210, or a licensed retailer in the retailer's own vehicle, or (b) a person who has given notice to the board in advance of the commencement of transportation shall transport or cause to be transported in this state tobacco products for sale.

(2) When transporting tobacco products for sale, the person shall have in his or her actual possession, or cause to have in the actual possession of those persons transporting such tobacco products on his or her behalf, invoices or delivery tickets for the tobacco products, which shall show the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of the tobacco products being transported.

(3) In any case where the department or the board, or any peace officer of the state, has knowledge or reasonable grounds to believe that any vehicle is transporting tobacco products in violation of this section, the department, the board, or peace officer, is authorized to stop the vehicle and to inspect it for contraband tobacco products. [2005 c 180 § 10.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.150 Distributor's license, retailer's license—Application—Approval—Display.** (1) The licenses issuable by the department under this chapter are as follows:

- (a) A distributor's license; and
- (b) A retailer's license.

(2) Application for the licenses shall be made through the master license system under chapter 19.02 RCW. The

department may adopt rules regarding the regulation of the licenses. The department may refuse to issue any license under this chapter if the department has reasonable cause to believe that the applicant has willfully withheld information requested for the purpose of determining the eligibility of the applicant to receive a license, or if the department has reasonable cause to believe that information submitted in the application is false or misleading or is not made in good faith. In addition, for the purpose of reviewing an application for a distributor's license and for considering the denial, suspension, or revocation of any such license, the department may consider criminal convictions of the applicant related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions, and the provisions of RCW 9.95.240 and chapter 9.96A RCW shall not apply to such cases. The department may, in its discretion, issue or refuse to issue the distributor's license, subject to the provisions of RCW 82.26.220.

(3) No person may qualify for a distributor's license under this section without first undergoing a criminal background check. The background check shall be performed by the board and must disclose any criminal convictions related to the selling of tobacco products within the previous five years in any state, tribal, or federal jurisdiction in the United States, its territories, or possessions. If the applicant or licensee also has a license issued under chapter 66.24 or 82.24 RCW, the background check done under the authority of chapter 66.24 or 82.24 RCW satisfies the requirements of this section.

(4) Each license issued under this chapter shall expire on the master license expiration date. The license shall be continued annually if the licensee has paid the required fee and complied with all the provisions of this chapter and the rules of the department adopted pursuant to this chapter.

(5) Each license and any other evidence of license as the department requires shall be exhibited in the place of business for which it is issued and in the manner required for the display of a master license. [2005 c 180 § 11.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

#### **82.26.160 Distributor's license—Application fees.**

(1) A fee of six hundred fifty dollars shall accompany each distributor's license application or license renewal application. If a distributor sells or intends to sell tobacco products at two or more places of business, whether established or temporary, a separate license with a license fee of one hundred fifteen dollars shall be required for each additional place of business.

(2) The fees imposed under subsection (1) of this section do not apply to any person applying for a distributor's license or for renewal of a distributor's license if the person has a valid wholesaler's license under RCW 82.24.510 for the place of business associated with the distributor's license application or license renewal application. [2005 c 180 § 12.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.170 Retailer's license—Application fee.** (1) A fee of ninety-three dollars shall accompany each retailer's license application or license renewal application. A separate

license is required for each separate location at which the retailer operates.

(2) The fee imposed under subsection (1) of this section does not apply to any person applying for a retailer's license or for renewal of a retailer's license if the person has a valid retailer's license under RCW 82.24.510 for the place of business associated with the retailer's license application or renewal application. [2005 c 180 § 13.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.180 Department web site listing distributors and retailers.** The department shall compile and maintain a current record of the names of all distributors and retailers licensed under this chapter and the status of their license or licenses. The information must be updated on a monthly basis and published on the department's official internet web site. This information is not subject to the confidentiality provisions of RCW 82.32.330 and shall be disclosed to manufacturers, distributors, retailers, and the general public upon request. [2005 c 180 § 15.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.190 Distributors and retailers—Valid license required—Violations—Penalties.** (1)(a) No person may engage in or conduct business as a distributor or retailer in this state after September 30, 2005, without a valid license issued by the department under this chapter. Any person who sells tobacco products to persons other than ultimate consumers or who meets the definition of distributor under RCW 82.26.010(3)(d) must obtain a distributor's license under this chapter. Any person who sells tobacco products to ultimate consumers must obtain a retailer's license under this chapter.

(b) A violation of this subsection (1) is punishable as a class C felony according to chapter 9A.20 RCW.

(2)(a) No person engaged in or conducting business as a distributor or retailer in this state may:

(i) Refuse to allow the department or the board, on demand, to make a full inspection of any place of business where any of the tobacco products taxed under this chapter are sold, stored, or handled, or otherwise hinder or prevent such inspection;

(ii) Make, use, or present or exhibit to the department or the board any invoice for any of the tobacco products taxed under this chapter that bears an untrue date or falsely states the nature or quantity of the goods invoiced; or

(iii) Fail to produce on demand of the department or the board all invoices of all the tobacco products taxed under this chapter within five years prior to such demand unless the person can show by satisfactory proof that the nonproduction of the invoices was due to causes beyond the person's control.

(b) No person, other than a licensed distributor or retailer, may transport tobacco products for sale in this state for which the taxes imposed under this chapter have not been paid unless:

(i) Notice of the transportation has been given as required under RCW 82.26.140;

(ii) The person transporting the tobacco products actually possesses invoices or delivery tickets showing the true name and address of the consignor or seller, the true name

and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported; and

(iii) The tobacco products are consigned to or purchased by a person in this state who is licensed under this chapter.

(c) A violation of this subsection (2) is a gross misdemeanor.

(3) Any person licensed under this chapter as a distributor, and any person licensed under this chapter as a retailer, shall not operate in any other capacity unless the additional appropriate license is first secured. A violation of this subsection (3) is a misdemeanor.

(4) The penalties provided in this section are in addition to any other penalties provided by law for violating the provisions of this chapter or the rules adopted under this chapter. [2005 c 180 § 16.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.200 Sales from distributors to retailers—Requirements.**

(1) A retailer that obtains tobacco products from an unlicensed distributor or any other person that is not licensed under this chapter must be licensed both as a retailer and a distributor under this chapter and is liable for the tax imposed under RCW 82.26.020 with respect to the tobacco products acquired from the unlicensed person that are held for sale, handling, or distribution in this state. For the purposes of this subsection, "person" includes both persons defined in RCW 82.26.010(10) and any person immune from state taxation, such as the United States or its instrumentalities, and federally recognized Indian tribes and enrolled tribal members, conducting business within Indian country.

(2) Every distributor licensed under this chapter shall sell tobacco products to retailers located in Washington only if the retailer has a current retailer's license under this chapter. [2005 c 180 § 17.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.210 Manufacturer's representatives—Requirements.**

A manufacturer that has manufacturer's representatives who sell or distribute the manufacturer's tobacco products in this state must provide the department a list of the names and addresses of all such representatives and must ensure that the list provided to the department is kept current. A manufacturer's representative is not authorized to distribute or sell tobacco products in this state unless the manufacturer that hired the representative has a valid distributor's license under this chapter and that manufacturer provides the department a current list of all of its manufacturer's representatives as required by this section. A manufacturer's representative must carry a copy of the distributor's license of the manufacturer that hired the representative at all times when selling or distributing the manufacturer's tobacco products. [2005 c 180 § 14.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.220 Enforcement, administration of chapter—License suspension, revocation.**

(1) The board shall enforce this chapter. The board may adopt, amend, and repeal rules necessary to enforce this chapter.

(2) The department may adopt, amend, and repeal rules necessary to administer this chapter. The department has full

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power and authority to revoke or suspend the distributor's or retailer's license of any distributor or retailer of tobacco products in the state upon sufficient cause showing a violation of this chapter or upon the failure of the licensee to comply with any of the rules adopted under it.

(3) A license shall not be suspended or revoked except upon notice to the licensee and after a hearing as prescribed by the department. The department, upon finding that the licensee has failed to comply with any provision of this chapter or of any rule adopted under it, shall, in the case of the first offense, suspend the license or licenses of the licensee for a period of not less than thirty consecutive business days, and in the case of a second or further offense, suspend the license or licenses for a period of not less than ninety consecutive business days but not more than twelve months, and in the event the department finds the licensee has been guilty of willful and persistent violations, it may revoke the license or licenses.

(4) Any licenses issued under chapter 82.24 RCW to a person whose license or licenses have been suspended or revoked under this section shall also be suspended or revoked during the period of suspension or revocation under this section.

(5) Any person whose license or licenses have been revoked under this section may apply to the department at the expiration of one year for a reinstatement of the license or licenses. The license or licenses may be reinstated by the department if it appears to the satisfaction of the department that the licensee will comply with the provisions of this chapter and the rules adopted under it.

(6) A person whose license has been suspended or revoked shall not sell tobacco products or cigarettes or permit tobacco products or cigarettes to be sold during the period of suspension or revocation on the premises occupied by the person or upon other premises controlled by the person or others or in any other manner or form.

(7) Any determination and order by the department, and any order of suspension or revocation by the department of the license or licenses, or refusal to reinstate a license or licenses after revocation is reviewable by an appeal to the superior court of Thurston county. The superior court shall review the order or ruling of the department and may hear the matter de novo, having due regard to the provisions of this chapter and the duties imposed upon the department and the board. [2005 c 180 § 18.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.230 Enforcement—Unlicensed distributors or retailers—Seizure and forfeiture of property.**

(1) Any tobacco products in the possession of a person selling tobacco products in this state acting as a distributor or retailer and who is not licensed as required under RCW 82.26.190, or a person who is selling tobacco products in violation of RCW 82.26.220(6), may be seized without a warrant by any agent of the department, agent of the board, or law enforcement officer of this state. Any tobacco products seized under this subsection shall be deemed forfeited.

(2) Any tobacco products in the possession of a person who is not a licensed distributor or retailer and who transports tobacco products for sale without having provided notice to

the board required under RCW 82.26.140, or without invoices or delivery tickets showing the true name and address of the consignor or seller, the true name and address of the consignee or purchaser, and the quantity and brands of tobacco products being transported may be seized and are subject to forfeiture.

(3) All conveyances, including aircraft, vehicles, or vessels that are used, or intended for use to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of tobacco products under subsection (2) of this section, may be seized and are subject to forfeiture except:

(a) A conveyance used by any person as a common or contract carrier having in actual possession invoices or delivery tickets showing the true name and address of the consignor or seller, the true name of the consignee or purchaser, and the quantity and brands of the tobacco products transported, unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) A conveyance subject to forfeiture under this section by reason of any act or omission of which the owner establishes to have been committed or omitted without his or her knowledge or consent; or

(c) A conveyance encumbered by a bona fide security interest if the secured party neither had knowledge of nor consented to the act or omission.

(4) Property subject to forfeiture under subsections (2) and (3) of this section may be seized by any agent of the department, the board, or law enforcement officer of this state upon process issued by any superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search warrant or an inspection under an administrative inspection warrant; or

(b) The department, board, or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable.

(5) This section shall not be construed to require the seizure of tobacco products if the department's agent, board's agent, or law enforcement officer reasonably believes that the tobacco products are possessed for personal consumption by the person in possession of the tobacco products.

(6) Any tobacco products seized by a law enforcement officer shall be turned over to the board as soon as practicable. [2005 c 180 § 20.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.240 Seizure and forfeiture of property—Department and board requirements.** (1) In all cases of seizure of any tobacco products made subject to forfeiture under this chapter, the department or board shall proceed as provided in RCW 82.24.135.

(2) When tobacco products are forfeited under this chapter, the department or board may:

(a) Retain the property for official use or upon application by any law enforcement agency of this state, another state, or the District of Columbia, or of the United States for

the exclusive use of enforcing this chapter or the laws of any other state or the District of Columbia or of the United States; or

(b) Sell the tobacco products at public auction to the highest bidder after due advertisement. Before delivering any of the goods to the successful bidder, the department or board shall require the purchaser to pay the proper amount of any tax due. The proceeds of the sale shall be first applied to the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. The balance of the proceeds and all money shall be deposited in the general fund of the state. Proper expenses of investigation include costs incurred by any law enforcement agency or any federal, state, or local agency.

(3) The department or the board may return any property seized under the provisions of this chapter when it is shown that there was no intention to violate the provisions of this chapter. When any property is returned under this section, the department or the board may return the property to the parties from whom they were seized if and when such parties have paid the proper amount of tax due under this chapter. [2005 c 180 § 21.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

**82.26.250 Enforcement—Search warrants.** When the department or the board has good reason to believe that any of the tobacco products taxed under this chapter are being kept, sold, offered for sale, or given away in violation of the provisions of this chapter, it may make affidavit of facts describing the place or thing to be searched, before any judge of any court in this state, and the judge shall issue a search warrant directed to the sheriff, any deputy, police officer, or duly authorized agent of the department or the board commanding him or her diligently to search any building, room in a building, place, or vehicle as may be designated in the affidavit and search warrant, and to seize the tobacco products and hold them until disposed of by law. [2005 c 180 § 22.]

**Effective date—2005 c 180:** See note following RCW 82.26.105.

## Chapter 82.27 RCW

### TAX ON ENHANCED FOOD FISH

#### Sections

82.27.010	Definitions.
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82.27.030	Exemptions.
82.27.040	Credit for taxes paid to another taxing authority.
82.27.050	Application of excise taxes' administrative provisions and definitions.
82.27.060	Payment of tax—Remittance—Returns.
82.27.070	Deposit of taxes.
82.27.900	Effective date—Implementation—1980 c 98.
82.27.901	Severability—1985 c 413.

**82.27.010 Definitions.** As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Enhanced food fish" includes all species of food fish, except all species of tuna, mackerel, and jack; shellfish; and anadromous game fish, including byproducts and parts

thereof, originating within the territorial and adjacent waters of Washington and salmon originating from within the territorial and adjacent waters of Oregon, Washington, and British Columbia, and all troll-caught Chinook salmon originating from within the territorial and adjacent waters of south-east Alaska. As used in this subsection, "adjacent" waters of Oregon, Washington, and Alaska are those comprising the United States fish conservation zone; "adjacent" waters of British Columbia are those comprising the Canadian two hundred mile exclusive economic zone; and "southeast Alaska" means that portion of Alaska south and east of Cape Suckling to the Canadian border. For purposes of this chapter, point of origination is established by a document which identifies the product and state or province in which it originates, including, but not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies.

(2) "Commercial" means related to or connected with buying, selling, bartering, or processing.

(3) "Possession" means the control of enhanced food fish by the owner and includes both actual and constructive possession. Constructive possession occurs when the person has legal ownership but not actual possession of the enhanced food fish.

(4) "Anadromous game fish" means steelhead trout and anadromous cutthroat trout and Dolly Varden char and includes byproducts and also parts of anadromous game fish, whether fresh, frozen, canned, or otherwise.

(5) "Landed" means the act of physically placing enhanced food fish (a) on a tender in the territorial waters of Washington; or (b) on any land within or without the state of Washington including wharves, piers, or any such extensions therefrom. [1995 c 372 § 4; 1985 c 413 § 1. Prior: 1983 1st ex.s. c 46 § 180; 1983 c 284 § 5; 1980 c 98 § 1.]

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**82.27.020 Excise tax imposed—Deduction—Measure of tax—Rates—Additional tax imposed.** (1) In addition to all other taxes, licenses, or fees provided by law there is established an excise tax on the commercial possession of enhanced food fish as provided in this chapter. The tax is levied upon and shall be collected from the owner of the enhanced food fish whose possession constitutes the taxable event. The taxable event is the first possession in Washington by an owner after the enhanced food fish has been landed. Processing and handling of enhanced food fish by a person who is not the owner is not a taxable event to the processor or handler.

(2) A person in possession of enhanced food fish and liable to this tax may deduct from the price paid to the person from which the enhanced food fish (except oysters) are purchased an amount equal to a tax at one-half the rate levied in this section upon these products.

(3) The measure of the tax is the value of the enhanced food fish at the point of landing.

(4) The tax shall be equal to the measure of the tax multiplied by the rates for enhanced food fish as follows:

(a) Chinook, coho, and chum salmon and anadromous game fish: Five and twenty-five one-hundredths percent;

(b) Pink and sockeye salmon: Three and fifteen one-hundredths percent;

(c) Other food fish and shellfish, except oysters, sea urchins, and sea cucumbers: Two and one-tenth percent;

(d) Oysters: Eight one-hundredths of one percent;

(e) Sea urchins: Four and six-tenths percent through December 31, 2010, and two and one-tenth percent thereafter; and

(f) Sea cucumbers: Four and six-tenths percent through December 31, 2010, and two and one-tenth percent thereafter.

(5) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (4) of this section. [2005 c 110 § 3; 2001 c 320 § 9; 1999 c 126 § 3; 1993 sp.s. c 17 § 12; 1985 c 413 § 2; 1983 2nd ex.s. c 3 § 17; 1983 c 284 § 6; 1982 1st ex.s. c 35 § 10; 1980 c 98 § 2.]

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1999 c 126 § 3:** "Section 3 of this act takes effect January 1, 2000." [1999 c 126 § 5.]

**Finding—Contingent effective date—Severability—1993 sp.s. c 17:** See notes following RCW 77.32.520.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Findings—Intent—1983 c 284:** "The legislature finds that there are commercial fish buyers benefiting financially from the propagation of game fish in the state. The legislature recognizes that license fees obtained from sports fishermen support the majority of the production of these game fish. The legislature finds that commercial operations which benefit from the commercial harvest of these fish should pay a tax to assist in the funding of these facilities. However, the intent of the legislature is not to support the commercial harvest of steelhead and other game fish." [1983 c 284 § 8.]

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.27.030 Exemptions.** The tax imposed by RCW 82.27.020 shall not apply to: (1) Enhanced food fish originating outside the state which enters the state as (a) frozen enhanced food fish or (b) enhanced food fish packaged for retail sales; (2) the growing, processing, or dealing with food fish or shellfish which are raised from eggs, fry, or larvae and which are under the physical control of the grower at all times until being sold or harvested; and (3) food fish, shellfish, anadromous game fish, and byproducts or parts of food fish shipped from outside the state which enter the state, except as provided in RCW 82.27.010, provided the taxpayer must have documentation showing shipping origination of fish exempt under this subsection to qualify for exemption. Such documentation includes, but is not limited to fish tickets, bills of lading, invoices, or other documentation required to be kept by governmental agencies. [1995 2nd sp.s. c 7 § 1; 1985 c 413 § 3; 1980 c 98 § 3.]

**Effective date—1995 2nd sp.s. c 7:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 2nd sp.s. c 7 § 2.]

**82.27.040 Credit for taxes paid to another taxing authority.** A credit shall be allowed against the tax imposed by RCW 82.27.020 upon enhanced food fish with respect to any tax previously paid on that same enhanced food fish to any other legally established taxing authority. To qualify for a credit, the owner of the enhanced food fish must have doc-

umentation showing a tax was paid in another jurisdiction. [1985 c 413 § 4; 1980 c 98 § 4.]

**82.27.050 Application of excise taxes' administrative provisions and definitions.** All of the provisions of chapters 82.02 and 82.32 RCW shall be applicable and have full force and effect with respect to taxes imposed under this chapter. The meaning attributed to words and phrases in chapter 82.04 RCW, insofar as applicable, shall have full force and effect with respect to taxes imposed under this chapter. [1980 c 98 § 5.]

**82.27.060 Payment of tax—Remittance—Returns.** The taxes levied by this chapter shall be due for payment monthly and remittance therefor shall be made within twenty-five days after the end of the month in which the taxable activity occurs. The taxpayer on or before the due date shall make out a signed return, setting out such information as the department of revenue may require, including the gross measure of the tax, any deductions, credits, or exemptions claimed, and the amount of tax due for the preceding monthly period, which amount shall be transmitted to the department along with the return.

The department may relieve any taxpayer from the obligation of filing a monthly return and may require the return to cover other periods, but in no event may periodic returns be filed for a period greater than one year. In such cases tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return. [2006 c 256 § 3; 2003 1st sp.s. c 13 § 10; 1990 c 214 § 1; 1980 c 98 § 6.]

**Effective dates—Application—Savings—2006 c 256:** See notes following RCW 82.32.045.

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**82.27.070 Deposit of taxes.** All taxes collected by the department of revenue under this chapter shall be deposited in the state general fund except for the excise tax on anadromous game fish, which shall be deposited in the \*wildlife fund, and, during the period January 1, 2000, to December 31, 2010, twenty-five forty-sixths of the revenues derived from the excise tax on sea urchins collected under RCW 82.27.020 shall be deposited into the sea urchin dive fishery account created in RCW 77.70.150, and twenty-five forty-sixths of the revenues derived from the excise tax on sea cucumbers collected under RCW 82.27.020 shall be deposited into the sea cucumber dive fishery account created in RCW 77.70.190. [2005 c 110 § 4; 2003 c 39 § 46; 1999 c 126 § 4; 1988 c 36 § 61; 1983 c 284 § 7; 1980 c 98 § 7.]

**\*Reviser's note:** The "state wildlife fund" was renamed the "state wildlife account" pursuant to 2005 c 224 § 4 and 2005 c 225 § 4.

**Findings—Intent—1983 c 284:** See note following RCW 82.27.020.

**82.27.900 Effective date—Implementation—1980 c 98.** This act shall take effect on July 1, 1980. The director of revenue is authorized to immediately take such steps as are necessary to insure that this act is implemented on its effective date. [1980 c 98 § 11.]

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**82.27.901 Severability—1985 c 413.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 413 § 6.]

## Chapter 82.29A RCW LEASEHOLD EXCISE TAX

### Sections

- 82.29A.010 Legislative findings and recognition.
- 82.29A.020 Definitions.
- 82.29A.030 Tax imposed—Credit—Additional tax imposed.
- 82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection.
- 82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting.
- 82.29A.060 Administration—Appraisal appeal—Audits.
- 82.29A.070 Disposition of revenue.
- 82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account.
- 82.29A.090 Distributions to counties and cities.
- 82.29A.100 Distributions by county treasurers.
- 82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance.
- 82.29A.120 Allowable credits.
- 82.29A.130 Exemptions—Certain property.
- 82.29A.132 Exemptions—Operation of state route No. 16.
- 82.29A.134 Exemptions—Sales/leasebacks by regional transit authorities.
- 82.29A.135 Exemptions—Property used to manufacture alcohol, biodiesel, or wood biomass fuel.
- 82.29A.136 Exemptions—Certain residential and recreational lots.
- 82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes.
- 82.29A.138 Exemptions—Certain amateur radio repeaters.
- 82.29A.140 Rules and regulations.
- 82.29A.160 Improvements not defined as contract rent taxable under Title 84 RCW.

**Reviser's note:** Throughout chapter 82.29A RCW the term "this 1976 amendatory act" has been changed to "this chapter, RCW 84.36.451 and 84.40.175." This 1976 amendatory act [1975-'76 2nd ex.s. c 61] also repealed chapter 82.29 RCW, RCW 84.36.450, 84.36.455, and 84.36.460.

### 82.29A.010 Legislative findings and recognition.

(1)(a) The legislature hereby recognizes that properties of the state of Washington, counties, school districts, and other municipal corporations are exempted by Article 7, section 1 of the state Constitution from property tax obligations, but that private lessees of such public properties receive substantial benefits from governmental services provided by units of government.

(b) The legislature further recognizes that a uniform method of taxation should apply to such leasehold interests in publicly owned property.

(c) The legislature finds that lessees of publicly owned property are entitled to those same governmental services and does hereby provide for a leasehold excise tax to fairly compensate governmental units for services rendered to such lessees of publicly owned property.

(2) The legislature further finds that experience gained by lessors, lessees, and the department of revenue since enactment of the leasehold excise tax under this chapter has shed light on areas in the leasehold excise statutes that need explanation and clarification. The purpose of chapter 220, Laws of 1999 is to make those changes. [1999 c 220 § 1; 1975-'76 2nd ex.s. c 61 § 1.]

**82.29A.020 Definitions.** As used in this chapter the following terms shall be defined as follows, unless the context otherwise requires:

(1) "Leasehold interest" shall mean an interest in publicly owned real or personal property which exists by virtue of any lease, permit, license, or any other agreement, written or verbal, between the public owner of the property and a person who would not be exempt from property taxes if that person owned the property in fee, granting possession and use, to a degree less than fee simple ownership: PROVIDED, That no interest in personal property (excluding land or buildings) which is owned by the United States, whether or not as trustee, or by any foreign government shall constitute a leasehold interest hereunder when the right to use such property is granted pursuant to a contract solely for the manufacture or production of articles for sale to the United States or any foreign government. The term "leasehold interest" shall include the rights of use or occupancy by others of property which is owned in fee or held in trust by a public corporation, commission, or authority created under RCW 35.21.730 or 35.21.660 if the property is listed on or is within a district listed on any federal or state register of historical sites. The term "leasehold interest" shall not include road or utility easements, rights of access, occupancy, or use granted solely for the purpose of removing materials or products purchased from a public owner or the lessee of a public owner, or rights of access, occupancy, or use granted solely for the purpose of natural energy resource exploration.

(2) "Taxable rent" shall mean contract rent as defined in subsection (a) of this subsection in all cases where the lease or agreement has been established or renegotiated through competitive bidding, or negotiated or renegotiated in accordance with statutory requirements regarding the rent payable, or negotiated or renegotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor: PROVIDED, That after January 1, 1986, with respect to any lease which has been in effect for ten years or more without renegotiation, taxable rent may be established by procedures set forth in subsection (b) of this subsection. All other leasehold interests shall be subject to the determination of taxable rent under the terms of subsection (b) of this subsection.

For purposes of determining leasehold excise tax on any lands on the Hanford reservation subleased to a private or public entity by the department of ecology, taxable rent shall include only the annual cash rental payment made by such entity to the department of ecology as specifically referred to as rent in the sublease agreement between the parties and shall not include any other fees, assessments, or charges imposed on or collected by such entity irrespective of whether the private or public entity pays or collects such other fees, assessments, or charges as specified in the sublease agreement.

(a) "Contract rent" shall mean the amount of consideration due as payment for a leasehold interest, including: The total of cash payments made to the lessor or to another party for the benefit of the lessor according to the requirements of the lease or agreement, including any rents paid by a sublessee; expenditures for the protection of the lessor's interest when required by the terms of the lease or agreement; and expenditures for improvements to the property to the extent

that such improvements become the property of the lessor. Where the consideration conveyed for the leasehold interest is made in combination with payment for concession or other rights granted by the lessor, only that portion of such payment which represents consideration for the leasehold interest shall be part of contract rent.

"Contract rent" shall not include: (i) Expenditures made by the lessee, which under the terms of the lease or agreement, are to be reimbursed by the lessor to the lessee or expenditures for improvements and protection made pursuant to a lease or an agreement which requires that the use of the improved property be open to the general public and that no profit will inure to the lessee from the lease; (ii) expenditures made by the lessee for the replacement or repair of facilities due to fire or other casualty including payments for insurance to provide reimbursement for losses or payments to a public or private entity for protection of such property from damage or loss or for alterations or additions made necessary by an action of government taken after the date of the execution of the lease or agreement; (iii) improvements added to publicly owned property by a sublessee under an agreement executed prior to January 1, 1976, which have been taxed as personal property of the sublessee prior to January 1, 1976, or improvements made by a sublessee of the same lessee under a similar agreement executed prior to January 1, 1976, and such improvements shall be taxable to the sublessee as personal property; (iv) improvements added to publicly owned property if such improvements are being taxed as personal property to any person.

Any prepaid contract rent shall be considered to have been paid in the year due and not in the year actually paid with respect to prepayment for a period of more than one year. Expenditures for improvements with a useful life of more than one year which are included as part of contract rent shall be treated as prepaid contract rent and prorated over the useful life of the improvement or the remaining term of the lease or agreement if the useful life is in excess of the remaining term of the lease or agreement. Rent prepaid prior to January 1, 1976, shall be prorated from the date of prepayment.

With respect to a "product lease", the value shall be that value determined at the time of sale under terms of the lease.

(b) If it shall be determined by the department of revenue, upon examination of a lessee's accounts or those of a lessor of publicly owned property, that a lessee is occupying or using publicly owned property in such a manner as to create a leasehold interest and that such leasehold interest has not been established through competitive bidding, or negotiated in accordance with statutory requirements regarding the rent payable, or negotiated under circumstances, established by public record, clearly showing that the contract rent was the maximum attainable by the lessor, the department may establish a taxable rent computation for use in determining the tax payable under authority granted in this chapter based upon the following criteria: (i) Consideration shall be given to rental being paid to other lessors by lessees of similar property for similar purposes over similar periods of time; (ii) consideration shall be given to what would be considered a fair rate of return on the market value of the property leased less reasonable deductions for any restrictions on use, special operating requirements or provisions for concurrent use by the lessor, another person or the general public.

(3) "Product lease" as used in this chapter shall mean a lease of property for use in the production of agricultural or marine products to the extent that such lease provides for the contract rent to be paid by the delivery of a stated percentage of the production of such agricultural or marine products to the credit of the lessor or the payment to the lessor of a stated percentage of the proceeds from the sale of such products.

(4) "Renegotiated" means a change in the lease agreement which changes the agreed time of possession, restrictions on use, the rate of the cash rental or of any other consideration payable by the lessee to or for the benefit of the lessor, other than any such change required by the terms of the lease or agreement. In addition "renegotiated" shall mean a continuation of possession by the lessee beyond the date when, under the terms of the lease agreement, the lessee had the right to vacate the premises without any further liability to the lessor.

(5) "City" means any city or town.

(6) "Products" includes natural resource products such as cut or picked evergreen foliage, Cascara bark, wild edible mushrooms, native ornamental trees and shrubs, ore and minerals, natural gas, geothermal water and steam, and forage removed through the grazing of livestock. [1999 c 220 § 2; 1991 c 272 § 23; 1986 c 285 § 1; 1979 ex.s. c 196 § 11; 1975-'76 2nd ex.s. c 61 § 2.]

**Effective dates—1991 c 272:** See RCW 81.108.901.

**Effective date—1979 ex.s. c 196:** See note following RCW 82.04.240.

**82.29A.030 Tax imposed—Credit—Additional tax imposed.** (1) There is hereby levied and shall be collected a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest on and after January 1, 1976, at a rate of twelve percent of taxable rent: PROVIDED, That after the computation of the tax there shall be allowed credit for any tax collected pursuant to RCW 82.29A.040.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. [1983 2nd ex.s. c 3 § 18; 1982 1st ex.s. c 35 § 11; 1975-'76 2nd ex.s. c 61 § 3.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**82.29A.040 Counties and cities authorized to impose tax—Maximum rate—Credit—Collection.** The legislative body of any county or city is hereby authorized to levy and collect a leasehold excise tax on the act or privilege of occupying or using publicly owned real or personal property through a leasehold interest in publicly owned property within the territorial limits of such county or city. The tax levied by a county under authority of this section shall not exceed six percent and the tax levied by a city shall not exceed four percent of taxable rent: PROVIDED, That any county ordinance levying such tax shall contain a provision allowing a credit against the county tax for the full amount of any city tax imposed upon the same taxable event.

The department of revenue shall perform the collection of such taxes on behalf of such county or city. [1975-'76 2nd ex.s. c 61 § 4.]

**82.29A.050 Payment—Due dates—Collection and remittance—Liability—Reporting.** (1) The leasehold excise taxes provided for in RCW 82.29A.030 and 82.29A.040 shall be paid by the lessee to the lessor and the lessor shall collect such tax and remit the same to the department of revenue. The tax shall be payable at the same time as payments are due to the lessor for use of the property from which the leasehold interest arises, and in the case of payment of contract rent to a person other than the lessor, at the time of payment. The tax payment shall be accompanied by such information as the department of revenue may require. In the case of prepaid contract rent the payment may be prorated in accordance with instructions of the department of revenue and the prorated portion of the tax shall be due, one-half not later than May 31 and the other half not later than November 30 each year.

(2) The lessor receiving taxes payable under the provisions of this chapter shall remit the same together with a return provided by the department, to the department of revenue on or before the last day of the month following the month in which the tax is collected. The department may relieve any taxpayer or class of taxpayers from the obligation of filing monthly returns and may require the return to cover other reporting periods, but in no event shall returns be filed for a period greater than one year. The lessor shall be fully liable for collection and remittance of the tax. The amount of tax until paid by the lessee to the lessor shall constitute a debt from the lessee to the lessor. The tax required by this chapter shall be stated separately from contract rent, and if not so separately stated for purposes of determining the tax due from the lessee to the lessor and from the lessor to the department, the contract rent does not include the tax imposed by this chapter. Where a lessee has failed to pay to the lessor the tax imposed by this chapter and the lessor has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the lessee for collection of the tax: PROVIDED, That taxes due where contract rent has not been paid shall be reported by the lessor to the department and the lessee alone shall be liable for payment of the tax to the department.

(3) Each person having a leasehold interest subject to the tax provided for in this chapter arising out of a lease of federally owned or federal trust lands shall report and remit the tax due directly to the department of revenue in the same manner and at the same time as the lessor would be required to report and remit the tax if such lessor were a state public entity. [1992 c 206 § 6; 1975-'76 2nd ex.s. c 61 § 5.]

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**82.29A.060 Administration—Appraisal appeal—Audits.** (1) All administrative provisions in chapters 82.02 and 82.32 RCW shall be applicable to taxes imposed pursuant to this chapter.

(2) A lessee, or a sublessee in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the county board of equalization for a change in appraised value when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b) based on an appraisal done by the county assessor at the request of the department. The petition must be on forms prescribed or approved by the department

ment of revenue and any petition not conforming to those requirements or not properly completed shall not be considered by the board. The petition must be filed with the board within the time period set forth in RCW 84.40.038. A decision of the board of equalization may be appealed by the taxpayer to the board of tax appeals as provided in RCW 84.08.130.

A sublessee, in the case where the sublessee is responsible for paying the tax imposed under this chapter, of property used for residential purposes may petition the department for a change in taxable rent when the department of revenue establishes taxable rent under RCW 82.29A.020(2)(b).

Any change in tax resulting from an appeal under this subsection shall be allocated to the lessee or sublessee responsible for paying the tax.

(3) This section shall not authorize the issuance of any levy upon any property owned by the public lessor.

(4) In selecting leasehold excise tax returns for audit the department of revenue shall give priority to any return an audit of which is specifically requested in writing by the county assessor or treasurer or other chief financial officer of any city or county affected by such return. Notwithstanding the provisions of RCW 82.32.330, findings of fact and determinations of the amount of taxable rent made pursuant to the provisions of this chapter shall be open to public inspection at all reasonable times. [1994 c 95 § 1; 1975-'76 2nd ex.s. c 61 § 6.]

**Effective date—1994 c 95:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 95 § 3.]

**82.29A.070 Disposition of revenue.** All moneys received by the department of revenue from taxes levied under provisions of RCW 82.29A.030 shall be transmitted to the state treasurer and deposited in the general fund. [1975-'76 2nd ex.s. c 61 § 7.]

**82.29A.080 Counties and cities to contract with state for administration and collection—Local leasehold excise tax account.** The counties and cities shall contract, prior to the effective date of an ordinance imposing a leasehold excise tax, with the department of revenue for administration and collection. The department of revenue shall deduct a percentage amount, as provided by such contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by the department. The remainder of any portion of any tax authorized by RCW 82.29A.040, which is collected by the department of revenue, must be remitted to the state treasurer who shall deposit the funds in the local leasehold excise tax account hereby created in the state treasury. Moneys in the local leasehold excise tax account may be spent only for distribution to counties and cities imposing a leasehold excise tax. [2008 c 86 § 401; 2002 c 371 § 925; 1985 c 57 § 84; 1981 2nd ex.s. c 4 § 8; 1975-'76 2nd ex.s. c 61 § 8.]

**Severability—Savings—Part headings not law—2008 c 86:** See notes following RCW 82.14.030.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

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

(2008 Ed.)

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**82.29A.090 Distributions to counties and cities.** (1) Bimonthly the state treasurer shall make distribution from the local leasehold excise tax account to the counties and cities the amount of tax collected on behalf of each county or city.

(2) Earnings accrued through July 31, 2002, shall be disbursed to counties and cities proportionate to the amount of tax collected annually on behalf of each county or city.

(3) After July 31, 2002, bimonthly the state treasurer shall disburse earnings from the local leasehold excise tax account to the counties or cities proportionate to the amount of tax collected on behalf of each county or city.

(4) The state treasurer shall make the distribution under this section without appropriation. [2002 c 177 § 1; 1981 2nd ex.s. c 4 § 9; 1975-'76 2nd ex.s. c 61 § 9.]

**Severability—1981 2nd ex.s. c 4:** See note following RCW 43.30.325.

**82.29A.100 Distributions by county treasurers.** Any moneys received by a county from the leasehold excise tax provided for under RCW 82.29A.040 shall be distributed proportionately by the county treasurer in accordance with RCW 84.56.230 as though such moneys were receipts from regular ad valorem property tax levies within such county: PROVIDED, That no distribution shall be made to the state or any city: AND PROVIDED FURTHER, That the pro rata calculation for proportionate distribution to taxing districts shall not include consideration of any rate(s) of levy by the state or any city. [1975-'76 2nd ex.s. c 61 § 10.]

**82.29A.110 Consistency and uniformity of local leasehold tax with state leasehold tax—Model ordinance.** It is the intent of this chapter that any local leasehold excise tax adopted pursuant to this chapter be as consistent and uniform as possible with the state leasehold excise tax. It is further the intent of this chapter that the local leasehold excise tax shall be imposed upon an individual taxable event simultaneously with the imposition of the state leasehold excise tax upon the same taxable event. The department shall, as soon as practicable, and with the assistance of the appropriate associations of county prosecutors and city attorneys, draft a model ordinance. [1975-'76 2nd ex.s. c 61 § 11.]

**82.29A.120 Allowable credits.** After computation of the taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040 there shall be allowed the following credits in determining the tax payable:

(1) With respect to a leasehold interest other than a product lease, executed with an effective date of April 1, 1986, or thereafter, or a leasehold interest in respect to which the department of revenue under the authority of RCW 82.29A.020 does adjust the contract rent base used for computing the tax provided for in RCW 82.29A.030, there shall be allowed a credit against the tax as otherwise computed equal to the amount, if any, that such tax exceeds the property tax that would apply to such leased property without regard to any property tax exemption under RCW 84.36.381, if it were privately owned by the lessee or if it were privately owned by any sublessee if the value of the credit inures to the sublessee. For lessees and sublessees who would qualify for a property

tax exemption under RCW 84.36.381 if the property were privately owned, the tax otherwise due after this credit shall be reduced by a percentage equal to the percentage reduction in property tax that would result from the property tax exemption under RCW 84.36.381.

(2) With respect to a product lease, a credit of thirty-three percent of the tax otherwise due. [1994 c 95 § 2; 1986 c 285 § 2; 1975-'76 2nd ex.s. c 61 § 12.]

**Effective date—1994 c 95:** See note following RCW 82.29A.060.

**82.29A.130 Exemptions—Certain property.** The following leasehold interests shall be exempt from taxes imposed pursuant to RCW 82.29A.030 and 82.29A.040:

(1) All leasehold interests constituting a part of the operating properties of any public utility which is assessed and taxed as a public utility pursuant to chapter 84.12 RCW.

(2) All leasehold interests in facilities owned or used by a school, college or university which leasehold provides housing for students and which is otherwise exempt from taxation under provisions of RCW 84.36.010 and 84.36.050.

(3) All leasehold interests of subsidized housing where the fee ownership of such property is vested in the government of the United States, or the state of Washington or any political subdivision thereof but only if income qualification exists for such housing.

(4) All leasehold interests used for fair purposes of a nonprofit fair association that sponsors or conducts a fair or fairs which receive support from revenues collected pursuant to RCW 67.16.100 and allocated by the director of the department of agriculture where the fee ownership of such property is vested in the government of the United States, the state of Washington or any of its political subdivisions: PROVIDED, That this exemption shall not apply to the leasehold interest of any sublessee of such nonprofit fair association if such leasehold interest would be taxable if it were the primary lease.

(5) All leasehold interests in any property of any public entity used as a residence by an employee of that public entity who is required as a condition of employment to live in the publicly owned property.

(6) All leasehold interests held by enrolled Indians of lands owned or held by any Indian or Indian tribe where the fee ownership of such property is vested in or held in trust by the United States and which are not subleased to other than to a lessee which would qualify pursuant to this chapter, RCW 84.36.451 and 84.40.175.

(7) All leasehold interests in any real property of any Indian or Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States: PROVIDED, That this exemption shall apply only where it is determined that contract rent paid is greater than or equal to ninety percent of fair market rental, to be determined by the department of revenue using the same criteria used to establish taxable rent in RCW 82.29A.020(2)(b).

(8) All leasehold interests for which annual taxable rent is less than two hundred fifty dollars per year. For purposes of this subsection leasehold interests held by the same lessee in contiguous properties owned by the same lessor shall be deemed a single leasehold interest.

(9) All leasehold interests which give use or possession of the leased property for a continuous period of less than thirty days: PROVIDED, That for purposes of this subsection, successive leases or lease renewals giving substantially continuous use of possession of the same property to the same lessee shall be deemed a single leasehold interest: PROVIDED FURTHER, That no leasehold interest shall be deemed to give use or possession for a period of less than thirty days solely by virtue of the reservation by the public lessor of the right to use the property or to allow third parties to use the property on an occasional, temporary basis.

(10) All leasehold interests under month-to-month leases in residential units rented for residential purposes of the lessee pending destruction or removal for the purpose of constructing a public highway or building.

(11) All leasehold interests in any publicly owned real or personal property to the extent such leasehold interests arises solely by virtue of a contract for public improvements or work executed under the public works statutes of this state or of the United States between the public owner of the property and a contractor.

(12) All leasehold interests that give use or possession of state adult correctional facilities for the purposes of operating correctional industries under RCW 72.09.100.

(13) All leasehold interests used to provide organized and supervised recreational activities for persons with disabilities of all ages in a camp facility and for public recreational purposes by a nonprofit organization, association, or corporation that would be exempt from property tax under RCW 84.36.030(1) if it owned the property. If the publicly owned property is used for any taxable purpose, the leasehold excise taxes set forth in RCW 82.29A.030 and 82.29A.040 shall be imposed and shall be apportioned accordingly.

(14) All leasehold interests in the public or entertainment areas of a baseball stadium with natural turf and a retractable roof or canopy that is in a county with a population of over one million, that has a seating capacity of over forty thousand, and that is constructed on or after January 1, 1995. "Public or entertainment areas" include ticket sales areas, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality and stadium club areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas and suites, the playing field, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include locker rooms or private offices exclusively used by the lessee.

(15) All leasehold interests in the public or entertainment areas of a stadium and exhibition center, as defined in RCW 36.102.010, that is constructed on or after January 1, 1998. For the purposes of this subsection, "public or entertainment areas" has the same meaning as in subsection (14) of this section, and includes exhibition areas.

(16) All leasehold interests in public facilities districts, as provided in chapter 36.100 or 35.57 RCW.

(17) All leasehold interests in property that is: (a) Owned by the United States government or a municipal corporation; (b) listed on any federal or state register of historical sites; and (c) wholly contained within a designated national historic reserve under 16 U.S.C. Sec. 461.

(18) All leasehold interests in the public or entertainment areas of an amphitheater if a private entity is responsible for one hundred percent of the cost of constructing the amphitheater which is not reimbursed by the public owner, both the public owner and the private lessee sponsor events at the facility on a regular basis, the lessee is responsible under the lease or agreement to operate and maintain the facility, and the amphitheater has a seating capacity of over seventeen thousand reserved and general admission seats and is in a county that had a population of over three hundred fifty thousand, but less than four hundred twenty-five thousand when the amphitheater first opened to the public.

For the purposes of this subsection, "public or entertainment areas" include box offices or other ticket sales areas, entrance gates, ramps and stairs, lobbies and concourses, parking areas, concession areas, restaurants, hospitality areas, kitchens or other work areas primarily servicing other public or entertainment areas, public rest room areas, press and media areas, control booths, broadcast and production areas, retail sales areas, museum and exhibit areas, scoreboards or other public displays, storage areas, loading, staging, and servicing areas, seating areas including lawn seating areas and suites, stages, and any other areas to which the public has access or which are used for the production of the entertainment event or other public usage, and any other personal property used for these purposes. "Public or entertainment areas" does not include office areas used predominately by the lessee.

(19) All leasehold interests in real property used for the placement of military housing meeting the requirements of RCW 84.36.665. [2008 c 194 § 1; 2008 c 84 § 2; 2007 c 90 § 1. Prior: 2005 c 514 § 601; 2005 c 170 § 1; 1999 c 165 § 21; 1997 c 220 § 202 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 307; 1995 c 138 § 1; 1992 c 123 § 2; 1975-'76 2nd ex.s. c 61 § 13.]

**Reviser's note:** This section was amended by 2008 c 84 § 2 and by 2008 c 194 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Severability—1999 c 164:** See RCW 35.57.900.

**Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220:** See RCW 36.102.800 through 36.102.803.

**Part headings not law—Severability—1997 c 220:** See RCW 36.102.900 and 36.102.901.

**Part headings not law—Effective date—1995 3rd sp.s. c 1:** See notes following RCW 82.14.0485.

**Effective date—1995 c 138:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 27, 1995]." [1995 c 138 § 2.]

(2008 Ed.)

**82.29A.132 Exemptions—Operation of state route No. 16.** All leasehold interests in the state route number 16 corridor transportation systems and facilities constructed and operated under chapter 47.46 RCW are exempt from tax under this chapter. [1998 c 179 § 6.]

**Finding—1998 c 179:** See note following RCW 35.21.718.

**82.29A.134 Exemptions—Sales/leasebacks by regional transit authorities.** All leasehold interests in property of a regional transit authority or public corporation created under RCW 81.112.320 under an agreement under RCW 81.112.300 are exempt from tax under this chapter. [2000 2nd sp.s. c 4 § 25.]

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**82.29A.135 Exemptions—Property used to manufacture alcohol, biodiesel, or wood biomass fuel.** (1) For the purposes of this section:

(a) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas, which is used alone or in combination with gasoline or other petroleum products for use as a fuel for motor vehicles, farm implements, and machines or implements of husbandry.

(b) "Anaerobic digester" has the same meaning as provided in RCW 82.08.900.

(c) "Biodiesel feedstock" means oil that is produced from an agricultural crop for the sole purpose of ultimately producing biodiesel fuel.

(d) "Biodiesel fuel" means a mono alkyl ester of long chain fatty acids derived from vegetable oils or animal fats for use in compression-ignition engines and that meets the requirements of the American society of testing and materials specification D 6751 in effect as of January 1, 2003.

(e) "Wood biomass fuel" means a pyrolytic liquid fuel or synthesis gas-derived liquid fuel, used in internal combustion engines, and produced from wood, forest, or field residue, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chroma-arsenic.

(2)(a) All leasehold interests in buildings, machinery, equipment, and other personal property which are used primarily for the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, the land upon which this property is located, and land that is reasonably necessary in the manufacturing of alcohol fuel, wood biomass fuel, biodiesel fuel, biodiesel feedstock, or the operation of an anaerobic digester, but not land necessary for growing of crops, which together comprise a new manufacturing facility or an addition to an existing manufacturing facility, are exempt from leasehold taxes for a period of six years from the date on which the facility or the addition to the existing facility becomes operational.

(b) For manufacturing facilities which produce products in addition to alcohol fuel, wood biomass fuel, biodiesel fuel, or biodiesel feedstock, the amount of the leasehold tax exemption shall be based upon the annual percentage of the total value of all products manufactured that is the value of the alcohol fuel, wood biomass fuel, biodiesel fuel, and biodiesel feedstock manufactured.

(3) Claims for exemptions authorized by this section shall be filed with the department of revenue on forms prescribed by the department of revenue and furnished by the department of revenue. Once filed, the exemption is valid for six years and shall not be renewed. The department of revenue shall verify and approve claims as the department of revenue determines to be justified and in accordance with this section. No claims may be filed after December 31, 2009, except for claims for anaerobic digesters, which may be filed no later than December 31, 2012.

The department of revenue may promulgate such rules, pursuant to chapter 34.05 RCW, as are necessary to properly administer this section. [2008 c 268 § 2. Prior: 2003 c 339 § 10; 2003 c 261 § 10; 1985 c 371 § 3; 1980 c 157 § 2.]

**Effective date—2008 c 268:** See note following RCW 84.36.635.

**Effective dates—2003 c 339:** See note following RCW 84.36.640.

**Effective dates—2003 c 261:** See note following RCW 84.36.635.

**82.29A.136 Exemptions—Certain residential and recreational lots.** All leasehold interests consisting of three thousand or more residential and recreational lots that are or may be subleased for residential and recreational purposes are exempt from tax under this chapter. [2001 c 26 § 1.]

**Effective date—2001 c 26 § 1:** "Section 1 of this act takes effect January 1, 2002." [2001 c 26 § 6.]

**82.29A.137 Exemptions—Certain leasehold interests related to the manufacture of superefficient airplanes. (Expires July 1, 2024.)** (1) All leasehold interests in port district facilities exempt from tax under RCW 82.08.980 or 82.12.980 and used by a manufacturer engaged in the manufacturing of superefficient airplanes, as defined in RCW 82.32.550, are exempt from tax under this chapter. A person taking the credit under RCW 82.04.4463 is not eligible for the exemption under this section.

(2) In addition to all other requirements under this title, a person taking the exemption under this section must report as required under RCW 82.32.545.

(3) This section expires July 1, 2024. [2003 2nd sp.s. c 1 § 13.]

**Contingent effective date—2003 2nd sp.s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**82.29A.138 Exemptions—Certain amateur radio repeaters.** (1) All leasehold interests in property used for the placement of amateur radio repeaters that are made available for use by, or are used in support of, a public agency in the event of an emergency or potential emergency to which the agency is, or may be, a qualified responder, are exempt from tax under this chapter.

(2) For purposes of this section, "amateur radio repeater" means an electronic device that receives a weak or low-level amateur radio signal and retransmits it at a higher level or higher power, so that the signal can cover longer distances without degradation, and is used by amateur radio operators possessing a valid license issued by the federal communications commission. [2007 c 21 § 1.]

**82.29A.140 Rules and regulations.** The department of revenue of the state of Washington shall make such rules and

regulations consistent with chapter 34.05 RCW and the provisions of this chapter, RCW 84.36.451 and 84.40.175 as shall be necessary to permit its effective administration including procedures for collection and remittance of taxes imposed by this chapter, and for intervention by the cities and counties levying under RCW 82.29A.040, in proceedings involving such levies and taxes collected pursuant thereto. [1975-'76 2nd ex.s. c 61 § 16.]

**82.29A.160 Improvements not defined as contract rent taxable under Title 84 RCW.** Notwithstanding any other provision of this chapter, RCW 84.36.451 and 84.40.175, improvements owned or being acquired by contract purchase or otherwise by any lessee or sublessee which are not defined as contract rent shall be taxable to such lessee or sublessee under Title 84 RCW at their full true and fair value without any deduction for interests held by the lessor or others. [1986 c 251 § 1; 1975-'76 2nd ex.s. c 61 § 18.]

## Chapter 82.32 RCW

### GENERAL ADMINISTRATIVE PROVISIONS

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- 82.32.5351 Annual report by semiconductor businesses—Report to legislature.
- 82.32.545 Annual report for airplane manufacturing tax preferences (*as amended by 2008 c 81*).
- 82.32.545 Annual report for airplane manufacturing tax preferences (*as amended by 2008 c 283*).
- 82.32.550 Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements.
- 82.32.555 Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges.
- 82.32.560 Electrolytic processing business tax exemption—Annual report.
- 82.32.570 Smelter tax incentives—Goals—Annual report.
- 82.32.580 Sales and use tax deferral—Historic automobile museum.
- 82.32.590 Annual survey for tax incentives—Failure to file.
- 82.32.600 Annual surveys or reports for tax incentives—Electronic filing.
- 82.32.610 Annual survey for fruit and vegetable business tax incentive—Report to legislature.
- 82.32.620 Annual report for tax incentives under RCW 82.04.294.

- 82.32.630 Annual survey for timber tax incentives.
- 82.32.645 Annual survey for biotechnology and medical device manufacturing business tax incentive—Report to legislature.
- 82.32.650 Annual survey—Customized employment training—Report to legislature.
- 82.32.700 Administration of the sales and use tax for hospital benefit zones.
- 82.32.710 Professional employer organizations—Eligibility for tax incentives—Responsibility for reports/surveys.
- 82.32.715 Monetary allowances—Streamlined sales and use tax agreement.
- 82.32.720 Vendor compensation—Streamlined sales and use tax agreement.
- 82.32.725 Amnesty—Streamlined sales and use tax agreement.
- 82.32.730 Sourcing—Streamlined sales and use tax agreement.
- 82.32.735 Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement.
- 82.32.740 Taxability matrix—Liability—Streamlined sales and use tax agreement.
- 82.32.745 Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement.
- 82.32.750 Purchaser liability—Penalty—Streamlined sales and use tax agreement.
- 82.32.755 Sourcing compliance—Taxpayer relief—Interest and penalties—Streamlined sales and use tax agreement.
- 82.32.760 Sourcing compliance—Taxpayer relief—Credits—Streamlined sales and use tax agreement.

*Debts owed state: RCW 43.17.240.*

*Refunds of erroneous or excessive payments: RCW 43.88.170.*

*Tax returns, remittances, etc., filing and receipt when transmitted by mail: RCW 1.12.070.*

**82.32.010 Application of chapter stated.** The provisions of this chapter shall apply with respect to the taxes imposed under chapters 82.04 through 82.14 RCW, under RCW 82.14B.030(3), under chapters 82.16 through 82.29A RCW of this title, under chapter 84.33 RCW, and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section. [1998 c 304 § 12; 1984 c 204 § 26; 1983 c 3 § 219; 1981 c 148 § 12; 1961 c 15 § 82.32.010. Prior: 1935 c 180 § 185; RRS § 8370-185.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**Savings—Effective date—1984 c 204:** See notes following RCW 84.33.035.

**Purpose—Severability—Effective dates—1981 c 148:** See notes following RCW 84.33.130.

**82.32.020 Definitions.** For the purposes of this chapter:  
 (1) The meaning attributed in chapters 82.01 through 82.27 RCW to the words and phrases "tax year," "taxable year," "person," "company," "gross proceeds of sales," "gross income of the business," "business," "engaging in business," "successor," "gross operating revenue," "gross income," "taxpayer," "retail sale," "seller," "buyer," "purchaser," "extended warranty," and "value of products" shall apply equally to the provisions of this chapter.

(2) The definitions in this subsection apply throughout this chapter, unless the context clearly requires otherwise.

(a) "Agreement" means the streamlined sales and use tax agreement.

(b) "Associate member" means a petitioning state that is found to be in compliance with the agreement and changes to its laws, rules, or other authorities necessary to bring it into compliance are not in effect, but are scheduled to take effect on or before January 1, 2008. The petitioning states, by majority vote, may also grant associate member status to a

petitioning state that does not receive an affirmative vote of three-fourths of the petitioning states upon a finding that the state has achieved substantial compliance with the terms of the agreement as a whole, but not necessarily each required provision, measured qualitatively, and there is a reasonable expectation that the state will achieve compliance by January 1, 2008.

(c) "Certified automated system" means software certified under the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) "Certified service provider" means an agent certified under the agreement to perform all of the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(e)(i) "Member state" means a state that:

(A) Has petitioned for membership in the agreement and submitted a certificate of compliance; and

(B) Before the effective date of the agreement, has been found to be in compliance with the requirements of the agreement by an affirmative vote of three-fourths of the other petitioning states; or

(C) After the effective date of the agreement, has been found to be in compliance with the agreement by a three-fourths vote of the entire governing board of the agreement.

(ii) Membership by reason of (e)(i)(A) and (B) of this subsection is effective on the first day of a calendar quarter at least sixty days after at least ten states comprising at least twenty percent of the total population, as determined by the 2000 federal census, of all states imposing a state sales tax have petitioned for membership and have either been found in compliance with the agreement or have been found to be an associate member under section 704 of the agreement.

(iii) Membership by reason of (e)(i)(A) and (C) of this subsection is effective on the state's proposed date of entry or the first day of the calendar quarter after its petition is approved by the governing board, whichever is later, and is at least sixty days after its petition is approved.

(f) "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

(g) "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

(h) "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller. As used in this subsection (2)(h), a seller includes an affiliated group of sellers using the same proprietary system.

(i) "Source" means the location in which the sale or use of tangible personal property, an extended warranty, or a service, subject to tax under chapter 82.08, 82.12, 82.14, or 82.14B RCW, is deemed to occur. [2007 c 6 § 101; 2003 1st sp.s. c 13 § 16; 1983 c 3 § 220; 1961 c 15 § 82.32.020. Prior: 1935 c 180 § 186; RRS § 8370-186.]

**Part headings not law—2007 c 6:** "Part headings used in this act are not any part of the law." [2007 c 6 § 1702.]

**Savings—2007 c 6:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2007 c 6 § 1703.]

**Effective date—2007 c 6:** "Sections 101 through 105, 201, 202, 401, 501 through 503, 601, 701 through 703, 801, 802, 901 through 905, 1001, 1002, 1004, 1005, 1007 through 1013, 1015 through 1017, 1019 through 1024, 1101 through 1104, 1201 through 1203, 1302, 1401 through 1403, 1501, 1502, and 1601 of this act take effect July 1, 2008." [2007 c 6 § 1704.]

**Severability—2007 c 6:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 6 § 1708.]

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**82.32.023 Definition of product for agreement purposes.** For purposes of compliance with the requirements of the agreement only, and unless the context requires otherwise, the terms "product" and "products" refer to tangible personal property, services, extended warranties, and anything else that can be sold or used. [2007 c 6 § 104.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.026 Registration—Seller's agent—Streamlined sales and use tax agreement.** (1) A seller, by written agreement, may appoint a person to represent the seller as its agent. The seller's agent has authority to register the seller with the department under RCW 82.32.030. An agent may also be a certified service provider, with authority to perform all the seller's sales and use tax functions, except that the seller remains responsible for remitting the tax on its own purchases.

(2) The seller or its agent must provide the department with a copy of the written agreement upon request. [2007 c 6 § 201.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.030 Registration certificates—Threshold levels—Central registration system.** (1) Except as provided in subsections (2) and (3) of this section, if any person engages in any business or performs any act upon which a tax is imposed by the preceding chapters, he or she shall, under such rules as the department of revenue shall prescribe, apply for and obtain from the department a registration certificate. Such registration certificate shall be personal and nontransferable and shall be valid as long as the taxpayer continues in business and pays the tax accrued to the state. In case business is transacted at two or more separate places by one taxpayer, a separate registration certificate for each place at which business is transacted with the public shall be required. Each certificate shall be numbered and shall show the name, residence, and place and character of business of the taxpayer and such other information as the department of revenue deems necessary and shall be posted in a conspicuous place at

the place of business for which it is issued. Where a place of business of the taxpayer is changed, the taxpayer must return to the department the existing certificate, and a new certificate will be issued for the new place of business. No person required to be registered under this section shall engage in any business taxable hereunder without first being so registered. The department, by rule, may provide for the issuance of certificates of registration to temporary places of business.

(2) Unless the person is a dealer as defined in RCW 9.41.010, registration under this section is not required if the following conditions are met:

(a) A person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twelve thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twelve thousand dollars per year;

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect; and

(d) The person is not otherwise required to obtain a license subject to the master application procedure provided in chapter 19.02 RCW.

(3) All persons who agree to collect and remit sales and use tax to the department under the agreement must register through the central registration system authorized under the agreement. Persons required to register under subsection (1) of this section are not relieved of that requirement because of registration under this subsection (3).

(4) Persons registered under subsection (3) of this section who are not required to register under subsection (1) of this section and who are not otherwise subject to the requirements of chapter 19.02 RCW are not subject to the fees imposed by RCW 19.02.075. [2007 c 6 § 202; 1996 c 111 § 2. Prior: 1994 sp.s. c 7 § 446; 1994 sp.s. c 2 § 2; 1992 c 206 § 8; 1982 1st ex.s. c 4 § 1; 1979 ex.s. c 95 § 1; 1975 1st ex.s. c 278 § 77; 1961 c 15 § 82.32.030; prior: 1941 c 178 § 19, part; 1937 c 227 § 16, part; 1935 c 180 § 187, part; Rem. Supp. 1941 § 8370-187, part.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Findings—Purpose—1996 c 111:** "The legislature finds that small businesses play a vital role in the state's current and future economic health. The legislature also finds that the state's excise tax reporting and registration requirements are unduly burdensome for small businesses incurring little or no tax liability. The legislature recognizes the costs associated in complying with the reporting and registration requirements that are hindering the further development of those businesses. For these reasons the legislature with this act simplifies the tax reporting and registration requirements for certain small businesses." [1996 c 111 § 1.]

**Effective date—1996 c 111:** "This act shall take effect July 1, 1996." [1996 c 111 § 5.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Effective date—1994 sp.s. c 2:** See note following RCW 82.04.4451.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

(2008 Ed.)

**82.32.033 Registration certificates—Special events—Promoter's duties—Penalties—Definitions.** (1) A promoter of a special event within the state of Washington shall not permit a vendor to make or solicit retail sales of tangible personal property or services at the special event unless the promoter makes a good faith effort to obtain verification that the vendor has obtained a certificate of registration from the department.

(2) A promoter of a special event shall:

(a) Keep, in addition to the records required under RCW 82.32.070, a record of the dates and place of each special event, and the name, address, and registration certificate number of each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event. The record of the date and place of a special event, and the name, address, and registration certificate number of each vendor at the event shall be preserved for a period of one year from the date of a special event; and

(b) Provide to the department, within twenty days of receipt of a written request from the department, a list of vendors permitted to make or solicit retail sales of tangible personal property or services. The list shall be in a form and contain such information as the department may require, and shall include the date and place of the event, and the name, address, and registration certificate number of each vendor.

(3) If a promoter fails to make a good faith effort to comply with the provisions of this section, the promoter is liable for the penalties provided in this subsection (3).

(a) If a promoter fails to make a good faith effort to comply with the provisions of subsection (1) of this section, the department shall impose a penalty of one hundred dollars for each vendor permitted to make or solicit retail sales of tangible personal property or services at the special event.

(b) If a promoter fails to make a good faith effort to comply with the provisions of subsection (2)(b) of this section, the department shall impose a penalty of:

(i) Two hundred fifty dollars if the information requested is not received by the department within twenty days of the department's written request; and

(ii) One hundred dollars for each vendor for whom the information as required by subsection (2)(b) of this section is not provided to the department.

(4) The aggregate of penalties imposed under subsection (3) of this section may not exceed two thousand five hundred dollars for a special event if the promoter has not previously been penalized under this section. Under no circumstances is a promoter liable for sales tax or business and occupation tax not remitted to the department by a vendor at a special event.

(5) The department shall notify a promoter by mail, or electronically as provided in RCW 82.32.135, of any penalty imposed under this section, and the penalty shall be due within thirty days from the date of the notice. If any penalty imposed under this section is not received by the department by the due date, there shall be assessed interest on the unpaid amount beginning the day following the due date until the penalty is paid in full. The rate of interest shall be computed on a daily basis on the amount of outstanding penalty at the rate as computed under RCW 82.32.050(2). The rate computed shall be adjusted annually in the same manner as provided in RCW 82.32.050(1)(c).

(6) For purposes of this section:

(a) "Promoter" means a person who organizes, operates, or sponsors a special event and who contracts with vendors for participation in the special event.

(b) "Special event" means an entertainment, amusement, recreational, educational, or marketing event, whether held on a regular or irregular basis, at which more than one vendor makes or solicits retail sales of tangible personal property or services. The term includes, but is not limited to: Auto shows, recreational vehicle shows, boat shows, home shows, garden shows, hunting and fishing shows, stamp shows, comic book shows, sports memorabilia shows, craft shows, art shows, antique shows, flea markets, exhibitions, festivals, concerts, swap meets, bazaars, carnivals, athletic contests, circuses, fairs, or other similar activities. "Special event" does not include an event that is organized for the exclusive benefit of any nonprofit organization as defined in RCW 82.04.3651. An event is organized for the exclusive benefit of a nonprofit organization if all of the gross proceeds of retail sales of all vendors at the event inure to the benefit of the nonprofit organization on whose behalf the event is being held. "Special event" does not include athletic contests that involve competition between teams, when such competition consists of more than five contests in a calendar year by at least one team at the same facility or site.

(c) "Vendor" means a person who, at a special event, makes or solicits retail sales of tangible personal property or services.

(7) "Good faith effort to comply" and "good faith effort to obtain" may be shown by, but is not limited to, circumstances where a promoter:

(a) Includes a statement on all written contracts with its vendors that a valid registration certificate number issued by the department of revenue is required for participation in the special event and requires vendors to indicate their registration certificate number on these contracts; and

(b) Provides the department with a list of vendors and their associated registration certificate numbers as provided in subsection (2)(b) of this section.

(8) This section does not apply to:

(a) A special event whose promoter does not charge more than two hundred dollars for a vendor to participate in a special event;

(b) A special event whose promoter charges a percentage of sales instead of, or in addition to, a flat charge for a vendor to participate in a special event if the promoter, in good faith, believes that no vendor will pay more than two hundred dollars to participate in the special event; or

(c) A person who does not organize, operate, or sponsor a special event, but only provides a venue, supplies, furnishings, fixtures, equipment, or services to a promoter of a special event. [2007 c 111 § 105; 2004 c 253 § 1; 2003 1st sp.s. c 13 § 15.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**82.32.045 Taxes—When due and payable—Reporting periods—Verified annual returns—Relief from filing requirements.** (1) Except as otherwise provided in this chapter, payments of the taxes imposed under chapters 82.04,

82.08, 82.12, 82.14, and 82.16 RCW, along with reports and returns on forms prescribed by the department, are due monthly within twenty-five days after the end of the month in which the taxable activities occur.

(2) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(3) The department of revenue may also require verified annual returns from any taxpayer, setting forth such additional information as it may deem necessary to correctly determine tax liability.

(4) Notwithstanding subsections (1) and (2) of this section, the department may relieve any person of the requirement to file returns if the following conditions are met:

(a) The person's value of products, gross proceeds of sales, or gross income of the business, from all business activities taxable under chapter 82.04 RCW, is less than twenty-eight thousand dollars per year;

(b) The person's gross income of the business from all activities taxable under chapter 82.16 RCW is less than twenty-four thousand dollars per year; and

(c) The person is not required to collect or pay to the department of revenue any other tax or fee which the department is authorized to collect. [2006 c 256 § 1; 2003 1st sp.s. c 13 § 8; 1999 c 357 § 1; 1996 c 111 § 3; 1983 2nd ex.s. c 3 § 63; 1982 1st ex.s. c 35 § 27; 1981 c 172 § 7; 1981 c 7 § 1.]

**Effective dates—2006 c 256:** "(1) Sections 1 through 4 of this act take effect August 1, 2006.

(2) Sections 6 and 7 of this act take effect July 1, 2006." [2006 c 256 § 9.]

**Application—2006 c 256:** "(1) Sections 1 through 3 of this act apply to returns due after July 31, 2006.

(2) Section 4 of this act applies to payments due after July 31, 2006.

(3) Section 6 of this act only applies to assessments originally issued after June 30, 2006." [2006 c 256 § 7.]

**Savings—2006 c 256:** "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [2006 c 256 § 8.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**Intent—1999 c 357:** "It is the intent of the legislature to allow the department of revenue to increase its ability to provide timely and cost-effective service to taxpayers." [1999 c 357 § 2.]

**Effective date—1999 c 357:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 357 § 4.]

**Findings—Purpose—Effective date—1996 c 111:** See notes following RCW 82.32.030.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1981 c 7:** "This act shall take effect October 1, 1981." [1981 c 172 § 9; 1981 c 7 § 5.]

**82.32.050 Deficient tax or penalty payments—Notice—Interest—Limitations—Time extension or correction of an assessment during state of emergency.** (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer such additional amount found to be due and shall add thereto interest on the tax only. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(a) For tax liabilities arising before January 1, 1992, interest shall be computed at the rate of nine percent per annum from the last day of the year in which the deficiency is incurred until the earlier of December 31, 1998, or the date of payment. After December 31, 1998, the rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For tax liabilities arising after December 31, 1991, the rate of interest shall be variable and computed as provided in subsection (2) of this section from the last day of the year in which the deficiency is incurred until the date of payment. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(c) Interest imposed after December 31, 1998, shall be computed from the last day of the month following each calendar year included in a notice, and the last day of the month following the final month included in a notice if not the end of a calendar year, until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment. The rate of interest shall be variable and computed as provided in subsection (2) of this section. The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(2) For the purposes of this section, the rate of interest to be charged to the taxpayer shall be an average of the federal short-term rate as defined in 26 U.S.C. Sec. 1274(d) plus two percentage points. The rate set for each new year shall be computed by taking an arithmetical average to the nearest percentage point of the federal short-term rate, compounded annually. That average shall be calculated using the rates from four months: January, April, and July of the calendar year immediately preceding the new year, and October of the previous preceding year.

(3) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the due date of any assessment or correction of an assessment for additional taxes, penalties, or interest as the department deems proper.

(4) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of

misrepresentation of a material fact by the taxpayer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2).

(5) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is administered or collected by the department of revenue and that has a statutorily defined due date. [2008 c 181 § 501; 2007 c 111 § 106; 2003 c 73 § 1; 1997 c 157 § 1; 1996 c 149 § 2; 1992 c 169 § 1; 1991 c 142 § 9; 1989 c 378 § 19; 1971 ex.s. c 299 § 16; 1965 ex.s. c 141 § 1; 1961 c 15 § 82.32.050. Prior: 1951 1st ex.s. c 9 § 5; 1949 c 228 § 20; 1945 c 249 § 9; 1939 c 225 § 27; 1937 c 227 § 17; 1935 c 180 § 188; Rem. Supp. 1949 § 8370-188.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Findings—Intent—1996 c 149:** "The legislature finds that a consistent application of interest and penalties is in the best interest of the residents of the state of Washington. The legislature also finds that the goal of the department of revenue's interest and penalty system should be to encourage taxpayers to voluntarily comply with Washington's tax code in a timely manner. The administration of tax programs requires that there be consequences for those taxpayers who do not timely satisfy their reporting and tax obligations, but these consequences should not be so severe as to discourage taxpayers from voluntarily satisfying their tax obligations.

It is the intent of the legislature that, to the extent possible, a single interest and penalty system apply to all tax programs administered by the department of revenue." [1996 c 149 § 1.]

**Effective date—1996 c 149:** "This act shall take effect January 1, 1997." [1996 c 149 § 20.]

**Effective date—Applicability—1992 c 169:** "(1) This act shall take effect July 1, 1992.

(2) This act is effective for all written waivers that remain enforceable as of July 1, 1992." [1992 c 169 § 4.]

**Effective date—1991 c 142 §§ 9-11:** "Sections 9 through 11 of this act shall take effect January 1, 1992." [1991 c 142 § 13.]

**Severability—1991 c 142:** See RCW 82.32A.900.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.055 Interest and penalties—Waiver for military personnel.** (1) Subject to the requirements in subsections (2) through (4) of this section, the department shall waive or cancel interest and penalties imposed under this chapter if the interest and penalties are:

(a) Imposed during any period of armed conflict; and

(b) Imposed on a taxpayer where a majority owner of the taxpayer is an individual who is on active duty in the military, and the individual is participating in a conflict and assigned to a duty station outside the territorial boundaries of the United States.

(2) To receive a waiver or cancellation of interest and penalties under this section, the taxpayer must submit to the department a copy of the individual's deployment orders for deployment outside the territorial boundaries of the United States.

(3) The department may not waive or cancel interest and penalties under this section if the gross income of the business exceeded one million dollars in the calendar year prior to the individual's initial deployment outside the United States

for the armed conflict. The department may not waive or cancel interest and penalties under this section for a taxpayer for more than twenty-four months.

(4) During any period of armed conflict, for any notice sent to a taxpayer that requires a payment of interest, penalties, or both, the notice must clearly indicate on or in the notice that interest and penalties may be waived under this section for qualifying taxpayers. [2008 c 184 § 1.]

**82.32.060 Excess payment of tax, penalty, or interest—Credit or refund—Payment of judgments for refund.** (1) If, upon receipt of an application by a taxpayer for a refund or for an audit of the taxpayer's records, or upon an examination of the returns or records of any taxpayer, it is determined by the department that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 82.32.050 any amount of tax, penalty, or interest has been paid in excess of that properly due, the excess amount paid within, or attributable to, such period shall be credited to the taxpayer's account or shall be refunded to the taxpayer, at the taxpayer's option. Except as provided in subsection (2) of this section, no refund or credit shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(2)(a) The execution of a written waiver under RCW 82.32.050 or 82.32.100 shall extend the time for making a refund or credit of any taxes paid during, or attributable to, the years covered by the waiver if, prior to the expiration of the waiver period, an application for refund of such taxes is made by the taxpayer or the department discovers a refund or credit is due.

(b) A refund or credit shall be allowed for an excess payment resulting from the failure to claim a bad debt deduction, credit, or refund under RCW 82.04.4284, 82.08.037, 82.12.037, 82.14B.150, or 82.16.050(5) for debts that became bad debts under 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003, less than four years prior to the beginning of the calendar year in which the refund application is made or examination of records is completed.

(3) Any such refunds shall be made by means of vouchers approved by the department and by the issuance of state warrants drawn upon and payable from such funds as the legislature may provide. However, taxpayers who are required to pay taxes by electronic funds transfer under RCW 82.32.080 shall have any refunds paid by electronic funds transfer.

(4) Any judgment for which a recovery is granted by any court of competent jurisdiction, not appealed from, for tax, penalties, and interest which were paid by the taxpayer, and costs, in a suit by any taxpayer shall be paid in the same manner, as provided in subsection (3) of this section, upon the filing with the department of a certified copy of the order or judgment of the court.

(a) Interest at the rate of three percent per annum shall be allowed by the department and by any court on the amount of any refund, credit, or other recovery allowed to a taxpayer for taxes, penalties, or interest paid by the taxpayer before January 1, 1992. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as com-

puted under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(b) For refunds or credits of amounts paid or other recovery allowed to a taxpayer after December 31, 1991, the rate of interest shall be the rate as computed for assessments under RCW 82.32.050(2) less one percent. This rate of interest shall apply for all interest allowed through December 31, 1998. Interest allowed after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year.

(5) Interest allowed on a credit notice or refund issued after December 31, 2003, shall be computed as follows:

(a) If all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund were made on or before the due date of the final return for each calendar year or the final reporting period included in the notice or refund:

(i) Interest shall be computed from January 31st following each calendar year included in a notice or refund; or

(ii) Interest shall be computed from the last day of the month following the final month included in a notice or refund.

(b) If the taxpayer has not made all overpayments for each calendar year and all reporting periods ending with the final month included in a notice or refund on or before the dates specified by RCW 82.32.045 for the final return for each calendar year or the final month included in the notice or refund, interest shall be computed from the last day of the month following the date on which payment in full of the liabilities was made for each calendar year included in a notice or refund, and the last day of the month following the date on which payment in full of the liabilities was made if the final month included in a notice or refund is not the end of a calendar year.

(c) Interest included in a credit notice shall accrue up to the date the taxpayer could reasonably be expected to use the credit notice, as defined by the department's rules. If a credit notice is converted to a refund, interest shall be recomputed to the date the refund is issued, but not to exceed the amount of interest that would have been allowed with the credit notice. [2004 c 153 § 306; 2003 c 73 § 2; 1999 c 358 § 13; 1997 c 157 § 2; 1992 c 169 § 2; 1991 c 142 § 10; 1990 c 69 § 1; 1989 c 378 § 20; 1979 ex.s. c 95 § 4; 1971 ex.s. c 299 § 17; 1965 ex.s. c 173 § 27; 1963 c 22 § 1; 1961 c 15 § 82.32.060. Prior: 1951 1st ex.s. c 9 § 6; 1949 c 228 § 21; 1935 c 180 § 189; Rem. Supp. 1949 § 8370-189.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective date—2003 c 73 § 2:** "Section 2 of this act takes effect January 1, 2004." [2003 c 73 § 3.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Effective date—Applicability—1992 c 169:** See note following RCW 82.32.050.

**Effective date—1991 c 142 §§ 9-11:** See note following RCW 82.32.050.

**Severability—1991 c 142:** See RCW 82.32A.900.

**Effective date—1990 c 69:** "This act shall take effect January 1, 1991." [1990 c 69 § 5.]

**Severability—1990 c 69:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 69 § 4.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.062 Additional offset for excess payment of sales tax.** In addition to the procedure set forth in RCW 82.32.060 and as an exception to the four-year period explicitly set forth in RCW 82.32.060, an offset for a tax that has been paid in excess of that properly due may be taken under the following conditions: (1) The tax paid in excess of that properly due was sales tax paid on the purchase of property acquired for leasing; (2) the taxpayer was at the time of purchase entitled to purchase the property at wholesale under RCW 82.04.060; and (3) the taxpayer substantiates that sales tax was paid at the time of purchase and that there was no intervening use of the equipment by the taxpayer. The offset is applied to and reduced by the amount of retail sales tax otherwise due from the beginning of lease of the property until the offset is extinguished. [2002 c 57 § 1.]

**82.32.065 Tax refund to consumer under new motor vehicle warranty laws—Credit or refund to new motor vehicle manufacturer.** If a manufacturer makes a refund of sales tax to a consumer upon return of a new motor vehicle under chapter 19.118 RCW, the department shall credit or refund to the manufacturer the amount of the tax refunded, upon receipt of documentation as required by the department. [1987 c 344 § 16.]

**Effective dates—Severability—1987 c 344:** See RCW 19.118.900 and 19.118.902.

**82.32.070 Records to be preserved—Examination—Estoppel to question assessment—Unified business identifier account number records.** (1) Every person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW shall keep and preserve, for a period of five years, suitable records as may be necessary to determine the amount of any tax for which he may be liable, which records shall include copies of all federal income tax and state tax returns and reports made by him. All his books, records, and invoices shall be open for examination at any time by the department of revenue. In the case of an out-of-state person or concern which does not keep the necessary books and records within this state, it shall be sufficient if it produces within the state such books and records as shall be required by the department of revenue, or permits the examination by an agent authorized or designated by the department of revenue at the place where such books and records are kept. Any person who fails to comply with the requirements of this section shall be forever barred from questioning, in any court action or proceedings, the correctness of any assessment of taxes made by the department of revenue based upon any period for which such books, records, and invoices have not been so kept and preserved.

(2) A person liable for any fee or tax imposed by chapters 82.04 through 82.27 RCW who contracts with another person or entity for work subject to chapter 18.27 or 19.28

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RCW shall obtain and preserve a record of the unified business identifier account number for the person or entity performing the work. Failure to obtain or maintain the record is subject to RCW 39.06.010 and to a penalty determined by the director, but not to exceed two hundred fifty dollars. The department shall notify the taxpayer and collect the penalty in the same manner as penalties under RCW 82.32.100. [1999 c 358 § 14; 1997 c 54 § 4; 1983 c 3 § 221; 1967 ex.s. c 89 § 2; 1961 c 15 § 82.32.070. Prior: 1951 1st ex.s. c 9 § 7; 1935 c 180 § 190; RRS § 8370-190.]

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**82.32.080 Payment by check—Electronic funds transfer—Rules—Mailing returns or remittances—Time extension—Deposits—Time extension during state of emergency—Records—Payment must accompany return.** (1) Payment of the tax may be made by uncertified check under such regulations as the department shall prescribe, but, if a check so received is not paid by the bank on which it is drawn, the taxpayer, by whom such check is tendered, shall remain liable for payment of the tax and for all legal penalties, the same as if such check had not been tendered.

(2) Payment of the tax shall be made by electronic funds transfer, as defined in RCW 82.32.085, if the amount of the tax due in a calendar year is one million eight hundred thousand dollars or more. The department may by rule provide for tax thresholds between two hundred forty thousand dollars and one million eight hundred thousand dollars for mandatory use of electronic funds transfer. All taxes administered by this chapter are subject to this requirement except the taxes authorized by chapters 82.14A, 82.14B, 82.24, 82.27, 82.29A, and 84.33 RCW. It is the intent of this section to require electronic funds transfer for those taxes reported on the department's combined excise tax return or any successor return.

(3) A return or remittance which is transmitted to the department by United States mail shall be deemed filed or received on the date shown by the post office cancellation mark stamped upon the envelope containing it, except as otherwise provided in this chapter. The department is authorized to allow electronic filing of returns or remittances from any taxpayer. A return or remittance which is transmitted to the department electronically shall be deemed filed or received according to procedures set forth by the department.

(4)(a)(i) The department, for good cause shown, may extend the time for making and filing any return, and may grant such reasonable additional time within which to make and file returns as it may deem proper, but any permanent extension granting the taxpayer a reporting date without penalty more than ten days beyond the due date, and any extension in excess of thirty days shall be conditional on deposit with the department of an amount to be determined by the department which shall be approximately equal to the estimated tax liability for the reporting period or periods for which the extension is granted. In the case of a permanent extension or a temporary extension of more than thirty days the deposit shall be deposited within the state treasury with other tax funds and a credit recorded to the taxpayer's account which may be applied to taxpayer's liability upon

cancellation of the permanent extension or upon reporting of the tax liability where an extension of more than thirty days has been granted.

(ii) The department shall review the requirement for deposit at least annually and may require a change in the amount of the deposit required when it believes that such amount does not approximate the tax liability for the reporting period or periods for which the extension is granted.

(b) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for making or filing any return as the department deems proper. The department may not require any deposit as a condition for granting an extension under this subsection (4)(b).

(5) The department shall keep full and accurate records of all funds received and disbursed by it. Subject to the provisions of RCW 82.32.105 and 82.32.350, the department shall apply the payment of the taxpayer first against penalties and interest, and then upon the tax, without regard to any direction of the taxpayer.

(6) The department may refuse to accept any return which is not accompanied by a remittance of the tax shown to be due thereon. When such return is not accepted, the taxpayer shall be deemed to have failed or refused to file a return and shall be subject to the procedures provided in RCW 82.32.100 and to the penalties provided in RCW 82.32.090. The above authority to refuse to accept a return shall not apply when a return is timely filed and a timely payment has been made by electronic funds transfer. [2008 c 181 § 502; 1999 c 357 § 3; 1997 c 156 § 3; 1990 c 69 § 2; 1971 ex.s. c 299 § 18; 1965 ex.s. c 141 § 2; 1963 ex.s. c 28 § 6; 1961 c 15 § 82.32.080. Prior: 1951 1st ex.s. c 9 § 8; 1949 c 228 § 22; 1935 c 180 § 191; Rem. Supp. 1949 § 8370-191.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Intent—Effective date—1999 c 357:** See notes following RCW 82.32.045.

**Severability—Effective date—1990 c 69:** See notes following RCW 82.32.060.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

*Findings—Payment of excise taxes by electronic funds transfer—2006 c 256:* See note following RCW 82.32.045.

*Tax returns, remittances, etc., filing and receipt when transmitted by mail:* RCW 1.12.070.

**82.32.085 Electronic funds transfer—Generally.** (1) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, drafts, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account.

(2)(a) Except as provided in (b) of this subsection, the electronic funds transfer is to be completed so that the state receives collectible funds on or before the next banking day following the due date.

(b) A remittance made using the automated clearinghouse debit method will be deemed to be received on the due date if the electronic funds transfer is initiated on or before

11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date.

(3)(a) The department shall adopt rules necessary to implement the provisions of RCW 82.32.080 and this section. The rules shall include but are not limited to: (i) Coordinating the filing of tax returns with payment by electronic funds transfer; (ii) form and content of electronic funds transfer; (iii) voluntary use of electronic funds transfer with permission of the department; (iv) use of commonly accepted means of electronic funds transfer; (v) means of crediting and recording proof of payment; and (vi) means of correcting errors in transmission.

(b) Any changes in the threshold of tax shall be implemented with a separate rule-making procedure. [2006 c 256 § 4; 1990 c 69 § 3.]

**Findings—Payment of excise taxes by electronic funds transfer—2006 c 256:** "(1) The legislature recognizes the following with respect to the payment of excise taxes to the department of revenue by electronic funds transfer:

(a) Taxpayers required to pay their taxes by electronic funds transfer must do so through the use of either the automated clearinghouse debit method or automated clearinghouse credit method;

(b) For a remittance by electronic funds transfer to be considered timely, the transfer must be completed so that the state receives collectible funds on or before the next banking day following the due date;

(c) For the state to receive collectible funds on or before the next banking day following the due date, taxpayers using the automated clearinghouse debit method must initiate the transfer before 5:00 p.m. pacific time on the due date;

(d) The department of revenue receives information identifying the precise date and time the electronic funds transfer is initiated when a taxpayer uses the debit method; and

(e) The department receives information identifying only the date that the state receives collectible funds when a taxpayer uses the automated clearinghouse credit method.

(2) The legislature therefore finds that a remittance made using the automated clearinghouse debit method should be deemed to be received on the due date if the transfer is initiated on or before 11:59 p.m. pacific time on the due date with an effective payment date on or before the next banking day following the due date. The legislature further finds that because the department does not receive information about when an electronic funds transfer is initiated when a taxpayer uses the automated clearinghouse credit method, such transfers must be completed so that the state receives collectible funds on or before the next banking day following the due date." [2006 c 256 § 5.]

**Effective dates—Application—Savings—2006 c 256:** See notes following RCW 82.32.045.

**Severability—Effective date—1990 c 69:** See notes following RCW 82.32.060.

**82.32.087 Direct pay permits.** (1) The director may grant a direct pay permit to a taxpayer who demonstrates, to the satisfaction of the director, that the taxpayer meets the requirements of this section. The direct pay permit allows the taxpayer to accrue and remit directly to the department use tax on the acquisition of tangible personal property or sales tax on the sale of or charges made for labor and/or services, in accordance with all of the applicable provisions of this title. Any taxpayer that uses a direct pay permit shall remit state and local sales or use tax directly to the department. The agreement by the purchaser to remit tax directly to the department, rather than pay sales or use tax to the seller, relieves the seller of the obligation to collect sales or use tax and requires the buyer to pay use tax on the tangible personal property and sales tax on the sale of or charges made for labor and/or services.

(2)(a) A taxpayer may apply for a permit under this section if the taxpayer (i) is subject to mandatory use of electronic funds transfer under RCW 82.32.080; or (ii) makes purchases subject to the taxes imposed under chapter 82.08 or 82.12 RCW in excess of ten million dollars per calendar year.

(b) Application for a permit must be made in writing to the director in a form and manner prescribed by the department. A taxpayer who transacts business in two or more locations may submit one application to cover the multiple locations.

(c) The director shall review a direct pay permit application in a timely manner and shall notify the applicant, in writing, of the approval or denial of the application. The department shall approve or deny an application based on the applicant's ability to comply with local government use tax coding capabilities and responsibilities; requirements for vendor notification; recordkeeping obligations; electronic data capabilities; and tax reporting procedures. Additionally, an application may be denied if the director determines that denial would be in the best interest of collecting taxes due under this title. The department shall provide a direct pay permit to an approved applicant with the notice of approval. The direct pay permit shall clearly state that the holder is solely responsible for the accrual and payment of the tax imposed under chapters 82.08 and 82.12 RCW and that the seller is relieved of liability to collect tax imposed under chapters 82.08 and 82.12 RCW on all sales to the direct pay permit holder. The taxpayer may petition the director for reconsideration of a denial.

(d) A taxpayer who uses a direct pay permit must continue to maintain records that are necessary to a determination of the tax liability in accordance with this title. A direct pay permit is not transferable and the use of a direct pay permit may not be assigned to a third party.

(3) Taxes for which the direct pay permit is used are due and payable on the tax return for the reporting period in which the taxpayer (a) receives the tangible personal property purchased or in which the labor and/or services are performed or (b) receives an invoice for such property or such labor and/or services, whichever period is earlier.

(4) The holder of a direct pay permit shall furnish a copy of the direct pay permit to each vendor with whom the taxpayer has opted to use a direct pay permit. Sellers who make sales upon which the sales or use tax is not collected by reason of the provisions of this section, in addition to existing requirements under this title, shall maintain a copy of the direct pay permit and any such records or information as the department may specify.

(5) A direct pay permit is subject to revocation by the director at any time the department determines that the taxpayer has violated any provision of this section or that revocation would be in the best interests of collecting the taxes due under this title. The notice of revocation must be in writing and is effective either as of the end of the taxpayer's next normal reporting period or a date deemed appropriate by the director and identified in the revocation notice. The taxpayer may petition the director for reconsideration of a revocation and reinstatement of the permit.

(6) Any taxpayer who chooses to no longer use a direct pay permit or whose permit is revoked by the department, shall return the permit to the department and immediately

make a good faith effort to notify all vendors to whom the permit was given, advising them that the permit is no longer valid.

(7) Except as provided in this subsection, the direct pay permit may be used for any purchase of tangible personal property and any retail sale under RCW 82.04.050. The direct pay permit may not be used for:

(a) Purchases of meals or beverages;

(b) Purchases of motor vehicles, trailers, boats, airplanes, and other property subject to requirements for title transactions by the department of licensing;

(c) Purchases for which a resale certificate may be used;

(d) Purchases that meet the definitions of RCW 82.04.050 (2)(e) and (f), (3)(a) through (d), (f), and (g), and (5); or

(e) Other activities subject to tax under chapter 82.08 or 82.12 RCW that the department by rule designates, consistent with the purposes of this section, as activities for which a direct pay permit is not appropriate and may not be used. [2001 c 188 § 2.]

**Finding—Intent—2001 c 188:** "The legislature finds that programs to allow buyers to remit sales and use tax, rather than traditional collection and remittance by the seller of sales and use tax, can assist in tax compliance, ease administrative burdens, and reduce impacts on buyers and sellers. It is the intent of the legislature to grant the department of revenue the authority to permit certain buyers direct payment authority of tax in those instances where it can be shown, to the satisfaction of the department, that direct payment does not burden sellers and does not complicate administration for the department. Buyers authorized for direct payment will remit tax directly to the department, and will pay use tax on tangible personal property and sales tax on retail labor and/or services.

This act does not affect the requirements to use a resale certificate nor does it affect the business and occupation tax treatment of the seller." [2001 c 188 § 1.]

**Effective date—2001 c 188:** "This act takes effect August 1, 2001." [2001 c 188 § 7.]

**82.32.090 Late payment—Disregard of written instructions—Evasion—Penalties.** (1) If payment of any tax due on a return to be filed by a taxpayer is not received by the department of revenue by the due date, there shall be assessed a penalty of five percent of the amount of the tax; and if the tax is not received on or before the last day of the month following the due date, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if the tax is not received on or before the last day of the second month following the due date, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No penalty so added shall be less than five dollars.

(2) If the department of revenue determines that any tax has been substantially underpaid, there shall be assessed a penalty of five percent of the amount of the tax determined by the department to be due. If payment of any tax determined by the department to be due is not received by the department by the due date specified in the notice, or any extension thereof, there shall be assessed a total penalty of fifteen percent of the amount of the tax under this subsection; and if payment of any tax determined by the department to be due is not received on or before the thirtieth day following the due date specified in the notice of tax due, or any extension thereof, there shall be assessed a total penalty of twenty-five percent of the amount of the tax under this subsection. No

penalty so added shall be less than five dollars. As used in this section, "substantially underpaid" means that the taxpayer has paid less than eighty percent of the amount of tax determined by the department to be due for all of the types of taxes included in, and for the entire period of time covered by, the department's examination, and the amount of underpayment is at least one thousand dollars.

(3) If a warrant be issued by the department of revenue for the collection of taxes, increases, and penalties, there shall be added thereto a penalty of ten percent of the amount of the tax, but not less than ten dollars.

(4) If the department finds that a person has engaged in any business or performed any act upon which a tax is imposed under this title and that person has not obtained from the department a registration certificate as required by RCW 82.32.030, the department shall impose a penalty of five percent of the amount of tax due from that person for the period that the person was not registered as required by RCW 82.32.030. The department shall not impose the penalty under this subsection (4) if a person who has engaged in business taxable under this title without first having registered as required by RCW 82.32.030, prior to any notification by the department of the need to register, obtains a registration certificate from the department.

(5) If the department finds that all or any part of a deficiency resulted from the disregard of specific written instructions as to reporting or tax liabilities, the department shall add a penalty of ten percent of the amount of the additional tax found due because of the failure to follow the instructions. A taxpayer disregards specific written instructions when the department of revenue has informed the taxpayer in writing of the taxpayer's tax obligations and the taxpayer fails to act in accordance with those instructions unless the department has not issued final instructions because the matter is under appeal pursuant to this chapter or departmental regulations. The department shall not assess the penalty under this section upon any taxpayer who has made a good faith effort to comply with the specific written instructions provided by the department to that taxpayer. Specific written instructions may be given as a part of a tax assessment, audit, determination, or closing agreement, provided that such specific written instructions shall apply only to the taxpayer addressed or referenced on such documents. Any specific written instructions by the department of revenue shall be clearly identified as such and shall inform the taxpayer that failure to follow the instructions may subject the taxpayer to the penalties imposed by this subsection.

(6) If the department finds that all or any part of the deficiency resulted from an intent to evade the tax payable hereunder, a further penalty of fifty percent of the additional tax found to be due shall be added.

(7) The penalties imposed under subsections (1) through (4) of this section can each be imposed on the same tax found to be due. This subsection does not prohibit or restrict the application of other penalties authorized by law.

(8) The department of revenue may not impose both the evasion penalty and the penalty for disregarding specific written instructions on the same tax found to be due.

(9) For the purposes of this section, "return" means any document a person is required by the state of Washington to file to satisfy or establish a tax or fee obligation that is admin-

istered or collected by the department of revenue, and that has a statutorily defined due date. [2006 c 256 § 6; 2003 1st sp.s. c 13 § 13; 2000 c 229 § 7; 1999 c 277 § 11; 1996 c 149 § 15; 1992 c 206 § 3; 1991 c 142 § 11; 1987 c 502 § 9; 1983 2nd ex.s. c 3 § 23; 1983 c 7 § 32; 1981 c 172 § 8; 1981 c 7 § 2; 1971 ex.s. c 179 § 1; 1967 ex.s. c 149 § 26; 1965 ex.s. c 141 § 3; 1963 ex.s. c 28 § 7; 1961 c 15 § 82.32.090. Prior: 1959 c 197 § 12; 1955 c 110 § 1; 1951 1st ex.s. c 9 § 9; 1949 c 228 § 23; 1937 c 227 § 18; 1935 c 180 § 192; Rem. Supp. 1949 § 8370-192.]

**Effective dates—Application—Savings—2006 c 256:** See notes following RCW 82.32.045.

**Application—2003 1st sp.s. c 13 § 13:** "Except as otherwise provided in this section, section 13 of this act applies to all penalties imposed after June 30, 2003. The five percent penalty imposed in section 13(2) of this act applies to all assessments originally issued after June 30, 2003." [2003 1st sp.s. c 13 § 14.]

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**Effective date—2000 c 229:** See note following RCW 46.16.010.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Effective date—1991 c 142 §§ 9-11:** See note following RCW 82.32.050.

**Severability—1991 c 142:** See RCW 82.32A.900.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Construction—Severability—Effective dates—1983 c 7:** See notes following RCW 82.08.020.

**Effective dates—1981 c 172:** See note following RCW 82.04.240.

**Effective date—1981 c 7:** See note following RCW 82.32.045.

**Construction—1971 ex.s. c 179:** "This 1971 amendatory act shall apply only to taxes becoming due and payable in June, 1971 and thereafter." [1971 ex.s. c 179 § 2.]

### **82.32.100 Failure to file returns or provide records—Assessment of tax by department—Penalties and interest.**

(1) If any person fails or refuses to make any return or to make available for examination the records required by this chapter, the department shall proceed, in such manner as it may deem best, to obtain facts and information on which to base its estimate of the tax; and to this end the department may examine the records of any such person as provided in RCW 82.32.110.

(2) As soon as the department procures such facts and information as it is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make a return, it shall proceed to determine and assess against such person the tax and any applicable penalties or interest due, but such action shall not deprive such person from appealing the assessment as provided in this chapter. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the total amount of such tax, penalties, and interest, and the total amount shall become due and shall be paid within thirty days from the date of such notice.

(3) No assessment or correction of an assessment may be made by the department more than four years after the close of the tax year, except (a) against a taxpayer who has not registered as required by this chapter, (b) upon a showing of fraud or of misrepresentation of a material fact by the tax-

payer, or (c) where a taxpayer has executed a written waiver of such limitation. The execution of a written waiver shall also extend the period for making a refund or credit as provided in RCW 82.32.060(2). [2007 c 111 § 107; 1992 c 169 § 3; 1989 c 378 § 21; 1971 ex.s. c 299 § 20; 1965 ex.s. c 141 § 4; 1961 c 15 § 82.32.100. Prior: 1951 1st ex.s. c 9 § 10; 1935 c 180 § 194; RRS § 8370-194.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective date—Applicability—1992 c 169:** See note following RCW 82.32.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.105 Waiver or cancellation of penalties or interest—Rules.** (1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, 82.14B.061, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department of revenue shall adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter. [1998 c 304 § 13; 1996 c 149 § 17; 1975 1st ex.s. c 278 § 78; 1965 ex.s. c 141 § 8.]

**Findings—Effective dates—1998 c 304:** See notes following RCW 82.14B.020.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.110 Examination of books or records—Subpoenas—Contempt of court.** The department of revenue or its duly authorized agent may examine any books, papers, records, or other data, or stock of merchandise bearing upon the amount of any tax payable or upon the correctness of any return, or for the purpose of making a return where none has been made, or in order to ascertain whether a return should be made; and may require the attendance of any person at a time and place fixed in a summons served by any sheriff in the

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same manner as a subpoena is served in a civil case, or served in like manner by an agent of the department of revenue.

The persons summoned may be required to testify and produce any books, papers, records, or data required by the department with respect to any tax, or the liability of any person therefor.

The director of the department of revenue, or any duly authorized agent thereof, shall have power to administer an oath to the person required to testify; and any person giving false testimony after the administration of such oath shall be guilty of perjury in the first degree.

If any person summoned as a witness before the department, or its authorized agent, fails or refuses to obey the summons, or refuses to testify or answer any material questions, or to produce any book, record, paper, or data when required to do so, the person is subject to proceedings for contempt, and the department shall thereupon institute contempt of court proceedings in the superior court of Thurston county or of the county in which such person resides. [1989 c 373 § 27; 1975 1st ex.s. c 278 § 79; 1961 c 15 § 82.32.110. Prior: 1935 c 180 § 194; RRS § 8370-194.]

**Severability—1989 c 373:** See RCW 7.21.900.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.120 Oaths and acknowledgments.** All officers empowered by law to administer oaths, the director of the department of revenue, and such officers as he may designate shall have the power to administer an oath to any person or to take the acknowledgment of any person with respect to any return or report required by law or the rules and regulations of the department of revenue. [1975 1st ex.s. c 278 § 80; 1961 c 15 § 82.32.120. Prior: 1935 c 180 § 195; RRS § 8370-195.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.130 Notice and orders—Service.** Notwithstanding any other law, any notice or order required by this title to be mailed to any taxpayer may be provided electronically as provided in RCW 82.32.135, served in the manner prescribed by law for personal service of summons and complaint in the commencement of actions in the superior courts of the state. However if the notice or order is mailed, it shall be addressed to the address of the taxpayer as shown by the records of the department, or, if no such address is shown, to such address as the department is able to ascertain by reasonable effort. Failure of the taxpayer to receive such notice or order whether served, mailed, or provided electronically as provided in RCW 82.32.135 shall not release the taxpayer from any tax or any increases or penalties thereon. [2007 c 111 § 108; 1979 ex.s. c 95 § 2; 1975 1st ex.s. c 278 § 81; 1967 c 237 § 20; 1961 c 15 § 82.32.130. Prior: 1935 c 180 § 196; RRS § 8370-196.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.135 Notice, assessment, other information—Electronic delivery.** (1) Whenever the department is required to send any assessment, notice, or any other infor-

mation to persons by regular mail, the department may instead provide the assessment, notice, or other information electronically if the following conditions are met:

(a) The person entitled to receive the information has authorized the department in writing, electronically or otherwise, to provide the assessment, notice, or other information electronically; and

(b) If the assessment, notice, or other information is subject to the confidentiality provisions of RCW 82.32.330, the department must use methods reasonably designed to protect the information from unauthorized disclosure. The provisions of this subsection (1)(b) may be waived by a taxpayer. The waiver must be in writing and may be provided to the department electronically. A person may provide a waiver with respect to a particular item of information or may give a blanket waiver with respect to any item of information or certain items of information to be provided electronically. A blanket waiver will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(2) A person may authorize the department under subsection (1)(a) of this section to provide a particular item of information electronically or may give blanket authorization to provide any item of information or certain items of information electronically. Such blanket authorization will continue until revoked in writing by the taxpayer. Such revocation may be provided to the department electronically in a manner provided or approved by the department.

(3) Any assessment, notice, or other information provided by the department electronically to a person is deemed to be received by the taxpayer on the date that the department electronically sends the information to the person or electronically notifies the person that the information is available to be accessed by the person.

(4) This section also applies to any information that is not expressly required by statute to be sent by regular mail, but is customarily sent by the department using regular mail, to persons entitled to receive the information. [2007 c 111 § 113.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**82.32.140 Taxpayer quitting business—Liability of successor.** (1) Whenever any taxpayer quits business, or sells out, exchanges, or otherwise disposes of more than fifty percent of the fair market value of either its tangible or intangible assets, any tax payable hereunder shall become immediately due and payable, and such taxpayer shall, within ten days thereafter, make a return and pay the tax due, unless an extension is granted under RCW 82.32.080.

(2) Any person who becomes a successor shall withhold from the purchase price a sum sufficient to pay any tax due from the taxpayer until such time as the taxpayer shall produce a receipt from the department of revenue showing payment in full of any tax due or a certificate that no tax is due. If any tax is not paid by the taxpayer within ten days from the date of such sale, exchange, or disposal, the successor shall become liable for the payment of the full amount of tax. If the fair market value of the assets acquired by a successor is less than fifty thousand dollars, the successor's liability for

payment of the unpaid tax is limited to the fair market value of the assets acquired from the taxpayer. The burden of establishing the fair market value of the assets acquired is on the successor.

(3) The payment of any tax by a successor shall, to the extent thereof, be deemed a payment upon the purchase price; and if such payment is greater in amount than the purchase price the amount of the difference shall become a debt due the successor from the taxpayer.

(4) No successor shall be liable for any tax due from the person from whom the successor has acquired a business or stock of goods if the successor gives written notice to the department of revenue of such acquisition and no assessment is issued by the department of revenue within six months of receipt of such notice against the former operator of the business and a copy thereof mailed to the successor or provided electronically to the successor in accordance with RCW 82.32.135. [2008 c 181 § 503; 2007 c 111 § 109; 2003 1st sp.s. c 13 § 12; 1985 c 414 § 7; 1975 1st ex.s. c 278 § 82; 1961 c 15 § 82.32.140. Prior: 1957 c 88 § 1; 1935 c 180 § 197; RRS § 8370-197.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective dates—2003 1st sp.s. c 13:** See note following RCW 63.29.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.145 Termination, dissolution, or abandonment of corporate or limited liability business—Personal liability of person in control of collected sales tax funds.** (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of retail sales tax funds collected and held in trust under RCW 82.08.050, or who is charged with the responsibility for the filing of returns or the payment of retail sales tax funds collected and held in trust under RCW 82.08.050, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person wilfully fails to pay or to cause to be paid any taxes due from the corporation pursuant to chapter 82.08 RCW. For the purposes of this section, any retail sales taxes that have been paid but not collected shall be deductible from the retail sales taxes collected but not paid.

For purposes of this subsection "wilfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member or manager, or other person shall be liable only for taxes collected which became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability in situations where nonpayment of the retail sales tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160, 82.32.170, 82.32.180, 82.32.190, and 82.32.200.

(5) This section applies only in situations where the department has determined that there is no reasonable means of collecting the retail sales tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in this chapter apply to collections under this section. [1995 c 318 § 2; 1987 c 245 § 1.]

**Effective date—1995 c 318:** See note following RCW 82.04.030.

**82.32.150 Contest of tax—Prepayment required—Restraining orders and injunctions barred.** All taxes, penalties, and interest shall be paid in full before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest. No restraining order or injunction shall be granted or issued by any court or judge to restrain or enjoin the collection of any tax or penalty or any part thereof, except upon the ground that the assessment thereof was in violation of the Constitution of the United States or that of the state. [1961 c 15 § 82.32.150. Prior: 1935 c 180 § 198; RRS § 8370-198.]

**82.32.160 Correction of tax—Administrative procedure—Conference—Determination by department.** Any person having been issued a notice of additional taxes, delinquent taxes, interest, or penalties assessed by the department, may within thirty days after the issuance of the original notice of the amount thereof or within the period covered by any extension of the due date thereof granted by the department petition the department in writing for a correction of the amount of the assessment, and a conference for examination and review of the assessment. The petition shall set forth the reasons why the correction should be granted and the amount of the tax, interest, or penalties, which the petitioner believes to be due. The department shall promptly consider the petition and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall fix the time and place therefor and notify the petitioner thereof by mail or electronically as provided in RCW 82.32.135. After the conference the department may make such determination as may appear to it to be just and lawful and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. If no such petition is filed within the thirty-day period the assessment covered by the notice shall become final.

The procedures provided for herein shall apply also to a notice denying, in whole or in part, an application for a pollution control tax exemption and credit certificate, with such modifications to such procedures established by departmental rules and regulations as may be necessary to accommodate a claim for exemption or credit. [2007 c 111 § 110; 1989 c 378 § 22; 1975 1st ex.s. c 158 § 4; 1967 ex.s. c 26 § 49;

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1963 ex.s. c 28 § 8; 1961 c 15 § 82.32.160. Prior: 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective date—1975 1st ex.s. c 158:** See note following RCW 82.34.050.

**Effective date—1967 ex.s. c 26:** See note following RCW 82.01.050.

**82.32.170 Reduction of tax after payment—Petition—Conference—Determination by department.** Any person, having paid any tax, original assessment, additional assessment, or corrected assessment of any tax, may apply to the department within the time limitation for refund provided in this chapter, by petition in writing for a correction of the amount paid, and a conference for examination and review of the tax liability, in which petition he shall set forth the reasons why the conference should be granted, and the amount in which the tax, interest, or penalty, should be refunded. The department shall promptly consider the petition, and may grant or deny it. If denied, the petitioner shall be notified by mail, or electronically as provided in RCW 82.32.135, thereof forthwith. If a conference is granted, the department shall notify the petitioner by mail, or electronically as provided in RCW 82.32.135, of the time and place fixed therefor. After the hearing the department may make such determination as may appear to it just and lawful, and shall mail a copy of its determination to the petitioner, or provide a copy of its determination electronically as provided in RCW 82.32.135. [2007 c 111 § 111; 1967 ex.s. c 26 § 50; 1961 c 15 § 82.32.170. Prior: 1951 1st ex.s. c 9 § 11; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Effective date—1967 ex.s. c 26:** See note following RCW 82.01.050.

**82.32.180 Court appeal—Procedure.** Any person, except one who has failed to keep and preserve books, records, and invoices as required in this chapter and chapter 82.24 RCW, having paid any tax as required and feeling aggrieved by the amount of the tax may appeal to the superior court of Thurston county, within the time limitation for a refund provided in chapter 82.32 RCW or, if an application for refund has been made to the department within that time limitation, then within thirty days after rejection of the application, whichever time limitation is later. In the appeal the taxpayer shall set forth the amount of the tax imposed upon the taxpayer which the taxpayer concedes to be the correct tax and the reason why the tax should be reduced or abated. The appeal shall be perfected by serving a copy of the notice of appeal upon the department within the time herein specified and by filing the original thereof with proof of service with the clerk of the superior court of Thurston county.

The trial in the superior court on appeal shall be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden shall rest upon the taxpayer to prove that the tax as paid by the taxpayer is incorrect, either in whole or in part, and to establish the correct amount of the tax. In such proceeding the taxpayer shall be deemed the plaintiff, and the state, the defendant; and both parties shall be entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent,

relevant, and material to determine the correct amount of the tax that should be paid by the taxpayer. Either party may seek appellate review in the same manner as other civil actions are appealed to the appellate courts.

It shall not be necessary for the taxpayer to protest against the payment of any tax or to make any demand to have the same refunded or to petition the director for a hearing in order to appeal to the superior court, but no court action or proceeding of any kind shall be maintained by the taxpayer to recover any tax paid, or any part thereof, except as herein provided.

The provisions of this section shall not apply to any tax payment which has been the subject of an appeal to the board of tax appeals with respect to which appeal a formal hearing has been elected. [1997 c 156 § 4; 1992 c 206 § 4; 1989 c 378 § 23; 1988 c 202 § 67; 1971 c 81 § 148; 1967 ex.s. c 26 § 51; 1965 ex.s. c 141 § 5; 1963 ex.s. c 28 § 9; 1961 c 15 § 82.32.180. Prior: 1951 1st ex.s. c 9 § 12; 1939 c 225 § 29, part; 1935 c 180 § 199, part; RRS § 8370-199, part.]

**Effective date—1992 c 206:** See note following RCW 82.04.170.

**Severability—1988 c 202:** See note following RCW 2.24.050.

*Appeal to board of tax appeals, formal hearing: RCW 82.03.160.*

### **82.32.190 Stay of collection pending suit—Interest.**

(1) The department, by its order, may hold in abeyance the collection of tax from any taxpayer or any group of taxpayers when a question bearing on their liability for tax hereunder is pending before the courts. The department may impose such conditions as may be deemed just and equitable and shall require the payment of interest at the rate of three-quarters of one percent of the amount of the tax for each thirty days or portion thereof from the date upon which such tax became due until the date of payment.

(2) Interest imposed under this section for periods after January 1, 1997, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for taxes held in abeyance under this section before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at three-quarters of one percent per each thirty days or portion thereof. [1996 c 149 § 3; 1971 ex.s. c 299 § 21; 1965 ex.s. c 141 § 6; 1961 c 15 § 82.32.190. Prior: 1937 c 227 § 19; 1935 c 180 § 200; RRS § 8370-200.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

### **82.32.200 Stay of collection—Bond—Interest.**

(1) When any assessment or additional assessment has been made, the taxpayer may obtain a stay of collection, under such circumstances and for such periods as the department of revenue may by general regulation provide, of the whole or any part thereof, by filing with the department a bond in an amount, not exceeding twice the amount on which stay is desired, and with sureties as the department deems necessary, conditioned for the payment of the amount of the assessments, collection of which is stayed by the bond, together with the interest thereon at the rate of one percent of the amount of such assessment for each thirty days or portion

thereof from the date the bond is filed until the date of payment.

(2) Interest imposed under this section after January 1, 1997, shall be computed on a daily basis on the amount of tax at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year. Interest for bonds filed before January 1, 1997, but outstanding after January 1, 1997, shall not be recalculated but shall remain at one percent per each thirty days or portion thereof. [1996 c 149 § 4; 1975 1st ex.s. c 278 § 83; 1961 c 15 § 82.32.200. Prior: 1935 c 180 § 201; RRS § 8370-201.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

### **82.32.210 Tax warrant—Filing—Lien—Effect.**

(1) If any fee, tax, increase, or penalty or any portion thereof is not paid within fifteen days after it becomes due, the department of revenue may issue a warrant in the amount of such unpaid sums, together with interest thereon from the date the warrant is issued until the date of payment. If, however, the department of revenue believes that a taxpayer is about to cease business, leave the state, or remove or dissipate the assets out of which fees, taxes or penalties might be satisfied and that any tax or penalty will not be paid when due, it may declare the fee, tax or penalty to be immediately due and payable and may issue a warrant immediately.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent of the amount of the warrant for each thirty days or portion thereof.

(b) Interest imposed after December 31, 1998, shall be computed on a daily basis on the amount of outstanding tax or fee at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. As used in this subsection, "fee" does not include an administrative filing fee such as a court filing fee and warrant fee.

(2) The department shall file a copy of the warrant with the clerk of the superior court of any county of the state in which real and/or personal property of the taxpayer may be found. The clerk is entitled to a filing fee under RCW 36.18.012(10). Upon filing, the clerk shall enter in the judgment docket, the name of the taxpayer mentioned in the warrant and in appropriate columns the amount of the fee, tax or portion thereof and any increases and penalties for which the warrant is issued and the date when the copy is filed, and thereupon the amount of the warrant so docketed shall become a specific lien upon all goods, wares, merchandise, fixtures, equipment, or other personal property used in the conduct of the business of the taxpayer against whom the warrant is issued, including property owned by third persons who have a beneficial interest, direct or indirect, in the operation of the business, and no sale or transfer of the personal property in any way affects the lien.

(3) The lien shall not be superior, however, to bona fide interests of third persons which had vested prior to the filing of the warrant when the third persons do not have a beneficial interest, direct or indirect, in the operation of the business, other than the securing of the payment of a debt or the receiv-

ing of a regular rental on equipment. The phrase "bona fide interests of third persons" does not include any mortgage of real or personal property or any other credit transaction that results in the mortgagee or the holder of the security acting as trustee for unsecured creditors of the taxpayer mentioned in the warrant who executed the chattel or real property mortgage or the document evidencing the credit transaction.

(4) The amount of the warrant so docketed shall thereupon also become a lien upon the title to and interest in all other real and personal property of the taxpayer against whom it is issued the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed shall be sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied. [2001 c 146 § 12; 1998 c 311 § 8; 1997 c 157 § 3; 1987 c 405 § 15; 1983 1st ex.s. c 55 § 8; 1967 ex.s. c 89 § 3; 1961 c 15 § 82.32.210. Prior: 1955 c 389 § 38; prior: 1951 1st ex.s. c 9 § 13; 1949 c 228 § 225, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

**Severability—1987 c 405:** See note following RCW 70.94.450.

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.32.215 Revocation of certificate of registration.** If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, or if any taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of revenue of retail sales tax collected by the taxpayer, the department of revenue may, by order, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered, and until the taxpayer has deposited with the department of revenue such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer. [1998 c 311 § 9; 1983 1st ex.s. c 55 § 9.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**82.32.220 Execution of warrant—Levy upon property—Satisfaction.** The department of revenue may issue an order of execution, pursuant to a filed warrant, directed to the sheriff of the county in which the warrant has been filed, commanding the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within the sheriff's county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department of revenue and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall

thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for the sheriff's services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant. [1998 c 311 § 10; 1983 1st ex.s. c 55 § 10; 1961 c 304 § 6; 1961 c 15 § 82.32.220. Prior: 1955 c 389 § 39; prior: 1951 1st ex.s. c 9 § 14; 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

*Fee for filing tax warrant by county clerk:* RCW 36.18.020.

**82.32.230 Agent of the department of revenue may execute.** In the discretion of the department of revenue, an order of execution of like terms, force, and effect may be issued and directed to any agent of the department authorized to collect taxes, and in the execution thereof such agent shall have all the powers conferred by law upon sheriffs, but shall not be entitled to any fee or compensation in excess of the actual expenses paid in the performance of such duty, which shall be added to the amount of the warrant. [1983 1st ex.s. c 55 § 11; 1975 1st ex.s. c 278 § 84; 1961 c 15 § 82.32.230. Prior: 1949 c 228 § 25, part; 1937 c 227 § 20, part; 1935 c 180 § 202, part; Rem. Supp. 1949 § 8370-202, part.]

**Effective dates—1983 1st ex.s. c 55:** See note following RCW 82.08.010.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.235 Notice and order to withhold and deliver property due or owned by taxpayer—Bond—Judgment by default.** In addition to the remedies provided in this chapter the department is hereby authorized to issue to any person, or to any political subdivision or department of the state, a notice and order to withhold and deliver property of any kind whatsoever when there is reason to believe that there is in the possession of such person, political subdivision or department, property which is or shall become due, owing, or belonging to any taxpayer against whom a warrant has been filed.

The notice and order to withhold and deliver shall be served by the sheriff of the county wherein the service is made, or by his deputy, or by any duly authorized representative of the department, provided that service by such persons

may also be made by certified mail, with return receipt requested, upon those persons, or political subdivision or department, to whom the notice and order to withhold and deliver is directed. Any person, or any political subdivision or department upon whom service has been made is hereby required to answer the notice within twenty days exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of in the notice.

In the event there is in the possession of any such person or political subdivision or department, any property which may be subject to the claim of the department, such property shall be delivered forthwith to the department of revenue or its duly authorized representative upon demand to be held in trust by the department for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability, or in the alternative, there shall be furnished a good and sufficient bond satisfactory to the department conditioned upon final determination of liability.

Should any person or political subdivision fail to make answer to an order to withhold and deliver within the time prescribed herein, it shall be lawful for the court, after the time to answer such order has expired, to render judgment by default against such person or political subdivision for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1987 c 208 § 1; 1975 1st ex.s. c 278 § 85; 1971 ex.s. c 299 § 22; 1963 ex.s. c 28 § 11.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.237 Notice and order to withhold and deliver—Continuing lien—Effective date.** Upon service, the notice and order to withhold and deliver shall constitute a continuing lien on property of the taxpayer and upon wages due, owing, or belonging to the taxpayer. The department shall include in the caption of the notice and order to withhold and deliver "continuing lien." The effective date of a notice and order to withhold and deliver served under RCW 82.32.235 shall be the date of service thereof. [1987 c 208 § 2.]

**82.32.240 Tax constitutes debt to the state—Priority of lien.** Any tax due and unpaid and all increases and penalties thereon, shall constitute a debt to the state and may be collected by court proceedings in the same manner as any other debt in like amount, which remedy shall be in addition to any and all other existing remedies.

In all cases of probate, insolvency, assignment for the benefit of creditors, or bankruptcy, involving any taxpayer who is, or decedent who was, engaging in business, the claim of the state for said taxes and all increases and penalties thereon shall be a lien upon all real and personal property of the taxpayer, and the mere existence of such cases or conditions shall be sufficient to create such lien without any prior or subsequent action by the state, and in all such cases it shall be the duty of all administrators, executors, guardians, receivers, trustees in bankruptcy or assignees for the benefit of creditors, to notify the department of revenue of such admin-

istration, receivership or assignment within sixty days from the date of their appointment and qualification.

The lien provided for by this section shall attach as of the date of the assignment for the benefit of creditors or of the initiation of the probate, insolvency, or bankruptcy proceedings: PROVIDED, That this sentence shall not be construed as affecting the validity or priority of any earlier lien that may have attached previously in favor of the state under any other section of this title.

Any administrator, executor, guardian, receiver or assignee for the benefit of creditors not giving the notification as provided for above shall become personally liable for payment of the taxes and all increases and penalties thereon to the extent of the value of the property subject to administration that otherwise would have been available for the payment of such taxes, increases, and penalties by the administrator, executor, guardian, receiver, or assignee.

As used in this section, "probate" includes the nonprobate claim settlement procedure under chapter 11.42 RCW, and "executor" and "administrator" includes any notice agent acting under chapter 11.42 RCW. [1994 c 221 § 69; 1988 c 64 § 21; 1975 1st ex.s. c 278 § 86; 1961 c 15 § 82.32.240. Prior: 1949 c 228 § 26; 1935 c 180 § 203; Rem. Supp. 1949 § 8370-203.]

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

**Captions—Severability—1988 c 64:** See RCW 83.100.904 and 83.100.905.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.245 Search for and seizure of property—Warrant—Procedure.** (1) When there is probable cause to believe that there is property within this state, not otherwise exempt from process or execution, in the possession or control of any taxpayer against whom a tax warrant has been filed which remains unsatisfied, any judge of the superior court or district court in the county in which such property is located may, upon the request of the sheriff or agent of the department authorized to collect taxes, issue a warrant directed to such officers commanding the search for and seizure of the property described in the request for warrant.

(2) Application for, issuance, and execution and return of the warrant authorized by this section and for return of any property seized shall be in accordance with the criminal rules of the superior court and the justice court.

(3) The sheriff or agent of the department shall levy execution upon property seized pursuant to this section as provided in RCW 82.32.220 and 82.32.230.

(4) Nothing in this section shall require the application for and issuance of any warrant not otherwise required by law. [1985 c 414 § 3.]

**82.32.260 Payment condition to dissolution or withdrawal of corporation.** In the case of any corporation organized under the laws of this state, the courts shall not enter or sign any decree of dissolution, nor shall the secretary of state file in his office any certificate of dissolution, and in the case of any corporation organized under the laws of another jurisdiction and admitted to do business in this state, the secretary of state shall withhold the issuance of any certificate of withdrawal, until proof, in the form of a certificate from the

department of revenue, has been furnished by the applicant for such dissolution or withdrawal, that every license fee, tax, increase, or penalty has been paid or provided for. [1975 1st ex.s. c 278 § 87; 1961 c 15 § 82.32.260. Prior: 1935 c 180 § 204; RRS § 8370-204.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.265 Use of collection agencies to collect taxes outside the state.** (1) The department may retain, by written contract, collection agencies licensed under chapter 19.16 RCW or licensed under the laws of another state or the District of Columbia for the purpose of collecting from sources outside the state of Washington taxes including interest and penalties thereon imposed under this title and RCW 84.33.041.

(2) Only accounts represented by tax warrants filed in the superior court of a county in the state as provided by RCW 82.32.210 may be assigned to a collection agency, and no such assignment may be made unless the department has previously notified or has attempted to notify the taxpayer of his or her right to petition for correction of assessment within the time provided and in accordance with the procedures set forth in chapter 82.32 RCW.

(3) Collection agencies assigned accounts for collection under this section shall have only those remedies and powers that would be available to them as assignees of private creditors. However, nothing in this section limits the right to enforce the liability for taxes lawfully imposed under the laws of this state in the courts of another state or the District of Columbia as provided by the laws of such jurisdictions and RCW 4.24.140 and 4.24.150.

(4) The account of the taxpayer shall be credited with the amounts collected by a collection agency before reduction for reasonable collection costs, including attorneys fees, that the department is authorized to negotiate on a contingent fee or other basis. [1987 c 80 § 5; 1985 c 414 § 4.]

**82.32.270 Accounting period prescribed.** The taxes imposed hereunder, and the returns required therefor, shall be upon a calendar year basis; but, if any taxpayer in transacting his business, keeps books reflecting the same on a basis other than the calendar year, he may, with consent of the department of revenue, make his returns, and pay taxes upon the basis of his accounting period as shown by the method of keeping the books of his business. [1975 1st ex.s. c 278 § 88; 1961 c 15 § 82.32.270. Prior: 1935 c 180 § 205; RRS § 8370-205.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.280 Tax declared additional.** Taxes imposed hereunder shall be in addition to any and all other licenses, taxes, and excises levied or imposed by the state or any municipal subdivision thereof. [1961 c 15 § 82.32.280. Prior: 1935 c 180 § 206; RRS § 8370-206.]

**82.32.290 Unlawful acts—Penalties.** (1)(a) It shall be unlawful:

(2008 Ed.)

(i) For any person to engage in business without having obtained a certificate of registration as provided in this chapter;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business without having obtained a certificate of registration as provided in this chapter;

(iii) For any person to tear down or remove any order or notice posted by the department;

(iv) For any person to aid or abet another in any attempt to evade the payment of any tax or any part thereof;

(v) For any purchaser to fraudulently sign a resale certificate without intent to resell the property purchased; or

(vi) For any person to fail or refuse to permit the examination of any book, paper, account, record, or other data by the department or its duly authorized agent; or to fail or refuse to permit the inspection or appraisal of any property by the department or its duly authorized agent; or to refuse to offer testimony or produce any record as required.

(b) Any person violating any of the provisions of this subsection (1) shall be guilty of a gross misdemeanor in accordance with chapter 9A.20 RCW.

(2)(a) It shall be unlawful:

(i) For any person to engage in business after revocation of a certificate of registration;

(ii) For the president, vice president, secretary, treasurer, or other officer of any company to cause or permit the company to engage in business after revocation of a certificate of registration; or

(iii) For any person to make any false or fraudulent return or false statement in any return, with intent to defraud the state or evade the payment of any tax or part thereof.

(b) Any person violating any of the provisions of this subsection (2) shall be guilty of a class C felony in accordance with chapter 9A.20 RCW.

(3) In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent return, or any return containing any false or fraudulent statement with the intent aforesaid, shall be guilty of the offense of perjury in the second degree; and any company for which a false return, or a return containing a false statement, as aforesaid, is made, shall be punished, upon conviction thereof, by a fine of not more than one thousand dollars. All penalties or punishments provided in this section shall be in addition to all other penalties provided by law. [1985 c 414 § 2; 1975 1st ex.s. c 278 § 89; 1961 c 15 § 82.32.290. Prior: 1935 c 180 § 207; RRS § 8370-207.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.291 Resale certificate, unlawful use—Penalty—Rules.** Any person who uses a resale certificate to purchase items or services without payment of sales tax and who is not entitled to use the certificate for the purchase shall be assessed a penalty of fifty percent of the tax due, in addition to all other taxes, penalties, and interest due, on the improperly purchased item or service. The department may waive the penalty imposed under this section if it finds that the use of the certificate was due to circumstances beyond the taxpayer's control or if the certificate was properly used for purchases for dual purposes. The department shall define by rule

what circumstances are considered to be beyond the taxpayer's control. [1993 sp.s. c 25 § 703.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

*Resale certificates:* RCW 82.04.470 and 82.08.130.

**82.32.300 Department of revenue to administer—Chapters enforced by liquor control board.** The administration of this and chapters 82.04 through 82.27 RCW of this title is vested in the department of revenue which shall prescribe forms and rules of procedure for the determination of the taxable status of any person, for the making of returns and for the ascertainment, assessment and collection of taxes and penalties imposed thereunder.

The department of revenue shall make and publish rules and regulations, not inconsistent therewith, necessary to enforce provisions of this chapter and chapters 82.02 through 82.23B and 82.27 RCW, and the liquor control board shall make and publish rules necessary to enforce chapters 82.24 and 82.26 RCW, which shall have the same force and effect as if specifically included therein, unless declared invalid by the judgment of a court of record not appealed from.

The department may employ such clerks, specialists, and other assistants as are necessary. Salaries and compensation of such employees shall be fixed by the department and shall be charged to the proper appropriation for the department.

The department shall exercise general supervision of the collection of taxes and, in the discharge of such duty, may institute and prosecute such suits or proceedings in the courts as may be necessary and proper. [1997 c 420 § 9; 1983 c 3 § 222; 1975 1st ex.s. c 278 § 90; 1961 c 15 § 82.32.300. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.310 Immunity of officers, agents, etc., of the department of revenue acting in good faith.** When recovery is had in any suit or proceeding against an officer, agent, or employee of the department of revenue for any act done by him or for the recovery of any money exacted by or paid to him and by him paid over to the department, in the performance of his official duty, and the court certifies that there was probable cause for the act done by such officer, agent, or employee, or that he acted under the direction of the department or an officer thereof, no execution shall issue against such officer, agent, or employee, but the amount so recovered shall, upon final judgment, be paid by the department as an expense of operation. [1975 1st ex.s. c 278 § 91; 1961 c 15 § 82.32.310. Prior: 1935 c 180 § 208, part; RRS § 8370-208, part.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.320 Revenue to state treasurer—Allocation for return or payment for less than the full amount due.** The department of revenue, on the next business day following the receipt of any payments hereunder, shall transmit them to the state treasurer, taking his or her receipt therefor. If a return or payment is submitted with less than the full amount of all taxes, interest, and penalties due, the department may allocate payments among applicable funds so as to minimize

administrative costs to the extent practicable. [1995 c 318 § 7; 1975 1st ex.s. c 278 § 92; 1961 c 15 § 82.32.320. Prior: 1935 c 180 § 209; RRS § 8370-209.]

**Effective date—1995 c 318:** See note following RCW 82.04.030.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.330 Disclosure of return or tax information.**

(1) For purposes of this section:

(a) "Disclose" means to make known to any person in any manner whatever a return or tax information;

(b) "Return" means a tax or information return or claim for refund required by, or provided for or permitted under, the laws of this state which is filed with the department of revenue by, on behalf of, or with respect to a person, and any amendment or supplement thereto, including supporting schedules, attachments, or lists that are supplemental to, or part of, the return so filed;

(c) "Tax information" means (i) a taxpayer's identity, (ii) the nature, source, or amount of the taxpayer's income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability deficiencies, overassessments, or tax payments, whether taken from the taxpayer's books and records or any other source, (iii) whether the taxpayer's return was, is being, or will be examined or subject to other investigation or processing, (iv) a part of a written determination that is not designated as a precedent and disclosed pursuant to RCW 82.32.410, or a background file document relating to a written determination, and (v) other data received by, recorded by, prepared by, furnished to, or collected by the department of revenue with respect to the determination of the existence, or possible existence, of liability, or the amount thereof, of a person under the laws of this state for a tax, penalty, interest, fine, forfeiture, or other imposition, or offense: PROVIDED, That data, material, or documents that do not disclose information related to a specific or identifiable taxpayer do not constitute tax information under this section. Except as provided by RCW 82.32.410, nothing in this chapter shall require any person possessing data, material, or documents made confidential and privileged by this section to delete information from such data, material, or documents so as to permit its disclosure;

(d) "State agency" means every Washington state office, department, division, bureau, board, commission, or other state agency;

(e) "Taxpayer identity" means the taxpayer's name, address, telephone number, registration number, or any combination thereof, or any other information disclosing the identity of the taxpayer; and

(f) "Department" means the department of revenue or its officer, agent, employee, or representative.

(2) Returns and tax information shall be confidential and privileged, and except as authorized by this section, neither the department of revenue nor any other person may disclose any return or tax information.

(3) This section does not prohibit the department of revenue from:

(a) Disclosing such return or tax information in a civil or criminal judicial proceeding or an administrative proceeding:

(i) In respect of any tax imposed under the laws of this state if the taxpayer or its officer or other person liable under Title 82 RCW is a party in the proceeding; or

(ii) In which the taxpayer about whom such return or tax information is sought and another state agency are adverse parties in the proceeding;

(b) Disclosing, subject to such requirements and conditions as the director shall prescribe by rules adopted pursuant to chapter 34.05 RCW, such return or tax information regarding a taxpayer to such taxpayer or to such person or persons as that taxpayer may designate in a request for, or consent to, such disclosure, or to any other person, at the taxpayer's request, to the extent necessary to comply with a request for information or assistance made by the taxpayer to such other person: PROVIDED, That tax information not received from the taxpayer shall not be so disclosed if the director determines that such disclosure would compromise any investigation or litigation by any federal, state, or local government agency in connection with the civil or criminal liability of the taxpayer or another person, or that such disclosure is contrary to any agreement entered into by the department that provides for the reciprocal exchange of information with other government agencies which agreement requires confidentiality with respect to such information unless such information is required to be disclosed to the taxpayer by the order of any court;

(c) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been either issued or filed and remains outstanding for a period of at least ten working days. The department shall not be required to disclose any information under this subsection if a taxpayer: (i) Has been issued a tax assessment; (ii) has been issued a warrant that has not been filed; and (iii) has entered a deferred payment arrangement with the department of revenue and is making payments upon such deficiency that will fully satisfy the indebtedness within twelve months;

(d) Disclosing the name of a taxpayer with a deficiency greater than five thousand dollars and against whom a warrant under RCW 82.32.210 has been filed with a court of record and remains outstanding;

(e) Publishing statistics so classified as to prevent the identification of particular returns or reports or items thereof;

(f) Disclosing such return or tax information, for official purposes only, to the governor or attorney general, or to any state agency, or to any committee or subcommittee of the legislature dealing with matters of taxation, revenue, trade, commerce, the control of industry or the professions;

(g) Permitting the department of revenue's records to be audited and examined by the proper state officer, his or her agents and employees;

(h) Disclosing any such return or tax information to a peace officer as defined in RCW 9A.04.110 or county prosecuting attorney, for official purposes. The disclosure may be made only in response to a search warrant, subpoena, or other court order, unless the disclosure is for the purpose of criminal tax enforcement. A peace officer or county prosecuting attorney who receives the return or tax information may disclose that return or tax information only for use in the investigation and a related court proceeding, or in the court proceeding

for which the return or tax information originally was sought;

(i) Disclosing any such return or tax information to the proper officer of the internal revenue service of the United States, the Canadian government or provincial governments of Canada, or to the proper officer of the tax department of any state or city or town or county, for official purposes, but only if the statutes of the United States, Canada or its provincial governments, or of such other state or city or town or county, as the case may be, grants substantially similar privileges to the proper officers of this state;

(j) Disclosing any such return or tax information to the Department of Justice, including the Bureau of Alcohol, Tobacco, Firearms and Explosives within the Department of Justice, the Department of Defense, the Immigration and Customs Enforcement and the Customs and Border Protection agencies of the United States Department of Homeland Security, the Coast Guard of the United States, and the United States Department of Transportation, or any authorized representative thereof, for official purposes;

(k) Publishing or otherwise disclosing the text of a written determination designated by the director as a precedent pursuant to RCW 82.32.410;

(l) Disclosing, in a manner that is not associated with other tax information, the taxpayer name, entity type, business address, mailing address, revenue tax registration numbers, North American industry classification system or standard industrial classification code of a taxpayer, and the dates of opening and closing of business. This subsection shall not be construed as giving authority to the department to give, sell, or provide access to any list of taxpayers for any commercial purpose;

(m) Disclosing such return or tax information that is also maintained by another Washington state or local governmental agency as a public record available for inspection and copying under the provisions of chapter 42.56 RCW or is a document maintained by a court of record not otherwise prohibited from disclosure;

(n) Disclosing such return or tax information to the United States department of agriculture for the limited purpose of investigating food stamp fraud by retailers;

(o) Disclosing to a financial institution, escrow company, or title company, in connection with specific real property that is the subject of a real estate transaction, current amounts due the department for a filed tax warrant, judgment, or lien against the real property;

(p) Disclosing to a person against whom the department has asserted liability as a successor under RCW 82.32.140 return or tax information pertaining to the specific business of the taxpayer to which the person has succeeded;

(q) Disclosing such return or tax information in the possession of the department relating to the administration or enforcement of the real estate excise tax imposed under chapter 82.45 RCW, including information regarding transactions exempt or otherwise not subject to tax; or

(r) Disclosing to local taxing jurisdictions the identity of sellers granted relief under RCW 82.32.430(5)(b)(i) and the period for which relief is granted.

(4)(a) The department may disclose return or taxpayer information to a person under investigation or during any court or administrative proceeding against a person under

investigation as provided in this subsection (4). The disclosure must be in connection with the department's official duties relating to an audit, collection activity, or a civil or criminal investigation. The disclosure may occur only when the person under investigation and the person in possession of data, materials, or documents are parties to the return or tax information to be disclosed. The department may disclose return or tax information such as invoices, contracts, bills, statements, resale or exemption certificates, or checks. However, the department may not disclose general ledgers, sales or cash receipt journals, check registers, accounts receivable/payable ledgers, general journals, financial statements, expert's workpapers, income tax returns, state tax returns, tax return workpapers, or other similar data, materials, or documents.

(b) Before disclosure of any tax return or tax information under this subsection (4), the department shall, through written correspondence, inform the person in possession of the data, materials, or documents to be disclosed. The correspondence shall clearly identify the data, materials, or documents to be disclosed. The department may not disclose any tax return or tax information under this subsection (4) until the time period allowed in (c) of this subsection has expired or until the court has ruled on any challenge brought under (c) of this subsection.

(c) The person in possession of the data, materials, or documents to be disclosed by the department has twenty days from the receipt of the written request required under (b) of this subsection to petition the superior court of the county in which the petitioner resides for injunctive relief. The court shall limit or deny the request of the department if the court determines that:

(i) The data, materials, or documents sought for disclosure are cumulative or duplicative, or are obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) The production of the data, materials, or documents sought would be unduly burdensome or expensive, taking into account the needs of the department, the amount in controversy, limitations on the petitioner's resources, and the importance of the issues at stake; or

(iii) The data, materials, or documents sought for disclosure contain trade secret information that, if disclosed, could harm the petitioner.

(d) The department shall reimburse reasonable expenses for the production of data, materials, or documents incurred by the person in possession of the data, materials, or documents to be disclosed.

(e) Requesting information under (b) of this subsection that may indicate that a taxpayer is under investigation does not constitute a disclosure of tax return or tax information under this section.

(5) Any person acquiring knowledge of any return or tax information in the course of his or her employment with the department of revenue and any person acquiring knowledge of any return or tax information as provided under subsection (3)(f), (g), (h), (i), (j), or (n) of this section, who discloses any such return or tax information to another person not entitled to knowledge of such return or tax information under the provisions of this section, is guilty of a misdemeanor. If the person guilty of such violation is an officer or employee of the

state, such person shall forfeit such office or employment and shall be incapable of holding any public office or employment in this state for a period of two years thereafter. [2008 c 81 § 11; 2007 c 6 § 1502; 2006 c 177 § 7. Prior: 2005 c 326 § 1; 2005 c 274 § 361; prior: 2000 c 173 § 1; 2000 c 106 § 1; 1998 c 234 § 1; 1996 c 184 § 5; 1995 c 197 § 1; 1991 c 330 § 1; 1990 c 67 § 1; 1985 c 414 § 9; 1984 c 138 § 12; 1969 ex.s. c 104 § 1; 1963 ex.s. c 28 § 10; 1961 c 15 § 82.32.330; prior: 1943 c 156 § 12; 1935 c 180 § 210; Rem. Supp. 1943 § 8370-210.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2006 c 177 §§ 1-9:** See note following RCW 82.04.250.

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—2000 c 173:** "This act takes effect July 1, 2000." [2000 c 173 § 2.]

**Effective date—2000 c 106:** "This act takes effect July 1, 2000." [2000 c 106 § 13.]

**Effective date—1996 c 184:** See note following RCW 46.16.010.

**Effective date—1995 c 197:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 197 § 2.]

**82.32.340 Chargeoff of uncollectible taxes—Destruction of files and records.** (1) Any tax or penalty which the department of revenue deems to be uncollectible may be transferred from accounts receivable to a suspense account and cease to be accounted an asset. Any item transferred shall continue to be a debt due the state from the taxpayer and may at any time within twelve years from the filing of a warrant covering such amount with the clerk of the superior court be transferred back to accounts receivable for the purpose of collection. The department of revenue may charge off as finally uncollectible any tax or penalty which it deems uncollectible at any time after twelve years from the date that the last tax return for the delinquent taxpayer was or should have been filed if the department of revenue is satisfied that there are no cost-effective means of collecting the tax or penalty.

After any tax or penalty has been charged off as finally uncollectible under the provisions of this section, the department of revenue may destroy any or all files and records pertaining to the liability of any taxpayer for such tax or penalty.

The department of revenue, subject to the approval of the state records committee, may at the expiration of five years after the close of any taxable year, destroy any or all files and records pertaining to the tax liability of any taxpayer for such taxable year, who has fully paid all taxes, penalties and interest for such taxable year, or any preceding taxable year for which such taxes, penalties and interest have been fully paid. In the event that such files and records are reproduced on film pursuant to RCW 40.20.020 for use in accordance with RCW 40.20.030, the original files and records may be destroyed immediately after reproduction and such reproductions may be destroyed at the expiration of the above five-year period, subject to the approval of the state records committee.

(2) Notwithstanding subsection (1) of this section, the department may charge off any tax within its jurisdiction to collect that is owed by a taxpayer, including any penalty or interest thereon, if the department ascertains that the cost of collecting that tax would be greater than the total amount which is owed or likely in the near future to be owed by, and collectible from, the taxpayer. [1989 c 78 § 3; 1985 c 414 § 1; 1979 1st ex.s. c 95 § 3; 1979 c 151 § 184; 1967 ex.s. c 89 § 4; 1965 ex.s. c 141 § 7; 1961 c 15 § 82.32.340. Prior: 1955 c 389 § 40; 1939 c 225 § 30; 1937 c 227 § 21; 1935 c 180 § 210(a); RRS § 8370-210a.]

**82.32.350 Closing agreements authorized.** The department may enter into an agreement in writing with any person relating to the liability of such person in respect of any tax imposed by any of the preceding chapters of this title for any taxable period or periods. [1971 ex.s. c 299 § 23; 1961 c 15 § 82.32.350. Prior: 1945 c 251 § 1; Rem. Supp. 1945 § 8370-225.]

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.32.360 Conclusive effect of agreements.** Upon approval of such agreement, evidenced by execution thereof by the department of revenue and the person so agreeing, the agreement shall be final and conclusive as to tax liability or tax immunity covered thereby, and, except upon a showing of fraud or malfeasance, or of misrepresentation of a material fact:

(1) The case shall not be reopened as to the matters agreed upon, or the agreement modified, by any officer, employee, or agent of the state, or the taxpayer, and

(2) In any suit, action or proceeding, such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded. [1975 1st ex.s. c 278 § 93; 1961 c 15 § 82.32.360. Prior: 1945 c 251 § 2; Rem. Supp. 1945 § 8370-226.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.32.380 Revenues to be deposited in general fund.** The state treasurer, upon receipt of any payments of tax, penalty, interest, or fees collected hereunder shall deposit them to the credit of the state general fund or such other fund as may be provided by law. [1961 c 15 § 82.32.380. Prior: 1945 c 249 § 10; 1943 c 156 § 12A, 1941 c 178 § 19(a); 1939 c 225 § 31; 1937 c 227 § 32; 1935 c 180 § 211; Rem. Supp. 1945 § 8370-211.]

**82.32.390 Certain revenues to be deposited in water quality account.** The department of revenue shall deposit into the water quality account all moneys received from the imposition on consumers of the taxes under chapters 82.08 and 82.12 RCW on the sales or use of articles of tangible personal property which become or are to become an ingredient or component of new or existing water pollution control facilities and activities, as defined in RCW 70.146.020, which received full or partial funding from the water quality account. [1986 c 3 § 15.]

(2008 Ed.)

**Severability—1986 c 3:** See RCW 70.146.900.

**Effective dates—1986 c 3:** See note following RCW 82.24.027.

**82.32.392 Certain revenues to be deposited in sulfur dioxide abatement account.** An amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility, and that meet the requirements of RCW 70.94.630, shall be deposited in the sulfur dioxide abatement account under RCW 70.94.630. [1997 c 368 § 9.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.32.393 Thermal electric generation facilities with tax exemptions for air pollution control equipment—Payments upon cessation of operation. (Expires December 31, 2015.)** If a business is allowed an exemption under RCW 82.08.810, 82.12.810, 82.08.811, 82.12.811, or 84.36.487, and the business ceases operation of the facility for which the exemption is allowed, the business shall deposit into the displaced workers account established in RCW 50.12.280 an amount equal to the fair market value of one-quarter of the total sulfur dioxide allowances authorized by federal law available to the facility at the time of cessation of operation of the generation facility as if the allowances were sold for a period of ten years following the time of cessation of operation of the generation facility. This section expires December 31, 2015. [1997 c 368 § 12.]

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

**82.32.394 Revenues from sale or use of leaded racing fuel to be deposited into the advanced environmental mitigation revolving account.** The department of revenue shall deposit into the advanced environmental mitigation revolving account, created in RCW 47.12.340, all moneys received from the imposition on consumers of the taxes under chapters 82.08 and 82.12 RCW on the sales or use of leaded racing fuel which is exempted from the motor vehicle fuel tax under \*RCW 82.38.081. [1998 c 115 § 7.]

**\*Reviser's note:** RCW 82.38.081 was repealed by 2007 c 515 § 34.

**Intent—1998 c 115 §§ 6 and 7:** "It is the intent of the legislature that leaded racing fuel be exempted from payment of the motor vehicle fuel tax, as provided in RCW 82.38.081, since it is illegal for use on the public highways of the state under federal law. The legislature further intends that leaded racing fuel be subject to the retail sales and use taxes under chapters 82.08 and 82.12 RCW and that the revenue collected will be earmarked as provided in RCW 82.32.394." [1998 c 115 § 5.]

**82.32.410 Written determinations as precedents. (1)** The director may designate certain written determinations as precedents.

(a) By rule adopted pursuant to chapter 34.05 RCW, the director shall adopt criteria which he or she shall use to decide whether a determination is precedential. These criteria shall include, but not be limited to, whether the determination clarifies an unsettled interpretation of Title 82 RCW or where the determination modifies or clarifies an earlier interpretation.

(b) Written determinations designated as precedents by the director shall be made available for public inspection and shall be published by the department.

(c) The department shall disclose any written determination upon which it relies to support any assessment of tax, interest, or penalty against such taxpayer, after making the deletions provided by subsection (2) of this section.

(2) Before making a written determination available for public inspection under subsection (1) of this section, the department shall delete:

(a) The names, addresses, and other identifying details of the person to whom the written determination pertains and of another person identified in the written determination; and

(b) Information the disclosure of which is specifically prohibited by any statute applicable to the department of revenue, and the department may also delete other information exempted from disclosure by chapter 42.56 RCW or any other statute applicable to the department of revenue. [2005 c 274 § 362; 2001 c 320 § 10; 1997 c 409 § 211; 1991 c 330 § 2.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Part headings—Severability—1997 c 409:** See notes following RCW 43.22.051.

**82.32.430 Liability for tax rate calculation errors—Geographic information system.** (1) A person who collects and remits sales or use tax to the department and who calculates the tax using geographic information system technology developed and provided by the department shall be held harmless and is not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of such technology.

(2) Except as provided in subsection (3) of this section, the department shall notify sellers who collect and remit sales or use tax to the department of changes in boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than sixty days before the effective date of the change.

(3) The department shall notify sellers who collect and remit sales or use tax to the department and make sales from printed catalogs of changes, as to such sales, of boundaries and rates to taxes imposed under the authority of chapter 82.14 RCW no later than one hundred twenty days before the effective date of the change.

(4) Sellers who have not received timely notice of rate and boundary changes under subsections (2) and (3) of this section due to actions or omissions of the department are not liable for the difference in the amount due until they have received the appropriate period of notice. Purchasers are liable for any uncollected amounts of tax.

(5)(a) Except as provided in (b) of this subsection, sellers registered with the department under RCW 82.32.030(3) and certified service providers must use the address-based geographic information technology system developed and provided by the department to calculate the tax to be collected and remitted to the department and to determine the appropriate local jurisdictions entitled to the tax.

(b)(i) Upon a showing that using the address-based geographic information technology system would cause undue

hardship, a seller may be temporarily held harmless and not liable for the difference in amount due nor subject to penalties or interest in regards to rate calculation errors resulting from the proper use of zip code-based technology provided by the department for the period in which relief is granted. The department shall notify local taxing jurisdictions of the identity of sellers granted relief under this section and the period for which relief is granted.

(ii) The department shall reimburse local taxing jurisdictions for differences in amount due on account of such rate calculation errors occurring during the period in which relief is granted. Purchasers are liable for any uncollected amounts of tax. The department shall retain amounts collected from purchasers that have been reimbursed to local taxing jurisdictions under this subsection (5)(b)(ii). [2007 c 6 § 1501; 2003 c 168 § 207; 2001 c 320 § 11; 2000 c 104 § 4.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Findings—Intent—Effective date—2000 c 104:** See notes following RCW 82.14.055.

**82.32.440 Project on sales and use tax exemption requirements.** (1) The department is authorized to enter into agreements with sellers who meet the criteria in this section for a project on sales and use tax exemption requirements. This project will allow the use of electronic data collection in lieu of paper certificates otherwise required by law, including the use of electronic signatures.

(2) The object of the project is to determine whether using an electronic system and reviewing the data regarding the exempt transactions provides the same level of reliability as the current system while lessening the burden on the seller.

(3) A business making both sales taxable and exempt under chapter 82.08 or 82.12 RCW, that has electronic data-collecting capabilities, and that wishes to participate in the project may make application to the department in such form and manner as the department may require. To be eligible for such participation, a seller must demonstrate its capability to take part in the project and to provide data to the department in a form in which the data can be used by the department. The department is not required to accept all applicants in this project and is not required to provide any reason for not selecting a participant. A seller selected as a participant may be relieved of other sales and use tax exemption documentation requirements provided by law as covered by the project, and will be relieved of the good faith requirement under RCW 82.08.050 to the extent that it has made available to the department the data required by the project. [2001 c 116 § 2.]

**Findings—2001 c 116:** "The legislature finds that current sales and use tax exemption documentation requirements are often confusing and burdensome for retailers, taxpayers, and the state. Additionally, the legislature notes the national efforts under way to simplify and streamline the sales and use tax, and that those efforts include a new system for retailers to use in processing sales and use tax exemptions. The legislature further finds that it would be beneficial to the state and its residents to allow for the simplification of sales and use tax exemption requirements." [2001 c 116 § 1.]

**82.32.450 Natural or manufactured gas, electricity—Maximum combined credits and deferrals allowed—Availability of credits and deferrals.** (1) The total combined credits and deferrals that may be taken under RCW 82.04.447, 82.12.024, and 82.16.0495 shall not exceed two million five hundred thousand dollars in any fiscal year. Each person is limited to no more than a total of one million five hundred thousand dollars in tax deferred and credit allowed in any fiscal year in which more than one person takes tax credits and claims tax deferral. The department may require reporting of the credits taken and amounts deferred in a manner and form as is necessary to keep a running total of the amounts.

(2) Credits and deferred tax are available on a first come basis. Priority for tax credits and deferrals among approved applicants shall be designated based on the first actual consumption of gas under RCW 82.04.447 or 82.12.024, or on the first actual use of electricity under RCW 82.16.0495, by each approved applicant. The department shall disallow any credits or deferred tax, or portion thereof, that would cause the total amount of credits taken and deferred taxes claimed to exceed the fiscal year cap or to exceed the per person fiscal year cap. If the fiscal cap is reached or exceeded[,] the department shall notify those persons who have approved applications under RCW 82.04.447, 82.12.024, and 82.16.0495 that no more credits may be taken or tax deferred during the remainder of the fiscal year. In addition, the department shall provide written notice to any person who has taken any tax credits or claimed any deferred tax in excess of the fiscal year cap. The notice shall indicate the amount of tax due and shall provide that the tax be paid within thirty days from the date of such notice.

(3) No portion of an application for credit or deferral disallowed under this section may be carried back or carried forward nor may taxes ineligible for credit or deferral due to the fiscal cap having been reached or exceeded be carried forward or carried backward. [2001 c 214 § 12.]

**Severability—Effective date—2001 c 214:** See notes following RCW 80.50.010.

**Findings—2001 c 214:** See note following RCW 39.35.010.

**82.32.470 Transfer of sales and use tax on toll projects.** (1) The tax imposed and collected under chapters 82.08 and 82.12 RCW, less any credits allowed under chapter 82.14 RCW, on initial construction for a transportation project to be constructed under chapter 36.120 RCW, must be transferred to the transportation project to defray costs or pay debt service on that transportation project. In the case of a toll project, this transfer or credit must be used to lower the overall cost of the project and thereby the corresponding tolls.

(2) This transaction is exempt from the requirements in RCW 43.135.035(4).

(3) Government entities constructing transportation projects under chapter 36.120 RCW shall report to the department the amount of state sales or use tax covered under this section. [2002 c 56 § 407.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.32.480 Washington forest products commission—Disclosure of taxpayer information.** The forest products

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commission, created pursuant to chapter 15.100 RCW, constitutes a state agency for purposes of applying the exemption contained in RCW 82.32.330(3)(f) for the disclosure of taxpayer information by the department. Disclosure of return or tax information may be made only to employees of the commission and not to commission members. Employees are authorized to use this information in accordance with RCW 15.100.100(4). Employees are subject to all civil and criminal penalties provided under RCW 82.32.330 for disclosures made to another person not entitled under the provisions of this section or RCW 15.100.100 to knowledge of such information. [2001 c 314 § 20.]

**Findings—Construction—Severability—2001 c 314:** See RCW 15.100.010, 15.100.900, and 15.100.901.

**82.32.490 Electronic database for use by mobile telecommunications service provider. (Contingency, see note following RCW 82.04.530.)** (1)(a) The department may provide an electronic database as described in this section to a mobile telecommunications service provider, or if the department does not provide an electronic database to mobile telecommunications service providers, then the designated database provider may provide an electronic database to a mobile telecommunications service provider.

(b)(i) An electronic database, whether provided by the department or the designated database provider, shall be provided in a format approved by the American national standards institute's accredited standards committee X12, that after allowing for de minimis deviations, designates for each street address in the state, including to the extent practicable, any multiple postal street addresses applicable to one street location, the appropriate taxing jurisdictions, and the appropriate code for each taxing jurisdiction, for each level of taxing jurisdiction, identified by one nationwide standard numeric code.

(ii) An electronic database shall also provide the appropriate code for each street address with respect to political subdivisions that are not taxing jurisdictions when reasonably needed to determine the proper taxing jurisdiction.

(iii) The nationwide standard numeric codes shall contain the same number of numeric digits with each digit or combination of digits referring to the same level of taxing jurisdiction throughout the United States using a format similar to FIPS 55-3 or other appropriate standard approved by the federation of tax administrators and the multistate tax commission, or their successors. Each address shall be provided in standard postal format.

(2) The department or designated database provider, as applicable, that provides or maintains an electronic database described in subsection (1) of this section shall provide notice of the availability of the then-current electronic database, and any subsequent revisions, by publication in the manner normally employed for the publication of informational tax, charge, or fee notices to taxpayers in the state.

(3) A mobile telecommunications service provider using the data contained in an electronic database described in subsection (1) of this section shall be held harmless from any tax, charge, or fee liability that otherwise would be due solely as a result of any error or omission in the database provided by the department or designated database provider. The mobile telecommunications service provider shall reflect changes

made to the database during a calendar quarter not later than thirty days after the end of the calendar quarter if the department or designated database provider, as applicable, has issued notice of the availability of an electronic database reflecting the changes under subsection (2) of this section. [2002 c 67 § 11.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.495 Liability of mobile telecommunications service provider if no database provided. (Contingency, see note following RCW 82.04.530.)** (1) If neither the department nor the designated database provider provides an electronic database under RCW 82.32.490, a mobile telecommunications service provider shall be held harmless from any tax, charge, or fee liability in any taxing jurisdiction in this state that otherwise would be due solely as a result of an assignment of a street address to an incorrect taxing jurisdiction if, subject to RCW 82.32.500, the home service provider employs an enhanced zip code to assign each street address to a specific taxing jurisdiction for each level of taxing jurisdiction and exercises due diligence at each level of taxing jurisdiction to ensure that each street address is assigned to the correct taxing jurisdiction. If an enhanced zip code overlaps boundaries of taxing jurisdictions of the same level, the home service provider must designate one specific jurisdiction within the enhanced zip code for use in taxing the activity for such enhanced zip code for each level of taxing jurisdiction. Any enhanced zip code assignment changed in accordance with RCW 82.32.500 is deemed to be in compliance with this section. For purposes of this section, there is a rebuttable presumption that a home service provider has exercised due diligence if the home service provider demonstrates that it has:

(a) Expended reasonable resources to implement and maintain an appropriately detailed electronic database of street address assignments to taxing jurisdictions;

(b) Implemented and maintained reasonable internal controls to correct misassignments of street addresses to taxing jurisdictions promptly; and

(c) Used all reasonably obtainable and usable data pertaining to municipal annexations, incorporations, reorganizations, and any other changes in jurisdictional boundaries that materially affect the accuracy of the database.

(2) Subsection (1) of this section applies to a mobile telecommunications service provider that is in compliance with the requirements of subsection (1) of this section, if in this state an electronic database has not been provided under RCW 82.32.490, until the later of:

(a) Eighteen months after the nationwide standard numeric code described in RCW 82.32.490(1) has been approved by the federation of tax administrators and the multistate tax commission; or

(b) Six months after the department or a designated database provider in this state provides the database as prescribed in RCW 82.32.490(1). [2002 c 67 § 12.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.500 Determination of taxing jurisdiction for telecommunications services. (Contingency, see note following RCW 82.04.530.)** A taxing jurisdiction, or the depart-

ment on behalf of any taxing jurisdiction or taxing jurisdictions within this state, may:

(1) Determine that the address used for purposes of determining the taxing jurisdictions to which taxes, charges, or fees for mobile telecommunications services are remitted does not meet the definition of place of primary use in RCW 82.04.065 and give binding notice to the home service provider to change the place of primary use on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. Before the taxing jurisdiction gives the notice of determination, the customer must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the address is the customer's place of primary use; and

(2) Determine that the assignment of a taxing jurisdiction by a home service provider under RCW 82.32.495 does not reflect the correct taxing jurisdiction and give binding notice to the home service provider to change the assignment on a prospective basis from the date of notice of determination. If the authority making the determination is not the department, the taxing jurisdiction must obtain the consent of all affected taxing jurisdictions within the state before giving the notice of determination. The home service provider must be given an opportunity to demonstrate, in accordance with applicable state or local tax, charge, or fee administrative procedures, that the assignment reflects the correct taxing jurisdiction. [2002 c 67 § 13.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.505 Telecommunications services—Place of primary use. (Contingency, see note following RCW 82.04.530.)** (1) A home service provider is responsible for obtaining and maintaining information regarding the customer's place of primary use as defined in RCW 82.04.065. Subject to RCW 82.32.500, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall:

(a) Allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and

(b) Not hold a mobile telecommunications service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use.

(2) Except as provided in RCW 82.32.500, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect on August 1, 2002, as that customer's place of primary use for the remaining term of the service contract or agreement, excluding any extension or renewal of the service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted. [2002 c 67 § 14.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.510 Scope of mobile telecommunications act—Identification of taxable and nontaxable charges.** (*Contingency, see note following RCW 82.04.530.*) (1) Chapter 67, Laws of 2002 does not modify, impair, supersede, or authorize the modification, impairment, or supersession of any law allowing a taxing jurisdiction to collect a tax, charge, or fee from a customer that has failed to provide its place of primary use.

(2) If a taxing jurisdiction does not otherwise subject charges for mobile telecommunications services to taxation and if these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable mobile telecommunications services may be subject to taxation unless the mobile telecommunications service provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business.

(3) If a taxing jurisdiction does not subject charges for mobile telecommunications services to taxation, a customer may not rely upon the nontaxability of charges for mobile telecommunications services unless the customer's home service provider separately states the charges for nontaxable mobile telecommunications services from taxable charges or the home service provider elects, after receiving a written request from the customer in the form required by the provider, to provide verifiable data based upon the home service provider's books and records that are kept in the regular course of business that reasonably identifies the nontaxable charges. [2002 c 67 § 15.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.515 Applicability of telephone and telecommunications definitions.** (*Contingency, see note following RCW 82.04.530.*) The definitions in RCW 82.04.065 apply to RCW 82.32.490 through 82.32.510 and 35.21.873. [2002 c 67 § 17.]

**Finding—Contingency—Court judgment—Effective date—2002 c 67:** See note and Reviser's note following RCW 82.04.530.

**82.32.520 Sourcing of calls.** (1) Except for the defined telecommunications services listed in subsection (3) of this section, the sale of telecommunications service as defined in RCW 82.04.065 sold on a call-by-call basis shall be sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

(2) Except for the defined telecommunications services listed in subsection (3) of this section, a sale of telecommunications service as defined in RCW 82.04.065 sold on a basis other than a call-by-call basis, is sourced to the customer's place of primary use.

(3) The sales of telecommunications service as defined in RCW 82.04.065 that are listed in subsection (3) of this section shall be sourced to each level of taxing jurisdiction as follows:

(a) A sale of mobile telecommunications services, other than air-ground radiotelephone service and prepaid calling service, is sourced to the customer's place of primary use as required by RCW 82.08.066.

(b) A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (i) the seller's telecommunications system, or (ii) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(c) A sale of prepaid calling service or a sale of a prepaid wireless calling service is sourced as follows:

(i) When a prepaid calling service is received by the purchaser at a business location of the seller, the sale is sourced to that business location;

(ii) When a prepaid calling service is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller;

(iii) When (c)(i) and (ii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith;

(iv) When (c)(i), (ii), and (iii) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith;

(v) When (c)(i), (ii), (iii), and (iv) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;

(vi) In the case of a sale of prepaid wireless calling service, (c)(v) of this subsection shall include as an option the location associated with the mobile telephone number.

(d) A sale of a private communication service is sourced as follows:

(i) Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which such customer channel termination point is located.

(ii) Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in such jurisdiction in which the customer channel termination points are located.

(iii) Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segment of channel are separately charged is sourced fifty percent in each level of jurisdiction in which the customer channel termination points are located.

(iv) Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction

based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

(4) The definitions in this subsection apply throughout this chapter.

(a) "Air-ground radiotelephone service" means air-ground radio service, as defined in 47 C.F.R. Sec. 22.99, as amended or renumbered as of January 1, 2003, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(b) "Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

(c) "Communications channel" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(d) "Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(e) "Customer channel termination point" means the location where the customer either inputs or receives the communications.

(f) "End user" means the person who uses the telecommunications service. In the case of an entity, the term end user means the individual who uses the service on behalf of the entity.

(g) "Home service provider" means the same as that term is defined in RCW 82.04.065.

(h) "Mobile telecommunications service" means the same as that term is defined in RCW 82.04.065.

(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

(j) "Postpaid calling service" means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number that is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service, that would be a prepaid calling service except it is not exclusively a telecommunications service.

(k) "Prepaid calling service" means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number and/or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(l) "Prepaid wireless calling service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services, including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(m) "Private communication service" means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(n) "Service address" means:

(i) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;

(ii) If the location in (n)(i) of this subsection is not known, the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller;

(iii) If the locations in (n)(i) and (ii) of this subsection are not known, the location of the customer's place of primary use. [2007 c 54 § 18; 2007 c 6 § 1001; 2004 c 153 § 403; 2003 c 168 § 501.]

**Reviser's note:** This section was amended by 2007 c 6 § 1001 and by 2007 c 54 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.32.525 Purchaser's cause of action for over-collected sales or use tax.** (1) A purchaser's cause of action against the seller for over-collected sales or use tax does not accrue until the purchaser has provided written notice to the seller and the seller has sixty days to respond. The notice to the seller must contain the information necessary to determine the validity of the request.

(2) In connection with a purchaser's request from a seller for over-collected sales or use taxes, a seller shall be presumed to have a reasonable business practice, if in the collection of such sales or use taxes, the seller:

(a) Uses either a provider or a system, including a proprietary system, that is certified by the state; and

(b) Has remitted to the state all taxes collected less any deductions, credits, or collection allowances. [2004 c 153 § 408; 2003 c 168 § 211.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.32.530 Seller nexus.** The department may not use registration under the streamlined sales and use tax agreement and collection of sales and use taxes in member states as a factor in determining whether the seller has nexus with Washington for any tax at any time. [2004 c 153 § 404; 2003 c 168 § 213.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**Effective dates—Part headings not law—2003 c 168:** See notes following RCW 82.08.010.

**82.32.535 Annual report by semiconductor businesses. (Contingent effective date.)** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.240(2) or who claims an exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645, shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.240(2), or tax exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.240(2) is used, or tax exemption or credit under RCW 82.04.426, 82.08.965, 82.12.965, 82.08.970, 82.12.970, 82.04.448, or 84.36.645 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection the department shall declare the amount of taxes exempted or credited for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1st of the year occurring five years after \*the effective date of this act, and November 1st of the year occurring eleven years after \*the effective date of this act, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 149, Laws of 2003 in regard to keeping Washington competitive. The report shall measure the effect of chapter 149, Laws of 2003 on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy,

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cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 149, Laws of 2003. [2003 c 149 § 11.]

**\*Contingent effective date—Findings—Intent—2003 c 149:** See notes following RCW 82.04.426.

**82.32.5351 Annual report by semiconductor businesses—Report to legislature.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.2404 or who claims an exemption or credit under RCW 82.08.9651 and 82.12.9651 shall make a complete annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.2404, or tax exemption or credit under RCW 82.08.9651 and 82.12.9651. The report is due by April 30th following any year in which a preferential tax rate under RCW 82.04.2404 is used, or tax exemption or credit under RCW 82.08.9651 and 82.12.9651 is taken. The department may extend the due date for timely filing annual reports under this section as provided in RCW 82.32.590. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit a complete annual report under (a) of this subsection by the due date of the report or any extension under RCW 82.32.590, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1st of the year occurring five years after December 1, 2006, and November 1st of the year occurring eleven years after December 1, 2006, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 84, Laws of 2006 in regard to keeping Washington competitive. The report shall measure the effect of chapter 84, Laws of 2006 on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 84, Laws of 2006. [2006 c 84 § 5.]

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**82.32.545 Annual report for airplane manufacturing tax preferences (as amended by 2008 c 81).** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(11), 82.04.250(3), or 82.04.290(3), or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits for employment positions in Washington. However, persons engaged in manufacturing commercial airplanes or components of such airplanes may report employment, wage, and benefit information per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260(11), 82.04.250(3), or 82.04.290(3), or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463, unless a survey covering this twelve-month period was filed as required by a statute repealed by chapter 81, Laws of 2008. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260(11), 82.04.250(3), or 82.04.290(3), is used, or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, and 82.04.4463 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, and by November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008 in regard to keeping Washington competitive. The report shall measure the effect of ~~((chapter 1, Laws of 2003 2nd sp. sess.))~~ these laws on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1, Laws of 2003 2nd sp. sess., chapter 177, Laws of 2006, and chapter 81, Laws of 2008. [2008 c 81 § 10; 2007 c 54 § 19; 2003 2nd sp. s. c 1 § 16.]

**Findings—Savings—Effective date—2008 c 81:** See note following RCW 82.08.975.

**82.32.545 Annual report for airplane manufacturing tax preferences (as amended by 2008 c 283).** (*Contingency, see note following RCW 82.04.4492.*) (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(11) or who claims an exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, ~~((and))~~ 82.04.4463, or 82.04.4492 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260(11), or tax exemption or credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, ~~((and))~~ 82.04.4463, or 82.04.4492. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.260(11) is used, or tax exemption or

credit under RCW 82.04.4461, 82.08.980, 82.12.980, 82.29A.137, 84.36.655, ~~((and))~~ 82.04.4463, or 82.04.4492 is taken. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) By November 1, 2010, ~~for chapter 1, Laws of 2003 2nd sp. sess., and by November 1, 2014, for RCW 82.04.4492,~~ and by November 1, ~~((2023))~~ 2022, ~~for chapter 1, Laws of 2003 2nd sp. sess. and RCW 82.04.4492, the ((fiscal committees of the house of representatives and the senate, in consultation with the department.))~~ joint legislative audit and review committee shall report to the legislature on the effectiveness of chapter 1, Laws of 2003 2nd sp. sess. and RCW 82.04.4492 in regard to keeping Washington competitive. The report shall measure the effect of chapter 1, Laws of 2003 2nd sp. sess. and RCW 82.04.4492 on job retention, net jobs created for Washington residents, company growth, diversification of the state's economy, cluster dynamics, and other factors as the committees select. The reports shall include a discussion of principles to apply in evaluating whether the legislature should reenact any or all of the tax preferences in chapter 1, Laws of 2003 2nd sp. sess. and RCW 82.04.4492. The department shall maintain information from the annual reports submitted under subsection (2) of this section necessary for the committee to prepare its reports under this subsection. [2008 c 283 § 2; 2007 c 54 § 19; 2003 2nd sp. s. c 1 § 16.]

**Reviser's note:** RCW 82.32.545 was amended twice during the 2008 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

**Contingency—2008 c 283:** See note following RCW 82.04.4492.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Contingent effective date—2003 2nd sp. s. c 1:** See RCW 82.32.550.

**Finding—2003 2nd sp. s. c 1:** See note following RCW 82.04.4461.

**82.32.550 Contingent effective date for aerospace tax incentives—Department date determinations and notice requirements.** (1)(a) Chapter 1, Laws of 2003 2nd sp. sess. takes effect on the first day of the month in which the governor and a manufacturer of commercial airplanes sign a memorandum of agreement regarding an affirmative final decision to site a significant commercial airplane final assembly facility in Washington state. The department shall provide notice of the effective date of chapter 1, Laws of 2003 2nd sp. sess. to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(b) Chapter 1, Laws of 2003 2nd sp. sess. is contingent upon the siting of a significant commercial airplane final assembly facility in the state of Washington. If a memorandum of agreement under subsection (1) of this section is not signed by June 30, 2005, chapter 1, Laws of 2003 2nd sp. sess. is null and void.

(c)(i) The rate in RCW 82.04.260(11)(a)(ii) takes effect July 1, 2007.

(ii) If on December 31, 2007, final assembly of a super-efficient airplane has not begun in Washington state, the department shall provide notice of such to affected taxpayers, the legislature, and others as deemed appropriate by the department.

(2) The definitions in this subsection apply throughout this section.

(a) "Commercial airplane" has its ordinary meaning, which is an airplane certified by the federal aviation adminis-

tration for transporting persons or property, and any military derivative of such an airplane.

(b) "Component" means a part or system certified by the federal aviation administration for installation or assembly into a commercial airplane.

(c) "Final assembly of a superefficient airplane" means the activity of assembling an airplane from components parts necessary for its mechanical operation such that the finished commercial airplane is ready to deliver to the ultimate consumer.

(d) "Significant commercial airplane final assembly facility" means a location with the capacity to produce at least thirty-six superefficient airplanes a year.

(e) "Siting" means a final decision by a manufacturer to locate a significant commercial airplane final assembly facility in Washington state.

(f) "Superefficient airplane" means a twin aisle airplane that carries between two hundred and three hundred fifty passengers, with a range of more than seven thousand two hundred nautical miles, a cruising speed of approximately mach .85, and that uses fifteen to twenty percent less fuel than other similar airplanes on the market. [2008 c 81 § 12; 2007 c 54 § 20; 2003 2nd sp.s. c 1 § 17.]

**Reviser's note:** Chapter 1, Laws of 2003 2nd sp. sess. took effect December 1, 2003.

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Finding—2003 2nd sp.s. c 1:** See note following RCW 82.04.4461.

**82.32.555 Telecommunications and ancillary services taxes—Identification of taxable and nontaxable charges.** If a taxing jurisdiction does not subject some charges for ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, to taxation, but these charges are aggregated with and not separately stated from charges that are subject to taxation, then the charges for nontaxable ancillary services or telecommunications service, as those terms are defined in RCW 82.04.065, may be subject to taxation unless the telecommunications service provider or ancillary services provider can reasonably identify charges not subject to the tax, charge, or fee from its books and records that are kept in the regular course of business and for purposes other than merely allocating the sales price of an aggregated charge to the individually aggregated items. [2007 c 54 § 21; 2007 c 6 § 1011; 2004 c 76 § 1.]

**Reviser's note:** This section was amended by 2007 c 6 § 1011 and by 2007 c 54 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.560 Electrolytic processing business tax exemption—Annual report.** (1) For the purposes of this section, "electrolytic processing business tax exemption" means the exemption and preferential tax rate under RCW 82.16.0421.

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(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the electrolytic processing business tax exemption are:

(a) To retain family wage jobs by enabling electrolytic processing businesses to maintain production of chlor-alkali and sodium chlorate at a level that will preserve at least seventy-five percent of the jobs that were on the payroll effective January 1, 2004; and

(b) To allow the electrolytic processing industries to continue production in this state through 2011 so that the industries will be positioned to preserve and create new jobs when the anticipated reduction of energy costs occur.

(4)(a) A person who receives the benefit of an electrolytic processing business tax exemption shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax exemption is claimed or used. The report shall not include names of employees. The report shall detail employment by the total number of full-time, part-time, and temporary positions. The report shall indicate the quantity of product produced at the plant during the time period covered by the report. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax exemption. Employment reports shall include data for actual levels of employment and identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted for that year to be immediately due and payable. Public utility taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By December 1, 2007, and by December 1, 2010, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the tax incentive under RCW 82.16.0421. The report shall measure the effect of the incentive on job retention for Washington residents, and other factors as the committees select. The report shall also discuss expected trends or changes to electricity prices as they affect the industries that benefit from the incentives. [2004 c 240 § 2.]

**82.32.570 Smelter tax incentives—Goals—Annual report.** (1) For the purposes of this section, "smelter tax incentive" means the preferential tax rate under RCW 82.04.2909, or an exemption or credit under RCW 82.04.4481, 82.08.805, 82.12.805, or 82.12.022(5).

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(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the smelter tax incentives are to retain family-wage jobs in rural areas by:

(a) Enabling the aluminum industry to maintain production of aluminum at a level that will preserve at least 75 percent of the jobs that were on the payroll effective January 1, 2004, as adjusted for employment reductions publicly announced before November 30, 2003; and

(b) Allowing the aluminum industry to continue producing aluminum in this state through 2012 so that the industry will be positioned to preserve and create new jobs when the anticipated reduction of energy costs occurs.

(4)(a) An aluminum smelter receiving the benefit of a smelter tax incentive shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report is due by March 31st following any year in which a tax incentive is claimed or used. The report shall not include names of employees. The report shall detail employment by the total number of full-time, part-time, and temporary positions. The report shall indicate the quantity of aluminum smelted at the plant during the time period covered by the report. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a tax incentive. Employment reports shall include data for actual levels of employment and identification of the number of jobs affected by any employment reductions that have been publicly announced at the time of the report. Information in a report under this section is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(b) If a person fails to submit an annual report under (a) of this subsection by the due date of the report, the department shall declare the amount of taxes exempted or credited, or reduced in the case of the preferential business and occupation tax rate, for that year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) By December 1, 2007, December 1, 2010, and December 1, 2015, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the smelter tax incentives under RCW 82.04.4482 and 82.16.0498. The reports shall measure the effect of the tax incentives on job retention for Washington residents and any other factors the committees may select. [2006 c 182 § 6; 2004 c 24 § 14.]

**Intent—Effective date—2004 c 24:** See notes following RCW 82.04.2909.

**82.32.580 Sales and use tax deferral—Historic automobile museum.** (1) The governing board of a nonprofit organization, corporation, or association may apply for deferral

of taxes on an eligible project. Application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the project, estimated or actual costs of the project, time schedules for completion and operation of the project, and other information required by the department. The department shall rule on the application within sixty days. All applications for the tax deferral under this section must be received no later than December 31, 2008.

(2) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible project.

(3) The nonprofit organization, corporation, or association shall begin paying the deferred taxes in the fifth year after the date certified by the department as the date on which the eligible project is operationally complete. The first payment is due on December 31st of the fifth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department may authorize an accelerated repayment schedule upon request of the nonprofit organization, corporation, or association.

(5) Except as provided in subsection (6) of this section, interest shall not be charged on any taxes deferred under this section for the period of deferral. The debt for deferred taxes is not extinguished by insolvency or other failure of the nonprofit organization, corporation, or association.

(6) If the project is not operationally complete within five calendar years from issuance of the tax deferral or if at any time the department finds that the project is not eligible for tax deferral under this section, the amount of deferred taxes outstanding for the project shall be immediately due and payable. If deferred taxes must be repaid under this subsection, the department shall assess interest, but not penalties, on amounts due under this subsection. Interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date of deferral, and shall accrue until the deferred taxes due are repaid.

(7) Applications and any other information received by the department of revenue under this section are not confidential under RCW 82.32.330. This chapter applies to the administration of this section.

(8) This section applies to taxable eligible project activity that occurs on or after July 1, 2007.

(9) The following definitions apply to this section:

(a) "Eligible project" means a project that is used primarily for a historic automobile museum.

(b) "Historic automobile museum" means a facility owned and operated by a nonprofit organization, corporation, or association that is used to maintain and exhibit to the public a collection of at least five hundred motor vehicles.

(c) "Nonprofit organization, corporation, or association" means an organization, corporation, or association exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10)).

(d) "Project" means the construction of new structures, the acquisition and installation of fixtures that are permanently affixed to and become a physical part of those struc-

tures, and site preparation. For purposes of this subsection, structures do not include parking facilities used for motor vehicles that are not on display or part of the museum collection.

(e) "Site preparation" includes soil testing, site clearing and grading, demolition, or any other related activities that are initiated before construction. Site preparation does not include landscaping services or landscaping materials. [2005 c 514 § 701.]

**Effective date—2005 c 514 § 701:** "Section 701 of this act takes effect July 1, 2007." [2005 c 514 § 1306.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.590 Annual surveys or reports for tax incentives—Failure to file. (Effective until July 1, 2009.)** (1) If the department finds that the failure of a taxpayer to file an annual survey or annual report under RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, or 82.74.040 by the due date was the result of circumstances beyond the control of the taxpayer, the department shall extend the time for filing the survey or report. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer. [2008 c 81 § 13. Prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective date—2006 c 177 §§ 1-9:** See note following RCW 82.04.250.

**Severability—2006 c 112:** See RCW 28B.67.901.

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**Retroactive application—2005 c 514 § 1001:** "Section 1001 of this act applies retroactively to annual surveys required under RCW 82.04.4452 that are due after December 31, 2004." [2005 c 514 § 1312.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.590 Annual surveys or reports for tax incentives—Failure to file. (Effective July 1, 2009.)** (1) If the department finds that the failure of a taxpayer to file an annual survey or annual report under RCW 82.04.4452, 82.32.5351, 82.32.650, 82.32.630, 82.32.610, 82.82.020, or 82.74.040 by the due date was the result of circumstances beyond the control of the taxpayer, the department shall

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extend the time for filing the survey or report. Such extension shall be for a period of thirty days from the date the department issues its written notification to the taxpayer that it qualifies for an extension under this section. The department may grant additional extensions as it deems proper.

(2) In making a determination whether the failure of a taxpayer to file an annual survey or annual report by the due date was the result of circumstances beyond the control of the taxpayer, the department shall be guided by rules adopted by the department for the waiver or cancellation of penalties when the underpayment or untimely payment of any tax was due to circumstances beyond the control of the taxpayer. [2008 c 81 § 13; 2008 c 15 § 7. Prior: 2006 c 354 § 17; 2006 c 300 § 10; 2006 c 177 § 8; 2006 c 112 § 7; 2006 c 84 § 7; 2005 c 514 § 1001.]

**Reviser's note:** This section was amended by 2008 c 15 § 7 and by 2008 c 81 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Effective date—2008 c 15:** See note following RCW 82.82.010.

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective date—2006 c 177 §§ 1-9:** See note following RCW 82.04.250.

**Severability—2006 c 112:** See RCW 28B.67.901.

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**Retroactive application—2005 c 514 § 1001:** "Section 1001 of this act applies retroactively to annual surveys required under RCW 82.04.4452 that are due after December 31, 2004." [2005 c 514 § 1312.]

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.600 Annual surveys or reports for tax incentives—Electronic filing. (Effective until July 1, 2009.)** (1) Persons required to file annual surveys or annual reports under RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, or 82.74.040 must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2008 c 81 § 14. Prior: 2007 c 54 § 23; 2007 c 54 § 22; prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 1002.]

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**Effective date—2006 c 177 §§ 1-9:** See note following RCW 82.04.250.

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**Effective date—2005 c 514 §§ 501 and 1002:** See note following RCW 82.04.4463.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.600 Annual surveys or reports for tax incentives—Electronic filing. (Effective July 1, 2009.)** (1) Persons required to file annual surveys or annual reports under RCW 82.04.4452, 82.32.5351, 82.32.545, 82.32.610, 82.32.630, 82.82.020, or 82.74.040 must electronically file with the department all surveys, reports, returns, and any other forms or information the department requires in an electronic format as provided or approved by the department. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050.

(2) Any survey, report, return, or any other form or information required to be filed in an electronic format under subsection (1) of this section is not filed until received by the department in an electronic format.

(3) The department may waive the electronic filing requirement in subsection (1) of this section for good cause shown. [2008 c 81 § 14; 2008 c 15 § 8. Prior: 2007 c 54 § 23; 2007 c 54 § 22; prior: 2006 c 354 § 16; 2006 c 300 § 11; 2006 c 178 § 9; 2006 c 177 § 9; 2006 c 84 § 8; 2005 c 514 § 102.]

**Reviser's note:** This section was amended by 2008 c 15 § 8 and by 2008 c 81 § 14, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Savings—Effective date—2008 c 81:** See notes following RCW 82.08.975.

**Effective date—2008 c 15:** See note following RCW 82.82.010.

**Severability—2007 c 54:** See note following RCW 82.04.050.

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**Effective date—2006 c 177 §§ 1-9:** See note following RCW 82.04.250.

**Effective date—2006 c 84 §§ 2-8:** See note following RCW 82.04.2404.

**Findings—Intent—2006 c 84:** See note following RCW 82.04.2404.

**Effective date—2005 c 514 §§ 501 and 1002:** See note following RCW 82.04.4463.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.32.610 Annual survey for fruit and vegetable business tax incentive—Report to legislature.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2) Each person claiming a tax exemption under RCW 82.04.4266, 82.04.4268, or 82.04.4269 shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which a tax exemption under RCW 82.04.4266, 82.04.4268, or 82.04.4269 is taken. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax exemption taken. The survey shall also include the following information for employment positions in Washington:

(a) The number of total employment positions;

(b) Full-time, part-time, and temporary employment positions as a percent of total employment;

(c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

The first survey filed under this subsection shall also include information for the twelve-month period immediately before first use of a tax incentive.

(3) The department may request additional information necessary to measure the results of the exemption program, to be submitted at the same time as the survey.

(4) All information collected under this section, except the amount of the tax exemption taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax exemption taken is not subject to the confidentiality provisions of RCW 82.32.330.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the survey or any extension under RCW 82.32.590, the department shall declare the amount of taxes exempted for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The amount due shall be calculated using a rate of 0.138 percent. The interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the exemption was claimed, and shall accrue until the taxes for which the exemption was claimed are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(6) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(7) The department shall study the tax exemption authorized in RCW 82.04.4266, 82.04.4268, and 82.04.4269. The department shall submit a report to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2011. The report shall measure the effect of the exemption on job creation, job retention, company growth, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [2006 c 354 § 5; 2005 c 513 § 3.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.32.620 Annual report for tax incentives under RCW 82.04.294.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.294 shall make an annual report to the department detailing employment, wages, and employer-provided health and retirement benefits per job at the manufacturing site. The report shall not include names of employees. The report shall also detail employment by the total number of full-time, part-time, and temporary positions. The first report filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.294. The report is due by March 31st following any year in which a preferential tax rate under RCW 82.04.294 is used. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(b) If a person fails to submit an annual report under (a) of this subsection, the department shall declare the amount of taxes reduced for the previous calendar year to be immediately due and payable. Excise taxes payable under this subsection are subject to interest, but not penalties, at the rate provided for delinquent taxes, as provided under this chapter. The department shall assess interest, retroactively to the date the preferential tax rate under RCW 82.04.294, was used. The interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, and shall accrue until the taxes for which the preferential tax rate was used are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330. [2005 c 301 § 4.]

**Findings—Intent—Effective date—Report to legislature—2005 c 301:** See notes following RCW 82.04.294.

**82.32.630 Annual survey for timber tax incentives.**

(1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information on how a tax incentive is used.

(2)(a) A person who reports taxes under RCW 82.04.260(12) shall file a complete annual survey with the department. The survey is due by March 31st following any year in which a person reports taxes under RCW 82.04.260(12). The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax reduced under the preferential rate in RCW 82.04.260(12). The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand

dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) The first survey filed under this subsection shall include employment, wage, and benefit information for the twelve-month period immediately before first use of a preferential tax rate under RCW 82.04.260(12).

(c) As part of the annual survey, the department may request additional information, including the amount of investment in equipment used in the activities taxable under the preferential rate in RCW 82.04.260(12), necessary to measure the results of, or determine eligibility for, the preferential tax rate in RCW 82.04.260(12).

(d) All information collected under this section, except the amount of the tax reduced under the preferential rate in RCW 82.04.260(12), is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax reduced is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided in (e) of this subsection. If the amount of the tax reduced as reported on the survey is different than the amount actually reduced based on the taxpayer's excise tax returns or otherwise allowed by the department, the amount actually reduced may be disclosed.

(e) Persons for whom the actual amount of the tax reduction is less than ten thousand dollars during the period covered by the survey may request the department to treat the amount of the tax reduction as confidential under RCW 82.32.330.

(f) Small harvesters as defined in RCW 84.33.035 are not required to file the annual survey under this section.

(3) If a person fails to submit a complete annual survey under subsection (2) of this section by the due date or any extension under RCW 82.32.590, the department shall declare the amount of taxes reduced under the preferential rate in RCW 82.04.260(12) for the period covered by the survey to be immediately due and payable. The department shall assess interest, but not penalties, on the taxes. Interest shall be assessed at the rate provided for delinquent excise taxes under this chapter, retroactively to the date the reduced taxes were due, and shall accrue until the amount of the reduced taxes is repaid.

(4) The department shall use the information from the annual survey required under subsection (2) of this section to prepare summary descriptive statistics by category. The department shall report these statistics to the legislature each year by September 1st. The requirement to prepare and report summary descriptive statistics shall cease after September 1, 2025.

(5) By November 1, 2011, and November 1, 2023, the fiscal committees of the house of representatives and the senate, in consultation with the department, shall report to the legislature on the effectiveness of the preferential tax rate provided in RCW 82.04.260(12). The report shall measure the effect of the preferential tax rate provided in RCW 82.04.260(12) on job retention, net jobs created for Washington residents, company growth, and other factors as the committees select. The report shall include a discussion of prin-

ciples to apply in evaluating whether the legislature should continue the preferential tax rate provided in RCW 82.04.260(12). [2007 c 48 § 6; 2006 c 300 § 9.]

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**Effective dates—Contingent effective date—2006 c 300:** See note following RCW 82.04.261.

**82.32.645 Annual survey for biotechnology and medical device manufacturing business tax incentive—Report to legislature.** (1) For the purposes of this section, "biotechnology product and medical device business tax incentive" or "tax incentive" means the sales and use tax deferrals under chapter 82.75 RCW.

(2) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources, the legislature needs information to evaluate whether the stated goals of legislation were achieved.

(3) The goals of the biotechnology product and medical device business tax incentives are to:

(a) Encourage the creation, expansion, and retention of commercial biotechnology product and medical device manufacturing operations and related job opportunities; and

(b) Fully mature the life sciences industry by creating a sustainable commercial sector.

(4)(a) A person who receives the benefit of a biotechnology product and medical device business tax incentive shall provide an annual survey to the department. The survey is due by March 31st following any year in which a tax incentive is claimed or used. The survey shall not include names of employees. The survey shall include the amount of the tax incentives claimed or used for the reporting year. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(b) The department may request additional information necessary to measure the results of the tax incentive, to be submitted at the same time as the survey.

(c) All information collected under this subsection, except the amount of the tax incentive claimed or used, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax incentive claimed or used is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(5) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(6) If a person fails to submit an annual survey under subsection (4)(a) of this section by the due date of the survey, the department shall declare 12.5 percent of the deferred tax from the date of deferral to be immediately due and payable. Excise taxes payable under this subsection are subject to interest but not penalties, as provided under this chapter. This information is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(7) The department shall use the information to study the tax incentive specified in subsection (1) of this section. The department shall report to the legislature by December 1, 2009, and December 1, 2015. The reports shall measure the number of new biotechnology product and medical device manufacturing facilities established in Washington, the amount of investment in biotechnology product and medical device manufacturing facilities, the number of facilities and investment by firms that utilized the biotechnology product and medical device business tax incentive, the number of biotechnology product and medical device manufacturing jobs in these facilities, the wages and benefits paid for biotechnology product and medical device manufacturing jobs, and the wages and benefits of biotechnology product and medical device manufacturing jobs compared to wages and benefits of other manufacturing jobs and jobs in other economic sectors. [2006 c 178 § 8.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**82.32.650 Annual survey—Customized employment training—Report to legislature.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(2) Each person claiming a tax credit under RCW 82.04.449 shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which a tax credit under RCW 82.04.449 is taken. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax credit taken. The survey shall also include the following information for employment positions in Washington:

(a) The number of total employment positions;

(b) Full-time, part-time, and temporary employment positions as a percent of total employment;

(c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

The first survey filed under this subsection shall also include information for the twelve-month period immediately before first use of a tax incentive.

(3) The department may request additional information necessary to measure the results of the credit program, to be submitted at the same time as the survey.

(4) All information collected under this section, except the amount of the tax credit taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax credit taken is not subject to the confidentiality provisions of RCW 82.32.330.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report or any extension under RCW 82.32.590, the department shall declare the amount of taxes credited for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under this chapter, retroactively to the date the credit was claimed, and shall accrue until the taxes for which the credit was claimed are repaid. This information is not subject to the confidentiality provisions of RCW 82.32.330.

(6) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(7) The department shall study the tax credit authorized in RCW 82.04.449. The department shall submit a report to the finance committee of the house of representatives and the ways and means committee of the senate by December 1, 2011. The report shall measure the effect of the credit on job creation, job retention, company growth, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [2006 c 112 § 6.]

**Reviser's note:** 2006 c 112 § 6 directed that this section be added to chapter 82.04 RCW, but codification in chapter 82.32 RCW appears to be more appropriate.

**Severability—2006 c 112:** See RCW 28B.67.901.

**82.32.700 Administration of the sales and use tax for hospital benefit zones.** (1) As a condition to imposing a sales and use tax under RCW 82.14.465, a city, town, or county must apply to the department at least seventy-five days before the effective date of any such tax. The application shall be in a form and manner prescribed by the department and shall include but is not limited to information establishing that the applicant is eligible to impose such a tax, the anticipated effective date for imposing the tax, the estimated number of years that the tax will be imposed, and the estimated amount of tax revenue to be received in each fiscal year that the tax will be imposed. For purposes of this section, "fiscal year" means the year beginning July 1st and ending the following June 30th. The department shall make available forms to be used for this purpose. As part of the application, a city, town, or county must provide to the department a copy of the ordinance creating the benefit zone as required in RCW 39.100.040. The department shall rule on completed applications within sixty days of receipt. The department may begin accepting and approving applications August 1, 2006. No new applications shall be considered by the department after the thirtieth day of September of the

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third year following the year in which the first application was received by the department.

(2) The authority to impose the local option sales and use taxes under RCW 82.14.465 is on a first-come basis. Priority for collecting the taxes authorized under RCW 82.14.465 among approved applicants shall be based on the date that the approved application was received by the department. As a part of the approval of applications under this section, the department shall approve the amount of tax under RCW 82.14.465 that an applicant may impose. The amount of tax approved by the department shall not exceed the lesser of two million dollars or the average amount of tax revenue that the applicant estimates that it will receive in all fiscal years through the imposition of a sales and use tax under RCW 82.14.465. A city, town, or county shall not receive, in any fiscal year, more revenues from taxes imposed under RCW 82.14.465 than the amount approved by the department. The department shall not approve the receipt of more credit against the state sales and use tax than is authorized under subsection (3) of this section.

(3) No more than two million dollars of credit against the state sales and use tax provided for under RCW 82.14.465(2), may be received in any fiscal year by all cities, towns, and counties imposing a tax under RCW 82.14.465.

(4)(a) The credit against the state sales and use tax shall be available to any city, town, or county imposing a tax under RCW 82.14.465 only as long as the city, town, or county has outstanding indebtedness under chapter 39.100 RCW or the tax allocation revenues are used for public improvement costs, but in no case shall the credit be available for more than thirty years after the tax is first imposed by the city, town, or county.

(b) Local governments may pledge any receipts from taxes levied and collected under chapter 39.100 RCW and RCW 82.14.465 to the repayment of its bonds or bond anticipation notes. A local government shall notify the department when all outstanding indebtedness secured in whole or in part from receipts is no longer outstanding or tax allocation revenues are no longer used for public improvement costs, and the credit provided for under RCW 82.14.465 shall be terminated.

(5) The department may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of chapter 39.100 RCW. [2007 c 266 § 9; 2006 c 111 § 9.]

**Finding—Application—Effective date—2007 c 266:** See notes following RCW 39.100.010.

**Effective date—2006 c 111:** See RCW 39.100.900.

**82.32.710 Professional employer organizations—Eligibility for tax incentives—Responsibility for reports/surveys.** (1) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of eligibility for any tax credit, exemption, or other tax incentive, arising as the result of the employment of covered employees, provided in RCW 82.04.4333, 82.04.44525, 82.04.448, 82.04.4483, 82.08.965, 82.12.965, 82.16.0495, or 82.60.049 or chapter 82.62 or 82.70 RCW, or any other provision in this title. A client, and not the professional employer organization, shall be entitled to the benefit of any tax credit, exemption, or other tax incen-

tive arising as the result of the employment of covered employees of that client.

(2) A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of reports or surveys that require the reporting of employment information relating to covered employees of the client, as provided in RCW 82.04.4452, 82.04.4483, 82.04.4484, 82.32.535, 82.32.540, 82.32.545, 82.32.560, 82.32.570, 82.32.610, 82.32.620, 82.60.070, 82.62.050, 82.63.020, or 82.74.040, or any other provision in this title. A client, and not the professional employer organization, shall be required to complete any survey or report that requires the reporting of employment information relating to covered employees of that client.

(3) For the purposes of this section, "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540. [2006 c 301 § 4.]

**Effective date—2006 c 301:** "This act takes effect July 1, 2006." [2006 c 301 § 10.]

**Act does not affect application of Title 50 or 51 RCW—2006 c 301:** "The provisions of this act do not affect the application of Title 50 or 51 RCW to the reporting requirement or tax liabilities of professional employer organizations or their clients." [2006 c 301 § 9.]

**82.32.715 Monetary allowances—Streamlined sales and use tax agreement.** (1) The department shall adopt by rule monetary allowances for certified service providers, model 2 sellers, and model 3 sellers and all other sellers that are not model 1 or model 2 sellers. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the allowances and the conditions under which they are allowed. The monetary allowances must be reasonable and provide adequate incentive for certified service providers and sellers to collect and remit sales and use taxes under the agreement. Monetary allowances will be funded solely from state sales and use taxes.

(2) For certified service providers, the monetary allowance may include a base rate that applies to taxable transactions processed by the certified service provider. Additionally, for a period not to exceed twenty-four months following a seller's registration under RCW 82.32.030(3), the monetary allowance may include a percentage of tax revenue generated by the seller.

(3) For model 2 sellers, the monetary allowance may include a base rate and a percentage of revenue generated by a seller registering under RCW 82.32.030(3), but shall not exceed a period of twenty-four months.

(4) For model 3 sellers and all other sellers that are not model 1 sellers or model 2 sellers, the monetary allowance may include a percentage of tax revenue generated by a seller registering under RCW 82.32.030(3), but shall not exceed a period of twenty-four months. [2007 c 6 § 301.]

**Part headings not law—Savings—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.720 Vendor compensation—Streamlined sales and use tax agreement. (Contingent effective date.)** (1) The department may adopt by rule vendor compensation for

sellers collecting and remitting sales and use taxes. The vendor compensation may include a base rate or a percentage of tax revenue collected by the seller, and may vary by type of seller. The department may be guided by the findings of the cost of collection study performed under the agreement, by cost of collection studies performed by the department, and by vendor compensation provided by other states, to determine reasonable vendor compensation for sellers for the costs to collect and remit sales and use taxes. Vendor compensation will be funded solely from state sales and use taxes.

(2) A seller is not entitled to vendor compensation while the seller or its certified service provider receives a monetary allowance under RCW 82.32.715. [2007 c 6 § 302.]

**Contingent effective date—2007 c 6 § 302:** "(1) Section 302 of this act takes effect when:

(a) The United States congress grants individual states the authority to impose sales and use tax collection duties on remote sellers; or

(b) It is determined by a court of competent jurisdiction, in a judgment not subject to review, that a state can impose sales and use tax collection duties on remote sellers.

(2) The department of revenue shall provide notice to affected taxpayers, the legislature, and others as deemed appropriate by the department, if either of the contingencies in this section occurs." [2007 c 6 § 1705.]

**Part headings not law—Savings—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.725 Amnesty—Streamlined sales and use tax agreement.** (1) No assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, or related penalties or interest, may be made by the department against a seller who:

(a) Within twelve months of the effective date of this state becoming a member state of the agreement, registers under RCW 82.32.030(3) to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW on sales made to buyers in this state in accordance with the terms of the agreement, if the seller was not otherwise registered in this state in the twelve-month period preceding the effective date of this state becoming a member state of the agreement; and

(b) Continues to be registered and continues to collect and remit to the department the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for a period of at least thirty-six months, absent the seller's fraud or intentional misrepresentation of a material fact.

(2) The provisions of subsection (1) of this section preclude an assessment for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW for sales made to buyers during the period the seller was not registered in this state.

(3) The provisions of this section do not apply to any seller with respect to:

(a) Any matter or matters for which the seller, before registering to collect and remit the applicable taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW, received notice from the department of the commencement of an audit and which audit is not yet finally resolved including any related administrative and judicial processes;

(b) Taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW and collected or remitted to the department by the seller; or

(c) That seller's liability for taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW in that seller's capacity as a buyer.

(4) The limitation periods for making an assessment or correction of an assessment prescribed in RCW \*82.32.050(3) and 82.32.100(3) do not run during the thirty-six month period in subsection (1)(b) of this section. [2007 c 6 § 401.]

**\*Reviser's note:** RCW 82.32.050 was amended by 2008 c 181 § 501, changing subsection (3) to subsection (4).

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.730 Sourcing—Streamlined sales and use tax agreement.** (1) Except as provided in subsections (5) through (7) of this section, for purposes of collecting or paying sales or use taxes to the appropriate jurisdictions, all sales at retail shall be sourced in accordance with this subsection and subsections (2) through (4) of this section.

(a) When tangible personal property, an extended warranty, or a service defined as a retail sale under RCW 82.04.050 is received by the purchaser at a business location of the seller, the sale is sourced to that business location.

(b) When the tangible personal property, extended warranty, or a service defined as a retail sale under RCW 82.04.050 is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser or the purchaser's donee, designated as such by the purchaser, occurs, including the location indicated by instructions for delivery to the purchaser or donee, known to the seller.

(c) When (a) and (b) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.

(d) When (a), (b), and (c) of this subsection do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.

(e) When (a), (b), (c), or (d) of this subsection do not apply, including the circumstance where the seller is without sufficient information to apply those provisions, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the extended warranty or service defined as a retail sale under RCW 82.04.050 was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold.

(2) The lease or rental of tangible personal property, other than property identified in subsection (3) or (4) of this section, shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

Periodic payments made subsequent to the first payment are sourced to the primary property location for each period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection (2) does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(3) The lease or rental of motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment shall be sourced as provided in this subsection.

(a) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The primary property location is as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location is not altered by intermittent use at different locations.

(b) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with subsection (1) of this section.

(c) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

(4) The retail sale, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with subsection (1) of this section.

(5)(a) A purchaser of direct mail that is not a holder of a direct pay permit shall provide to the seller in conjunction with the purchase either a direct mail form or information that shows the jurisdictions to which the direct mail is delivered to recipients.

(i) Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax and the purchaser is obligated to pay or remit the applicable tax on a direct pay basis. A direct mail form shall remain in effect for all future sales of direct mail by the seller to the purchaser until it is revoked in writing.

(ii) Upon receipt of information from the purchaser showing the jurisdictions to which the direct mail is delivered to recipients, the seller shall collect the tax according to the delivery information provided by the purchaser. In the absence of bad faith, the seller is relieved of any further obligation to collect tax on any transaction where the seller has collected tax pursuant to the delivery information provided by the purchaser.

(b) If the purchaser of direct mail does not have a direct pay permit and does not provide the seller with either a direct mail form or delivery information as required by (a) of this subsection, the seller shall collect the tax according to sub-

section (1)(e) of this section. This subsection does not limit a purchaser's obligation for sales or use tax to any state to which the direct mail is delivered.

(c) If a purchaser of direct mail provides the seller with documentation of direct pay authority, the purchaser is not required to provide a direct mail form or delivery information to the seller.

(6) The following are sourced to the location at or from which delivery is made to the consumer:

(a) A retail sale of watercraft;

(b) A retail sale of a modular home, manufactured home, or mobile home;

(c) A retail sale, excluding the lease and rental, of a motor vehicle, trailer, semitrailer, or aircraft, that do not qualify as transportation equipment; and

(d) Florist sales. In the case of a sale in which one florist takes an order from a customer and then communicates that order to another florist who delivers the items purchased to the place designated by the customer, the location at or from which the delivery is made to the consumer is deemed to be the location of the florist originally taking the order.

(7) A retail sale of the providing of telecommunications services or ancillary services, as those terms are defined in RCW 82.04.065, shall be sourced in accordance with RCW 82.32.520.

(8) The definitions in this subsection apply throughout this section.

(a) "Delivered electronically" means delivered to the purchaser by means other than tangible storage media.

(b) "Direct mail" means printed material delivered or distributed by United States mail or other delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. "Direct mail" does not include multiple items of printed material delivered to a single address.

(c) "Florist sales" means the retail sale of tangible personal property by a florist. For purposes of this subsection (8)(c), "florist" means a person whose primary business activity is the retail sale of fresh cut flowers, potted ornamental plants, floral arrangements, floral bouquets, wreaths, or any similar products, used for decorative and not landscaping purposes.

(d) "Receive" and "receipt" mean taking possession of tangible personal property, making first use of services, or taking possession or making first use of digital goods, whichever comes first. "Receive" and "receipt" do not include possession by a shipping company on behalf of the purchaser.

(e) "Transportation equipment" means:

(i) Locomotives and railcars that are used for the carriage of persons or property in interstate commerce;

(ii) Trucks and truck tractors with a gross vehicle weight rating of ten thousand one pounds or greater, trailers, semitrailers, or passenger buses that are:

(A) Registered through the international registration plan; and

(B) Operated under authority of a carrier authorized and certificated by the United States department of transportation

or another federal authority to engage in the carriage of persons or property in interstate commerce;

(iii) Aircraft that are operated by air carriers authorized and certificated by the United States department of transportation or another federal or foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; or

(iv) Containers designed for use on and component parts attached or secured on the items described in (e)(i) through (iii) of this subsection.

(9) In those instances where there is no obligation on the part of a seller to collect or remit this state's sales or use tax, the use of tangible personal property or of a service, subject to use tax, is sourced to the place of first use in this state. The definition of use in RCW 82.12.010 applies to this subsection. [2008 c 324 § 1; 2007 c 6 § 501.]

**Effective date—2008 c 324:** "This act takes effect July 1, 2008." [2008 c 324 § 2.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

### **82.32.735 Confidentiality and privacy—Certified service providers—Streamlined sales and use tax agreement.**

(1) A fundamental precept of allowing the use of a certified service provider is to preserve the privacy of consumers by protecting their anonymity. With very limited exceptions, a certified service provider shall perform its tax calculation, remittance, and reporting functions without retaining the personally identifiable information of consumers.

(2) The department shall provide public notification to consumers, including purchasers claiming exemption from tax, of its practices relating to the collection, use, and retention of personally identifiable information.

(3) When personally identifiable information that has been collected and retained is no longer required to ensure the validity of exemptions from taxation by reason of the consumer's status or the intended use of the goods or services purchased, the information shall no longer be retained by the state of Washington.

(4) When personally identifiable information regarding an individual is retained by or on behalf of the state of Washington, this state shall provide reasonable access for the individual to his or her own information and a right to correct any inaccurately recorded information.

(5) If anyone other than a member state of the agreement, or other than a person authorized by Washington law or the agreement, seeks to discover personally identifiable information, the state of Washington shall make a reasonable and timely effort to notify the individual of the request.

(6) The provisions of this section may be enforced by petitioning the superior court of Thurston county for injunctive relief. [2007 c 6 § 601.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

### **82.32.740 Taxability matrix—Liability—Streamlined sales and use tax agreement.**

(1) The department shall complete a taxability matrix maintained by the member states

of the agreement in downloadable format. The matrix contains terms defined in the agreement. The department shall provide notice of changes in the taxability of products or services listed in the matrix.

(2) Sellers and certified service providers are relieved from liability to the state and to local jurisdictions for having charged or collected the incorrect amount of sales or use tax if the error resulted from reliance on erroneous information provided by the department in the taxability matrix. [2007 c 6 § 701.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.745 Software certification by department—Classifications—Liability—Streamlined sales and use tax agreement.** (1) The department shall review software submitted to the governing board of the agreement for certification as a certified automated system under the terms of the agreement. The review shall include a determination of whether the software adequately classifies this state's product-based sales tax exemptions. Upon completing the review, the department shall certify to the governing board its acceptance or rejection of the classifications made by the system.

(2) Certified service providers and model 2 sellers shall be held harmless and are not liable for sales or use taxes, nor interest or penalties on those taxes, not collected due to reliance on the certification of the department under subsection (1) of this section.

(3) The relief from liability provided to certified service providers and model 2 sellers under subsection (2) of this section does not apply with respect to the incorrect classification of an item or transaction into a product-based exemption certified by the department unless that item or transaction is contained in a listing of items or transactions within a product definition approved by the governing board or the department.

(4) If the department determines that an item or transaction is incorrectly classified as to its taxability, it shall notify the certified service provider or model 2 seller of the incorrect classification. The certified service provider or model 2 seller has ten days to revise the classification after receipt of notice from the department. Upon the expiration of the ten days, the certified service provider or model 2 seller is liable for the failure to collect the correct amount of sales or use taxes. [2007 c 6 § 702.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.750 Purchaser liability—Penalty—Streamlined sales and use tax agreement.** (1) Purchasers are relieved from liability for tax, interest, and penalty for having failed to pay the correct amount of sales or use tax in any of the following circumstances:

(a) A purchaser's seller or certified service provider relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(b) A purchaser holding a direct pay permit relied on erroneous data provided by the department on tax rates, boundaries, taxing jurisdiction assignments, or in the taxability matrix completed by the department pursuant to RCW 82.32.740;

(c) A purchaser relied on erroneous data provided by the department in the taxability matrix completed by the department pursuant to RCW 82.32.740; or

(d) A purchaser relied on erroneous data provided by the department on tax rates, boundaries, or taxing jurisdiction assignments.

(2) For purposes of this section, "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional that is in addition to the correct amount of sales or use tax and interest. [2007 c 6 § 703.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.755 Sourcing compliance—Taxpayer relief—Interest and penalties—Streamlined sales and use tax agreement.** (1) Notwithstanding any other provision in this chapter, no interest or penalties may be imposed on any taxpayer because of errors in collecting or remitting the correct amount of local sales tax arising out of changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020 if the taxpayer establishes that:

(a) Immediately before July 1, 2008, the taxpayer was registered with the department and engaged in making sales of tangible personal property that the taxpayer delivered to locations away from its place of business; and

(b) During the calendar year for which the error was made the taxpayer:

(i) Has gross income of the business less than five hundred thousand dollars;

(ii) Has at least five percent of its gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from its place of business; and

(iii) Has at least one percent of its gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax.

(2) The relief from penalty and interest provided by subsection (1) of this section does not apply with respect to transactions occurring more than four years after the close of the calendar year in which \*RCW 82.14.490 becomes effective. [2007 c 6 § 1601.]

\*Reviser's note: RCW 82.14.490 takes effect July 1, 2008.

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**82.32.760 Sourcing compliance—Taxpayer relief—Credits—Streamlined sales and use tax agreement.** (1) Eligible taxpayers may either:

(a) Use the services of a certified service provider at no cost to themselves for tax reporting periods up to two years after July 1, 2008; or

(b) Claim a credit against the tax imposed under RCW 82.08.020(1) collected and otherwise required to be remitted by the taxpayer as a seller and the tax imposed under RCW 82.04.220. The amount of the credit is equal to the amount of costs incurred within one year of July 1, 2008, in order to comply with changes in local sales and use tax sourcing rules implemented under RCW 82.14.490 and the chapter 6, Laws of 2007 amendments to RCW 82.14.020.

(i) The total amount of credit claimed under this subsection (1)(b) may not exceed one thousand dollars.

(ii) The credit may be claimed until it is used. No refunds may be granted for the credit. The costs that may be used in the calculation of the credit include goods and services purchased, and labor costs incurred, for the purpose of complying with the local sales tax sourcing rules.

(2) The use of a certified service provider under subsection (1)(a) of this section must begin within one year after July 1, 2008, but not before July 1, 2008.

(3) The credit under subsection (1)(b) of this section must first be claimed within one year after July 1, 2008, but not before July 1, 2008. This subsection does not affect the ability of a taxpayer to claim unused credit until it is used.

(4) For purposes of subsection (1) of this section, an "eligible taxpayer" means a taxpayer that:

(a) Immediately before July 1, 2008, was registered with the department and engaged in making sales of tangible personal property that the taxpayer delivered to physical locations away from its place of business; and

(b) During the calendar year in which \*RCW 82.14.490 becomes effective:

(i) Has a physical presence in Washington;

(ii) Has gross income of the business less than five hundred thousand dollars;

(iii) Has at least five percent of its gross income from sales subject to sales tax derived from sales of tangible personal property delivered to physical locations away from its place of business; and

(iv) Has at least one percent of its gross income from sales subject to sales tax derived from deliveries of tangible personal property to destinations in local jurisdictions imposing sales tax other than the one to which the taxpayer reported the most local sales tax.

(5) Certified service providers agreeing to provide services to eligible taxpayers under subsection (1)(a) of this section shall be compensated for those services by retaining as a fee an amount adopted by rule by the department. The department may be guided by the provisions for monetary allowances adopted by the governing board of the agreement to determine the amount of the fee. The fee must be reasonable and provide adequate incentive for certified service providers to provide services to eligible taxpayers. The fee will be funded solely from state sales taxes.

(6) Taxpayers that use certified service provider services under subsection (1)(a) of this section but are not eligible taxpayers are immediately liable to the department for the amount retained by the certified service provider as a fee for providing those services to the taxpayer. All administrative provisions of this chapter applicable to the collection of taxes apply to amounts due under this subsection. If any amounts due under this subsection are not paid by the due date of any notice informing the taxpayer of such liability, the depart-

ment shall apply interest, but not penalties, to amounts remaining due. Interest assessed under this subsection shall be at the rate provided for delinquent excise taxes under this chapter from the day after the due date until the amount due under this subsection is paid in full.

(7) Taxpayers that claim a credit under subsection (1)(b) of this section but are not eligible taxpayers are immediately liable to the department for the amount of credit claimed. If any amounts due under this subsection are not paid by the due date of any notice informing the taxpayer of such liability, the department shall apply interest, but not penalties, to amounts remaining due. Interest assessed under this subsection shall be at the rate provided for delinquent excise taxes under this chapter from the day after the due date until the amount due under this subsection is paid in full.

(8) No application is necessary for either the use of certified service providers under subsection (1)(a) of this section or the tax credit under subsection (1)(b) of this section. The taxpayer must keep records necessary for the department to determine eligibility under this section. The department may prescribe rules and procedures regarding the administration of this section. [2007 c 6 § 1602.]

\*Reviser's note: RCW 82.14.490 takes effect July 1, 2008.

Part headings not law—Savings—Severability—2007 c 6: See notes following RCW 82.32.020.

Findings—Intent—2007 c 6: See note following RCW 82.14.495.

## Chapter 82.32A RCW

### TAXPAYER RIGHTS AND RESPONSIBILITIES

#### Sections

82.32A.002	Short title.
82.32A.005	Finding.
82.32A.010	Administration of chapter.
82.32A.020	Rights.
82.32A.030	Responsibilities.
82.32A.040	Taxpayer rights advocate.
82.32A.050	Taxpayer services program.
82.32A.900	Severability—1991 c 142.

*Refunds of erroneous or excessive payments: RCW 43.88.170.*

**82.32A.002 Short title.** This chapter shall be known and cited as "Washington taxpayers' rights and responsibilities." [1991 c 142 § 1.]

**82.32A.005 Finding.** (1) The legislature finds that taxes are one of the most sensitive points of contact between citizens and their government, and that there is a delicate balance between revenue collection and taxpayers' rights and responsibilities. The rights, privacy, and property of Washington taxpayers should be protected adequately during the process of the assessment and collection of taxes.

(2) The legislature further finds that the Washington tax system is based largely on voluntary compliance and that taxpayers have a responsibility to inform themselves about applicable tax laws. The legislature also finds that the rights of the taxpayers and their attendant responsibilities are best implemented where the department of revenue provides accurate tax information, instructions, forms, administrative policies, and procedures to assist taxpayers to voluntarily comply with the provisions of the revenue act, Title 82 RCW,

and where taxpayers cooperate in the administration of these provisions. [1991 c 142 § 2.]

**82.32A.010 Administration of chapter.** The department of revenue shall administer this chapter. The department of revenue shall adopt or amend rules as may be necessary to fully implement this chapter and the rights established under this chapter. [1991 c 142 § 3.]

**82.32A.020 Rights.** The taxpayers of the state of Washington have:

(1) The right to a written explanation of the basis for any tax deficiency assessment, interest, and penalties at the time the assessments are issued;

(2) The right to rely on specific, official written advice and written tax reporting instructions from the department of revenue to that taxpayer, and to have interest, penalties, and in some instances, tax deficiency assessments waived where the taxpayer has so relied to their proven detriment;

(3) The right to redress and relief where tax laws or rules are found to be unconstitutional by the final decision of a court of record and the right to prompt administrative remedies in such cases;

(4) The right to confidentiality and protection from public inquiry regarding financial and business information in the possession of the department of revenue in accordance with the requirements of RCW 82.32.330;

(5) The right to receive, upon request, clear and current tax instructions, rules, procedures, forms, and other tax information; and

(6) The right to a prompt and independent administrative review by the department of revenue of a decision to revoke a tax registration, and to a written determination that either sustains the revocation or reinstates the registration. [1991 c 142 § 4.]

**82.32A.030 Responsibilities.** To ensure consistent application of the revenue laws, taxpayers have certain responsibilities under chapter 82.32 RCW, including, but not limited to, the responsibility to:

(1) Register with the department of revenue;

(2) Know their tax reporting obligations, and when they are uncertain about their obligations, seek instructions from the department of revenue;

(3) Keep accurate and complete business records;

(4) File accurate returns and pay taxes in a timely manner;

(5) Ensure the accuracy of the information entered on their tax returns;

(6) Substantiate claims for refund;

(7) Timely pay all taxes after closing a business and request cancellation of registration number; and

(8) Timely respond to communications from the department of revenue. [1991 c 142 § 5.]

**82.32A.040 Taxpayer rights advocate.** The director of revenue shall appoint a taxpayer rights advocate. The advocate shall be responsible for directly assisting taxpayers and their representatives to assure their understanding and utilization

of the policies, processes, and procedures available to them in the resolution of problems. [1991 c 142 § 6.]

**82.32A.050 Taxpayer services program.** The department of revenue shall maintain a taxpayer services program consisting of, but not limited to:

(1) Providing taxpayer assistance in the form of information, education, and instruction in person, by telephone, or by correspondence;

(2) Conducting tax workshops at locations most conveniently accessible to the majority of taxpayers affected; and

(3) Publishing written bulletins, instructions, current revenue laws, rules, court decisions, and interpretive rulings of the department of revenue. [1991 c 142 § 7.]

**82.32A.900 Severability—1991 c 142.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 142 § 12.]

## Chapter 82.33 RCW

### ECONOMIC AND REVENUE FORECASTS

#### Sections

82.33.010	Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts.
82.33.020	Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.
82.33.030	Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.
82.33.040	Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.
82.33.050	Employment growth forecast and general state revenue estimates.

**82.33.010 Economic and revenue forecast council—Oversight and approval of economic and revenue forecasts.** (1) The economic and revenue forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ an economic and revenue forecast supervisor to supervise the preparation of all economic and revenue forecasts. As used in this chapter, "supervisor" means the economic and revenue forecast supervisor. Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(3) The economic and revenue forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official, optimistic, and pessimistic state economic and revenue forecasts prepared under RCW 82.33.020. If the council is unable to approve a forecast before a date required in RCW 82.33.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(4) A council member who does not cast an affirmative vote for approval of the official economic and revenue forecast may request, and the supervisor shall provide, an alternative economic and revenue forecast based on assumptions specified by the member.

(5) Members of the economic and revenue forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1990 c 229 § 1; 1984 c 138 § 4. Formerly RCW 82.01.130.]

**Effective date—1990 c 229:** See note following RCW 41.06.087.

**82.33.020 Economic and revenue forecast supervisor—Economic and revenue forecasts—Submittal of forecasts—Estimated tuition fees revenue.** (1) Four times each year the supervisor shall prepare, subject to the approval of the economic and revenue forecast council under RCW 82.33.010:

- (a) An official state economic and revenue forecast;
- (b) An unofficial state economic and revenue forecast based on optimistic economic and revenue projections; and
- (c) An unofficial state economic and revenue forecast based on pessimistic economic and revenue projections.

(2) The supervisor shall submit forecasts prepared under this section, along with any unofficial forecasts provided under RCW 82.33.010, to the governor and the members of the committees on ways and means and the chairs of the committees on transportation of the senate and house of representatives, including one copy to the staff of each of the committees, on or before November 20th, February 20th in the even-numbered years, March 20th in the odd-numbered years, June 20th, and September 20th. All forecasts shall include both estimated receipts and estimated revenues in conformance with generally accepted accounting principles as provided by RCW 43.88.037.

(3) All agencies of state government shall provide to the supervisor immediate access to all information relating to economic and revenue forecasts. Revenue collection information shall be available to the supervisor the first business day following the conclusion of each collection period.

(4) The economic and revenue forecast supervisor and staff shall co-locate and share information, data, and files with the tax research section of the department of revenue but shall not duplicate the duties and functions of one another.

(5) As part of its forecasts under subsection (1) of this section, the supervisor shall provide estimated revenue from tuition fees as defined in RCW 28B.15.020. [2005 c 319 § 137; 1992 c 231 § 34; 1990 c 229 § 2. Prior: 1987 c 505 §

79; 1987 c 502 § 10; 1986 c 112 § 2; 1984 c 138 § 1. Formerly RCW 82.01.120.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

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

**Effective date—1990 c 229:** See note following RCW 41.06.087.

**82.33.030 Alternative economic and revenue forecasts to be provided at the request of the legislative evaluation and accountability program committee.** The administrator of the legislative evaluation and accountability program committee may request, and the supervisor shall provide, alternative economic and revenue forecasts based on assumptions specified by the administrator. [1984 c 138 § 3. Formerly RCW 82.01.125.]

*Legislative evaluation and accountability program committee: Chapter 44.48 RCW.*

**82.33.040 Economic and revenue forecast work group—Availability of information to group—Provision of technical support to economic and revenue forecast council—Meetings.** (1) To promote the free flow of information and to promote legislative input in the preparation of forecasts, immediate access to all information relating to economic and revenue forecasts shall be available to the economic and revenue forecast work group, hereby created. Revenue collection information shall be available to the economic and revenue forecast work group the first business day following the conclusion of each collection period. The economic and revenue forecast work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of revenue;
- (b) Office of financial management;
- (c) Legislative evaluation and accountability program committee;
- (d) Ways and means committee of the senate; and
- (e) Ways and means committee of the house of representatives.

(2) The economic and revenue forecast work group shall provide technical support to the economic and revenue forecast council. Meetings of the economic and revenue forecast work group may be called by any member of the group for the purpose of assisting the economic and revenue forecast council, reviewing the state economic and revenue forecasts, or reviewing monthly revenue collection data or for any other purpose which may assist the economic and revenue forecast council. [1986 c 158 § 23; 1984 c 138 § 5. Formerly RCW 82.01.135.]

**82.33.050 Employment growth forecast and general state revenue estimates.** The state economic and revenue forecast council shall perform the state employment growth forecast and general state revenue estimates required by Article VII, section 12. [2007 c 484 § 3.]

**Contingent effective date—2007 c 484 §§ 2-8:** See note following RCW 43.79.495.

## Chapter 82.33A RCW

## ECONOMIC CLIMATE COUNCIL

## Sections

- 82.33A.005 Intent.  
 82.33A.010 Council—Created—Selection of benchmarks—Access to agency information.  
 82.33A.020 Consulting with Washington economic development commission.

**82.33A.005 Intent.** The citizens of Washington should enjoy a high quality of life, which requires a healthy state economy. To achieve this goal, the legislature recognizes that the state must be able to compete economically at a national and international level. It is critical to the economic well-being of the citizens of this state that the legislature strive to continually improve the state's economic climate. Therefore, the legislature intends to provide a mechanism whereby the information necessary to achieve this goal is available on a timely and reliable basis. [1996 c 152 § 1.]

**82.33A.010 Council—Created—Selection of benchmarks—Access to agency information.** (1) The economic climate council is hereby created.

(2) The council shall, in consultation with the Washington economic development commission, select a series of benchmarks that characterize the competitive environment of the state. The benchmarks should be indicators of the cost of doing business; the education and skills of the workforce; a sound infrastructure; and the quality of life. In selecting the appropriate benchmarks, the council shall use the following criteria:

(a) The availability of comparative information for other states and countries;

(b) The timeliness with which benchmark information can be obtained; and

(c) The accuracy and validity of the benchmarks in measuring the economic climate indicators named in this section.

(3) Each year the council shall prepare an official state economic climate report on the present status of benchmarks, changes in the benchmarks since the previous report, and the reasons for the changes. The reports shall include current benchmark comparisons with other states and countries, and an analysis of factors related to the benchmarks that may affect the ability of the state to compete economically at the national and international level.

(4) All agencies of state government shall provide to the council immediate access to all information relating to economic climate reports. [2007 c 232 § 8; 1998 c 245 § 168; 1996 c 152 § 2.]

**82.33A.020 Consulting with Washington economic development commission.** The economic climate council shall consult with the Washington economic development commission in selecting benchmarks and developing economic climate reports and benchmarks. The commission shall provide for a process to ensure public participation in the selection of the benchmarks. [2007 c 232 § 9; 1996 c 152 § 4.]

(2008 Ed.)

## Chapter 82.34 RCW

POLLUTION CONTROL FACILITIES—  
TAX EXEMPTIONS AND CREDITS

## Sections

- 82.34.010 Definitions.  
 82.34.015 Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c).  
 82.34.020 Application for certificate—Filing—Form—Contents.  
 82.34.030 Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board.  
 82.34.040 Rules.  
 82.34.050 Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption.  
 82.34.060 Application for final cost determination as to existing or new facility—Filing—Form—Contents—Approval—Determination of costs—Credits against taxes imposed by chapters 82.04, 82.12, 82.16 RCW—Limitations.  
 82.34.090 Certified mail—Use of in sending certificates or notice of refusal to issue certificates.  
 82.34.100 Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement—Exemptions from revocation.  
 82.34.110 Administrative and judicial review.  
 82.34.900 Severability—1967 ex.s. c 139.  
 82.34.901 Severability—1981 2nd ex.s. c 9.

**82.34.010 Definitions.** Unless a different meaning is plainly required by the context, the following words as hereinafter used in this chapter shall have the following meanings:

(1) "Facility" shall mean an "air pollution control facility" or a "water pollution control facility" as herein defined: (a) "Air pollution control facility" includes any treatment works, control devices and disposal systems, machinery, equipment, structures, property or any part or accessories thereof, installed or acquired for the primary purpose of reducing, controlling or disposing of industrial waste which if released to the outdoor atmosphere could cause air pollution. "Air pollution control facility" shall not mean any motor vehicle air pollution control devices used to control the emission of air contaminants from any motor vehicle. (b) "Water pollution control facility" includes any treatment works, control device or disposal system, machinery, equipment, structures, property or any accessories thereof installed or acquired for the primary purpose of reducing, controlling or disposing of sewage and industrial waste which if released to a water course could cause water pollution: PROVIDED, That the word "facility" shall not be construed to include any control device, machinery, equipment, structure, disposal system or other property installed or constructed: For a municipal corporation other than for coal-fired, steam electric generating plants constructed and operated pursuant to chapter 54.44 RCW for which an application for a certificate was made no later than December 31, 1969, together with any air or water pollution control facility improvement which may be made hereafter to such plants; or for the primary purpose of connecting any commercial establishment with the waste collecting facilities of public or privately owned utilities: PROVIDED FURTHER, That the word "facility" shall not include any control device, machinery, equipment, structure, disposal system, or other property installed or constructed with the proceeds derived from the sale of industrial revenue bonds issued under chapter 39.84 RCW.

(2) "Industrial waste" shall mean any liquid, gaseous, radioactive or solid waste substance or combinations thereof resulting from any process of industry, manufacture, trade or

business, or from the development or recovery of any natural resources.

(3) "Treatment works" or "control device" shall mean any machinery, equipment, structure or property which is installed, constructed or acquired for the primary purpose of controlling air or water pollution and shall include, but shall not be limited to such devices as precipitators, scrubbers, towers, filters, baghouses, incinerators, evaporators, reservoirs, aerators used for the purpose of treating, stabilizing, incinerating, holding, removing or isolating sewage and industrial wastes.

(4) "Disposal system" shall mean any system containing treatment works or control devices and includes but is not limited to pipelines, outfalls, conduits, pumping stations, force mains, solids handling equipment, instrumentation and monitoring equipment, ducts, fans, vents, hoods and conveyors and all other construction, devices, appurtenances and facilities used for collecting or conducting, sewage and industrial waste to a point of disposal, treatment or isolation except that which is necessary to manufacture of products.

(5) "Certificate" shall mean a pollution control tax exemption and credit certificate for which application has been made not later than December 31, 1969, except as follows:

(a) With respect to a facility required to be installed, such application will be deemed timely made if made not later than November 30, 1981, and within one year after the effective date of specific requirements for such facility promulgated by the appropriate control agency.

(b) With respect to a water pollution control facility for which an application was made in anticipation of specific requirements for such facility being promulgated by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(c) With respect to a facility for which plans and specifications were approved by the appropriate control agency, an application will be deemed timely made if made during November, 1981, and subsequently denied, and if an appeal of the agency's denial of the application was filed in a timely manner.

(d) For the purposes of (a), (b), and (c) of this subsection, "facility" means a facility installed in an industrial, manufacturing, waste disposal, utility, or other commercial establishment which is in operation or under construction as of July 30, 1967.

(6) "Appropriate control agency" shall mean the department of ecology; or the operating local or regional air pollution control agency within whose jurisdiction a facility is or will be located, or the department of ecology, where the facility is not or will not be located within the area of an operating local or regional air pollution control agency, or where the department of ecology has assumed jurisdiction.

(7) "Department" shall mean the department of revenue. [1988 c 127 § 36; 1984 c 42 § 1; 1981 2nd ex.s. c 9 § 1; 1980 c 175 § 1; 1967 ex.s. c 139 § 1.]

**82.34.015 Limitations on the issuance of certificates under RCW 82.34.010(5) (b) and (c).** The department shall not issue a certificate under RCW 82.34.010(5)(b) before

July 1, 1985, or before the promulgation of specific requirements for such facility by the appropriate control agency, whichever is later. The department shall not issue a certificate under RCW 82.34.010(5)(c) before July 1, 1985. [1984 c 42 § 2.]

**82.34.020 Application for certificate—Filing—Form—Contents.** An application for a certificate shall be filed with the department not later than November 30, 1981, and in such manner and in such form as may be prescribed by the department. The application shall contain estimated or actual costs, plans and specifications of the facility including all materials incorporated or to be incorporated therein and a list describing, and showing the cost, of all equipment acquired or to be acquired by the applicant for the purpose of pollution control, together with the operating procedure for the facility, or a time schedule for the acquisition and installation or attachment of the facility and the proposed operating procedure for such facility. [1981 2nd ex.s. c 9 § 2; 1967 ex.s. c 139 § 2.]

**82.34.030 Approval of application by control agency—Notice to department—Hearing—Appeal to state air pollution control board.** A certificate shall be issued by the department within thirty days after approval of the application by the appropriate control agency. Such approval shall be given when it is determined that the facility is designed and is operated or is intended to be operated primarily for the control, capture and removal of pollutants from the air or for the control and reduction of water pollution and that the facility is suitable, reasonably adequate, and meets the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, as the case may be, and it shall notify the department of its findings within thirty days of the date on which the application was submitted to it for approval. In making such determination, the appropriate control agency shall afford to the applicant an opportunity for a hearing: PROVIDED, That if the local or regional air pollution control agency fails to act or if the applicant feels aggrieved by the action of the local or regional air pollution control agency, such applicant may appeal to the state air pollution control board pursuant to rules and regulations established by that board. [1967 ex.s. c 139 § 3.]

**82.34.040 Rules.** The department may adopt such rules as it deems necessary for the administration of this chapter subject to the provisions of RCW 34.05.310 through 34.05.395. Such rules shall not abridge the authority of the appropriate control agency as provided in this chapter or any other law. [1989 c 175 § 177; 1967 ex.s. c 139 § 4.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**82.34.050 Original acquisition of facility exempt from sales and use taxes—Election to take tax credit in lieu of exemption.** (1) The original acquisition of a facility by the holder of a certificate shall be exempt from sales tax imposed by chapter 82.08 RCW and use tax imposed by chapter 82.12 RCW when the due date for payment of such taxes is subsequent to the effective date of the certificate: PROVIDED, That the exemption of this section shall not

apply to servicing, maintenance, repairs, and replacement of parts after a facility is complete and placed in operation. Sales and use taxes paid by a holder of a certificate with respect to expenditures incurred for acquisition of a facility prior to the issuance of a certificate covering such facility may be claimed as a tax credit as provided in subsection (2) of this section.

(2) Subsequent to July 30, 1967 the holder of the certificate may, in lieu of accepting the tax exemption provided for in this section, elect to take a tax credit in the total amount of the exemption for the facility covered by such certificate against any future taxes to be paid pursuant to chapters 82.04, 82.12 and 82.16 RCW. [2000 c 103 § 12; 1975 1st ex.s. c 158 § 1; 1967 ex.s. c 139 § 5.]

**Effective date—1975 1st ex.s. c 158:** "The provisions of this amendatory act shall be applicable with respect to applications for a pollution control tax exemption and credit certificate made to the department of revenue on or after January 1, 1975." [1975 1st ex.s. c 158 § 5.]

**82.34.060 Application for final cost determination as to existing or new facility—Filing—Form—Contents—Approval—Determination of costs—Credits against taxes imposed by chapters 82.04, 82.12, 82.16 RCW—Limitations.** (1) On and after July 30, 1967, an application for a determination of the cost of an existing or newly completed pollution control facility may be filed with the department in such manner and in such form as may be prescribed by the department. The application shall contain the final cost figures for the installation of the facility and reasonable supporting documents and other proof as required by the department. In the event such facility is not already covered by a certificate issued for the purpose of authorizing the tax exemption or credit provided for in this chapter, the department shall seek the approval of the facility from the appropriate control agency. For any application for a certificate or supplement which was filed with the department not later than November 30, 1981, the department shall determine the final cost of the pollution control facility and issue a supplement to the existing certificate or an original certificate stating the cost of the pollution control facility: PROVIDED, That the cost of an existing pollution control facility shall be the depreciated value thereof at the time of application filed pursuant to this section.

(2) When the operation of a facility has commenced and a certificate pertaining thereto has been issued, a credit may be claimed against taxes imposed pursuant to chapters 82.04, 82.12 and 82.16 RCW. The amount of such credit shall be two percent of the cost of a facility covered by the certificate for each year the certificate remains in force. Such credits shall be cumulative and shall be subject only to the following limitations:

(a) No credit exceeding fifty percent of the taxes payable under chapters 82.04, 82.12 and 82.16 RCW shall be allowed in any reporting period;

(b) The net commercial value of any materials captured or recovered through use of a facility shall, first, reduce the credit allowable in the current reporting period and thereafter be applied to reduce any credit balance allowed and not yet utilized: PROVIDED, That for the purposes of this chapter the determination of "net commercial value" shall not include a deduction for the cost or depreciation of the facility.

(c) The total cumulative amount of such credits allowed for any facility covered by a certificate shall not exceed fifty percent of the cost of such facility.

(d) The total cumulative amount of credits against state taxes authorized by this chapter shall be reduced by the total amount of any federal investment credit or other federal tax credit actually received by the certificate holder applicable to the facility. This reduction shall be made as an offset against the credit claimed in the first reporting period following the allowance of such investment credit, and thereafter as an offset against any credit balance as it shall become available to the certificate holder.

(3) Applicants and certificate holders shall provide the department with information showing the net commercial value of materials captured or recovered by a facility and shall make all pertinent books and records available for examination by the department for the purposes of determining the credit provided by this chapter. [1981 2nd ex.s. c 9 § 3; 1967 ex.s. c 139 § 6.]

**82.34.090 Certified mail—Use of in sending certificates or notice of refusal to issue certificates.** The department shall send a certificate or supplement when issued, by certified mail to the applicant. Notice of the department's refusal to issue a certificate or supplement shall likewise be sent to the applicant by certified mail. [1967 ex.s. c 139 § 9.]

**82.34.100 Revision of prior findings of appropriate control agency—Grounds for modification or revocation of certificate or supplement—Exemptions from revocation.** (1) The department of ecology, after notice to the department and the applicant and after affording the applicant an opportunity for a hearing, shall, on its own initiative or on complaint of the local or regional air pollution control agency in which an air pollution control facility is located, or is expected to be located, revise the prior findings of the appropriate control agency whenever any of the following appears:

(a) The certificate or supplement thereto was obtained by fraud or misrepresentation, or the holder of the certificate has failed substantially without good cause to proceed with the construction, reconstruction, installation or acquisition of a facility or without good cause has failed substantially to operate the facility for the purpose specified by the appropriate control agency in which case the department shall modify or revoke the certificate. If the certificate and/or supplement are revoked, all applicable taxes from which an exemption has been secured under this chapter or against which the credit provided for by this chapter has been claimed shall be immediately due and payable with the maximum interest and penalties prescribed by applicable law. No statute of limitations shall operate in the event of fraud or misrepresentation.

(b) The facility covered by the certificate or supplement thereto is no longer operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air, as the case may be, or is no longer suitable or reasonably adequate to meet the intent and purposes of chapter 70.94 RCW or chapter 90.48 RCW, in which case the certificate shall be modified or revoked.

(2) A certificate, or supplement thereto, issued pursuant to RCW 82.34.030 may not be revoked if:

(a) The facility is modified, but is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air and is reasonably adequate to meet the intent and purposes of chapter 70.94 or 90.48 RCW;

(b) The facility is replaced by a new or different facility that is still operated primarily for the purpose of the control or reduction of water pollution or the control, capture, and removal of pollutants from the air and is reasonably adequate to meet the intent and purposes of chapter 70.94 or 90.48 RCW;

(c) The facility is modified or removed as a result of an alteration of the production process and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW;

(d) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW;

(e) Part of an industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed ceases operations and the cessation of operation results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW; or

(f) The industrial, manufacturing, waste disposal, utility, or other commercial establishment in which the facility was installed is altered and the alteration results in reasonably adequate compliance with the intent and purposes of chapter 70.94 or 90.48 RCW.

(3) Upon the date of mailing by certified mail to the certificate holder of notice of the action of the department modifying or revoking a certificate or supplement, the certificate or supplement shall cease to be in force or shall remain in force only as modified. [1998 c 9 § 1; 1988 c 127 § 37; 1967 ex.s. c 139 § 10.]

#### **82.34.110 Administrative and judicial review.**

Administrative and judicial review of a decision of the control agency or the department shall be in accordance with the applicable provisions of chapters 34.05, 43.21B, 82.03, and 82.32 RCW, as now or hereafter amended. [1975 1st ex.s. c 158 § 2; 1967 ex.s. c 139 § 11.]

**Effective date—1975 1st ex.s. c 158:** See note following RCW 82.34.050.

**82.34.900 Severability—1967 ex.s. c 139.** If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 ex.s. c 139 § 12.]

**82.34.901 Severability—1981 2nd ex.s. c 9.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the applica-

tion of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 9 § 5.]

### **Chapter 82.36 RCW MOTOR VEHICLE FUEL TAX**

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*Constitutional limitations on certain taxes, highway funds: State Constitution Art. 2 § 40.*

*Dispensing device label required for gasoline containing alcohol: RCW 19.94.505.*

*Refunds of tax on marine fuel, disposition under marine recreation land act: Chapter 79A.25 RCW.*

*Tax proceeds pledged to ferry bond retirement: RCW 47.61.070, 47.61.090.*

**82.36.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended fuel" means a mixture of motor vehicle fuel and another liquid, other than a de minimis amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(3) "Bulk transfer" means a transfer of motor vehicle fuel by pipeline or vessel.

(4) "Bulk transfer-terminal system" means the motor vehicle fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Motor vehicle fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Motor vehicle fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Department" means the department of licensing.

(6) "Director" means the director of licensing.

(7) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; misrepresentation of fact; or other act of deception; or

(b) An intentional: Omission; failure to file a return or report; or other act of deception.

(8) "Export" means to obtain motor vehicle fuel in this state for sales or distribution outside the state.

(9) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(10) "Import" means to bring motor vehicle fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(11) "International fuel tax agreement licensee" means a motor vehicle fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(12) "Licensee" means a person holding a motor vehicle fuel supplier, motor vehicle fuel importer, motor vehicle fuel exporter, motor vehicle fuel blender, motor vehicle distributor, or international fuel tax agreement license issued under this chapter.

(13) "Motor vehicle fuel blender" means a person who produces blended motor fuel outside the bulk transfer-terminal system.

(14) "Motor vehicle fuel distributor" means a person who acquires motor vehicle fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(15) "Motor vehicle fuel exporter" means a person who purchases motor vehicle fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state. If the exporter of record is acting as an agent, the person for whom the agent is acting is the exporter. If there is no exporter of record, the owner of the motor fuel at the time of exportation is the exporter.

(16) "Motor vehicle fuel importer" means a person who imports motor vehicle fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the motor vehicle fuel at the time of importation is the importer.

(17) "Motor vehicle fuel supplier" means a person who holds a federal certificate of registry that is issued under the internal revenue code and authorizes the person to enter into federal tax-free transactions on motor vehicle fuel in the bulk transfer-terminal system.

(18) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing motor vehicle fuel as the means of propulsion.

(19) "Motor vehicle fuel" means gasoline and any other inflammable gas or liquid, by whatsoever name the gasoline, gas, or liquid may be known or sold, the chief use of which is as fuel for the propulsion of motor vehicles or motorboats.

(20) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(21) "Position holder" means a person who holds the inventory position in motor vehicle fuel, as reflected by the records of the terminal operator. A person holds the inventory position in motor vehicle fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to motor vehicle fuel. "Position holder" includes a terminal operator that owns motor vehicle fuel in their terminal.

(22) "Rack" means a mechanism for delivering motor vehicle fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(23) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(24) "Removal" means a physical transfer of motor vehicle fuel other than by evaporation, loss, or destruction.

(25) "Terminal" means a motor vehicle fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable motor vehicle fuel is removed at a rack.

(26) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(27) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable motor vehicle fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable motor vehicle fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder. [2007 c 515 § 1; 2001 c 270 § 1; 1998 c 176 § 6. Prior: 1995 c 287 § 1; 1995 c 274 § 20; 1993 c 54 § 1; 1991 c 339 § 13; 1990 c 250 § 79; 1987 c 174 § 1; 1983 1st ex.s. c 49 § 25; 1981 c 342 § 1; 1979 c 158 § 223; 1977 ex.s. c 317 § 1; 1971 ex.s. c 156 § 1; 1967 c 153 § 1; 1965 ex.s. c 79 § 1; 1961 c 15 § 82.36.010; prior: 1939 c 177 § 1; 1933 c 58 § 1; RRS § 8327-1; prior: 1921 c 173 § 1.]

**Severability—2007 c 515:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2007 c 515 § 35.]

**Effective date—2007 c 515:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2007]." [2007 c 515 § 36.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Effective date—1987 c 174:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 1, 1987." [1987 c 174 § 8.]

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective date—1981 c 342:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. This act shall only take effect upon the passage of Senate Bills No. 3669 and 3699, and if Senate Bills No. 3669 and 3699 are not both enacted by the 1981 regular session of the legislature this amendatory act shall be null and void in its entirety." [1981 c 342 § 12.] Senate Bills No. 3669 and 3699 became 1981 c 315 and 1981 c 316, respectively.

**Severability—1981 c 342:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 342 § 13.]

**Effective dates—1977 ex.s. c 317:** "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977, except for section 9, which shall take effect on September 1, 1977." [1977 ex.s. c 317 § 24.]

**Severability—1977 ex.s. c 317:** "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 317 § 23.]

**82.36.020 Tax levied and imposed—Rate to be computed—Incidence—Distribution.** (1) There is hereby levied and imposed upon motor vehicle fuel licensees, other than motor vehicle fuel distributors, a tax at the rate computed in the manner provided in RCW 82.36.025 on each gallon of motor vehicle fuel.

(2) The tax imposed by subsection (1) of this section is imposed when any of the following occurs:

(a) Motor vehicle fuel is removed in this state from a terminal if the motor vehicle fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(b) Motor vehicle fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state;

(c) Motor vehicle fuel enters into this state if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Motor vehicle fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the motor vehicle fuel;

(e) Blended motor vehicle fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of previously taxed motor vehicle fuel used to produce the blended motor vehicle fuel;

(f) Motor vehicle fuel is sold by a licensed motor vehicle fuel supplier to a motor vehicle fuel distributor, motor vehicle fuel importer, motor vehicle fuel blender, or international fuel tax agreement licensee and the motor vehicle fuel is not removed from the bulk transfer-terminal system.

(3) The proceeds of the motor vehicle fuel excise tax shall be distributed as provided in RCW 46.68.090. [2007 c 515 § 2; 2001 c 270 § 2; 2000 c 103 § 13; 1998 c 176 § 7; 1983 1st ex.s. c 49 § 26; 1982 1st ex.s. c 6 § 1; 1977 ex.s. c 317 § 2; 1974 ex.s. c 28 § 1. Prior: 1973 1st ex.s. c 160 § 1; 1973 1st ex.s. c 124 § 2; 1972 ex.s. c 24 § 1; 1970 ex.s. c 85 § 3; 1967 ex.s. c 145 § 75; 1967 ex.s. c 83 § 2; 1965 ex.s. c 79 § 2; 1963 c 113 § 1; 1961 ex.s. c 7 § 1; 1961 c 15 § 82.36.020; prior: 1957 c 247 § 1; 1955 c 207 § 1; 1951 c 269 § 43; 1949 c 220 § 7; 1939 c 177 § 2; 1933 c 58 § 5; Rem. Supp. 1949 § 8327-5; prior: 1931 c 140 § 2; 1923 c 81 § 1; 1921 c 173 § 2.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**Effective date—1970 ex.s. c 85:** See note following RCW 47.60.500.

**Disbursal and release of funds—1967 ex.s. c 83:** "All funds heretofore accumulated and undistributed to any city and town by reason of the matching requirements of the 1961 amendatory provisions in RCW 82.36.020 and 82.40.290 shall be immediately disbursed and released for use

in accordance with the 1967 amendatory provisions of RCW 82.36.020 and 82.40.290.

This section is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect immediately." [1967 ex.s. c 83 § 63.]

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

**82.36.022 Tax imposed—Intent.** It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.36.020 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 20.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.025 Motor vehicle fuel tax rate—Expiration of subsection.** (1) A motor vehicle fuel tax rate of twenty-three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(2) Beginning July 1, 2003, an additional and cumulative motor vehicle fuel tax rate of five cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(4) Beginning July 1, 2006, an additional and cumulative motor vehicle fuel tax rate of three cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(5) Beginning July 1, 2007, an additional and cumulative motor vehicle fuel tax rate of two cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors.

(6) Beginning July 1, 2008, an additional and cumulative motor vehicle fuel tax rate of one and one-half cents per gallon on motor vehicle fuel shall be imposed on motor vehicle fuel licensees, other than motor vehicle fuel distributors. [2007 c 515 § 3; 2005 c 314 § 101; 2003 c 361 § 401. Prior: 1999 c 269 § 16; 1999 c 94 § 29; 1994 c 179 § 30; 1991 c 342 § 57; 1990 c 42 § 101; 1983 1st ex.s. c 49 § 27; 1981 c 342 § 2; 1979 c 158 § 224; 1977 ex.s. c 317 § 6.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—2003 c 361:** "The legislature finds that the state's transportation system is in critical need of repair, restoration, and enhancement. The state's economy, the ability to move goods to market, and the overall mobility and safety of the citizens of the state rely on the state's transportation system. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

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tem. The revenues generated by this act are dedicated to funds, accounts, and activities that are necessary to improve the delivery of state transportation projects and services." [2003 c 361 § 101.]

**Part headings not law—2003 c 361:** "Part headings used in this act are not any part of the law." [2003 c 361 § 701.]

**Severability—2003 c 361:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 361 § 702.]

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—1999 c 269:** See note following RCW 36.78.070.

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Effective dates—1991 c 342:** See note following RCW 47.26.167.

**Purpose of state and local transportation funding program—1990 c 42:** "(1) The legislature finds that a new comprehensive funding program is required to maintain the state's commitment to the growing mobility needs of its citizens and commerce. The transportation funding program is intended to satisfy the following state policies and objectives:

(a) Statewide system: Provide for preservation of the existing statewide system and improvements for current and expected capacity needs in rural, established urban, and growing suburban areas throughout the state;

(b) Local flexibility: Provide for necessary state highway improvements, as well as providing local governments with the option to use new funding sources for projects meeting local and regional needs;

(c) Multimodal: Provide a source of funds that may be used for multimodal transportation purposes;

(d) Program compatibility: Implement transportation facilities and services that are consistent with adopted land use and transportation plans and coordinated with recently authorized programs such as the act authorizing creation of transportation benefit districts and the local transportation act of 1988;

(e) Interjurisdictional cooperation: Encourage transportation planning and projects that are multijurisdictional in their conception, development, and benefit, recognizing that mobility problems do not respect jurisdictional boundaries;

(f) Public and private sector: Use a state, local, and private sector partnership that equitably shares the burden of meeting transportation needs.

(2) The legislature further recognizes that the revenues currently available to the state and to counties, cities, and transit authorities for highway, road, and street construction and preservation fall far short of the identified need. The 1988 Washington road jurisdiction study identified a statewide funding shortfall of between \$14.6 and \$19.9 billion to bring existing roads to acceptable standards. The gap between identified transportation needs and available revenues continues to increase. A comprehensive transportation funding program is required to meet the current and anticipated future needs of this state.

(3) The legislature further recognizes the desirability of making certain changes in the collection and distribution of motor vehicle excise taxes with the following objectives: Simplifying administration and collection of the taxes including adoption of a predictable depreciation schedule for vehicles; simplifying the allocation of the taxes among various recipients; and the dedication of a portion of motor vehicle excise taxes for transportation purposes.

(4) The legislature, therefore, declares a need for the three-part funding program embodied in this act: (a) Statewide funding for highways, roads, and streets in urban and rural areas; (b) local option funding authority, available immediately, for the construction and preservation of roads, streets, and transit improvements and facilities; and (c) the creation of a multimodal transportation fund that is funded through dedication of a portion of motor vehicle excise tax. This funding program is intended, by targeting certain new revenues, to produce a significant increase in the overall capacity of the state, county, and city transportation systems to satisfy and efficiently accommodate the movement of people and goods." [1990 c 42 § 1.]

**Headings—1990 c 42:** "The index and part and section headings as used in this act do not constitute any part of the law." [1990 c 42 § 502.]

**Severability—1990 c 42:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 42 § 503.]

**Effective dates—Application—Implementation—1990 c 42:** "(1) Sections 101 through 104, 115 through 117, 201 through 214, 405 through 411, and 503, chapter 42, Laws of 1990 are necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect April 1, 1990.

(2) Sections 105 through 114, chapter 42, Laws of 1990 shall take effect September 1, 1990. The additional fees in sections 105 through 108, chapter 42, Laws of 1990 apply for all motor vehicle registrations that expire August 31, 1991, and thereafter.

(3) Sections 301 through 303 and 305 through 328, chapter 42, Laws of 1990 shall take effect September 1, 1990, and apply to the purchase of vehicle registrations that expire August 31, 1991, and thereafter.

(4) Section 304, chapter 42, Laws of 1990 shall take effect July 1, 1991, and apply to all vehicles registered for the first time with an expiration date of June 30, 1992, and thereafter.

(5) The director of licensing may immediately take such steps as are necessary to ensure that the sections of chapter 42, Laws of 1990 are implemented on their effective dates.

(6) \*Sections 401 through 404, chapter 42, Laws of 1990 shall take effect September 1, 1990, only if the bonds issued under RCW 47.56.711 for the Spokane river toll bridge have been retired or fully defeased, and shall become null and void if the bonds have not been retired or fully defeased on that date." [1990 c 298 § 38; 1990 c 42 § 504.]

\*Reviser's note: The bonds were fully defeased on June 1, 1990.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective date—Severability—1981 c 342:** See notes following RCW 82.36.010.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**82.36.026 Tax liability—General.** (1) A licensed supplier shall be liable for and pay tax to the department as provided in RCW 82.36.020. On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on motor vehicle fuel removed from a refinery as provided in RCW 82.36.020(2)(b).

(3) A licensed importer shall be liable for and pay tax to the department on motor vehicle fuel imported into this state as provided in RCW 82.36.020(2)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended motor vehicle fuel as provided in RCW 82.36.020(2)(e).

(5) Nothing in this chapter shall prohibit the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to the tax. [2007 c 515 § 4; 2001 c 270 § 3; 1998 c 176 § 8.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.027 Tax liability of terminal operator.** A terminal operator is jointly and severally liable for payment of the tax imposed under RCW 82.36.020(1) if, at the time of removal:

(1) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under 26 C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false. [2007 c 515 § 6; 1998 c 176 § 9.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

### 82.36.028 Tax liability—Reciprocity agreements.

International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.36.020 to the department on motor vehicle fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.36.020 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2007 c 515 § 5.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

### 82.36.029 Deductions—Handling losses—Reports.

Upon the taxable removal of motor vehicle fuel, the licensee who acquired or removed the motor vehicle fuel, other than a motor vehicle fuel exporter, shall be entitled to a deduction from the tax liability on the gallonage of taxable motor vehicle fuel removed in order to account for handling losses, as follows: For a motor vehicle fuel supplier acting as a distributor, one-quarter of one percent; and for all other licensees, thirty one-hundredths of one percent. For those licensees required to file tax reports, the handling loss deduction shall be reported on tax reports filed with the department. For motor vehicle fuel distributors, the handling loss deduction shall be shown on the invoice provided to the motor vehicle fuel distributor by the seller. [1998 c 176 § 10.]

### 82.36.031 Periodic tax reports—Forms--Filing—Time extensions during state of emergency.

(1) For the purpose of determining the amount of liability for the tax imposed under this chapter, and to periodically update license information, each licensee, other than a motor vehicle fuel distributor or an international fuel tax agreement licensee, shall file monthly tax reports with the department, on a form prescribed by the department. An international fuel tax licensee shall file quarterly tax reports with the department, on a form prescribed by the department.

(2) A report shall be filed with the department even though no motor vehicle fuel tax is due for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and made under penalties of perjury, which declaration has the same force and effect as a verification of the report and is in lieu of the verification. The report shall show information as the department may require for the proper administration and enforcement of this chapter. Tax reports shall be filed on or before the twenty-fifth day of the next succeeding calendar month following the period to which the reports relate. If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date.

(3) The department, if it deems it necessary in order to ensure payment of the tax imposed under this chapter, or to facilitate the administration of this chapter, may require the filing of reports and tax remittances at shorter intervals than one month.

(4) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may

extend the time for filing any report or the due date for tax remittances as the department deems proper. [2008 c 181 § 505; 2007 c 515 § 8; 1998 c 176 § 11.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.032 Penalty for filing fraudulent tax report.** If any licensee files a fraudulent tax report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to all other penalties prescribed by law. [1998 c 176 § 13; 1987 c 174 § 7.]

**Effective date—1987 c 174:** See note following RCW 82.36.010.

**82.36.035 Computation and payment of tax—Remittance—Electronic funds transfer.** (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of motor vehicle fuel subject to the motor vehicle fuel tax.

(2) Except as provided in subsection (3) of this section, tax reports shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(3) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date.

(4) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more.

(5) A motor vehicle fuel distributor shall remit tax on motor vehicle fuel purchased from a motor vehicle fuel supplier, and due to the state for that reporting period, to the motor vehicle fuel supplier.

(6) At the election of the distributor, the payment of the motor vehicle fuel tax owed on motor vehicle fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and supplier or no later than seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of motor vehicle fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for motor vehicle fuel purchases. [2005 c 260 § 1; 1998 c 176 § 12.]

**Effective date—2005 c 260:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 260 § 4.]

**82.36.040 Payment of tax—Penalty for delinquency.** If payment of any tax due is not received by the due date, there shall be assessed a penalty of two percent of the amount of the tax. [1991 c 339 § 2; 1989 c 378 § 24; 1987 c 174 § 4; 1977 c 28 § 1; 1961 c 15 § 82.36.040. Prior: 1957 c 247 § 3;

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1955 c 207 § 3; prior: 1953 c 151 § 1; 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

**Effective date—1987 c 174:** See note following RCW 82.36.010.

**82.36.044 Credit for worthless accounts receivable—Report—Adjustment.** A motor vehicle fuel supplier is entitled to a credit of the tax paid over to the department on those sales of motor vehicle fuel for which the supplier has received no consideration from or on behalf of the purchaser. The amount of the tax credit shall not exceed the amount of tax imposed by this chapter on such sales. Such credit may be taken on a tax return subsequent to the tax return on which the tax was paid over to the department. If a credit has been granted under this section, any amounts collected for application against accounts on which such a credit is based shall be reported on a subsequent tax return filed after such collection, and the amount of credit received by the supplier based upon the collected amount shall be returned to the department. In the event the credit has not been paid, the amount of the credit requested by the supplier shall be adjusted by the department to reflect the decrease in the amount on which the claim is based. [1998 c 176 § 15.]

**82.36.045 Licensees, persons acting as licensees—Tax reports—Deficiencies, failure to file, fraudulent filings, misappropriation, or conversion—Penalties, liability—Mitigation—Reassessment petition, hearing—Notice.** (1) If the department determines that the tax reported by a licensee is deficient, the department shall assess the deficiency on the basis of information available to it, and shall add a penalty of two percent of the amount of the deficiency.

(2) If a licensee, or person acting as such, fails, neglects, or refuses to file a motor vehicle fuel tax report the department shall, on the basis of information available to it, determine the tax liability of the licensee or person for the period during which no report was filed. The department shall add the penalty provided in subsection (1) of this section to the tax. An assessment made by the department under this subsection or subsection (1) of this section is presumed to be correct. In any case, where the validity of the assessment is questioned, the burden is on the person who challenges the assessment to establish by a fair preponderance of evidence that it is erroneous or excessive, as the case may be.

(3) If a licensee or person acting as such files a false or fraudulent report with intent to evade the tax imposed by this chapter, the department shall add to the amount of deficiency a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsections (1) and (2) of this section and all other penalties prescribed by law.

(4) Motor vehicle fuel tax, penalties, and interest payable under this chapter bears interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion of it should have been paid until the date of payment. If a licensee or person acting as such establishes by a fair preponderance of evidence that the failure to pay the amount of tax due was attributable to reasonable cause and was not intentional or willful, the department may waive the penalty. The department may waive the interest when it determines the cost of processing

or collection of the interest exceeds the amount of interest due.

(5) Except in the case of a fraudulent report, neglect or refusal to make a report, or failure to pay or to pay the proper amount, the department shall assess the deficiency under subsection (1) or (2) of this section within five years from the last day of the succeeding calendar month after the reporting period for which the amount is proposed to be determined or within five years after the return is filed, whichever period expires later.

(6) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interest of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(7) A licensee or person acting as such against whom an assessment is made under subsection (1) or (2) of this section may petition for a reassessment within thirty days after service upon the licensee of notice of the assessment. If the petition is not filed within the thirty-day period, the amount of the assessment becomes final at the expiration of that period.

If a petition for reassessment is filed within the thirty-day period, the department shall reconsider the assessment and, if the petitioner has so requested in its petition, shall grant the petitioner an oral hearing and give the petitioner twenty days' notice of the time and place of the hearing. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment becomes final thirty days after service of notice upon the petitioner.

An assessment made by the department becomes due and payable when it becomes final. If it is not paid to the department when due and payable, the department shall add a penalty of ten percent of the amount of the tax.

(8) In a suit brought to enforce the rights of the state under this chapter, the assessment showing the amount of taxes, penalties, interest, and cost unpaid to the state is prima facie evidence of the facts as shown.

(9) A notice of assessment required by this section must be served personally or by certified or registered mail. If it is served by mail, service shall be made by deposit of the notice in the United States mail, postage prepaid, addressed to the respondent at the most current address furnished to the department. [2007 c 515 § 9; 1998 c 176 § 16; 1996 c 104 § 2; 1991 c 339 § 1.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.047 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment.** When an assessment becomes final in accordance with this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties, interest, and a filing fee under RCW 36.18.012(10). The clerk of the county in which the warrant is filed shall immediately designate a superior court cause number for the

warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant the name of the licensee or person mentioned in the warrant, the amount of the tax, penalties, interest, and filing fee, and the date when the warrant was filed. The aggregate amount of the warrant as docketed becomes a lien upon the title to and interest in all real and personal property of the named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of the clerk. The warrant so docketed is sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of a civil judgment, wholly or partially unsatisfied. The clerk of the court is entitled to a filing fee under RCW 36.18.012(10). [2001 c 146 § 13; 1998 c 176 § 17; 1991 c 339 § 4.]

**82.36.050 Date of mailing deemed date of filing or receipt—Timely mailing bars penalties and tolls statutory time limitations.** When any application, report, notice, payment, or claim for credit or refund to be filed with or made to any officer, agent, or employee of the state under the provisions of this chapter has been deposited in the United States mail addressed to such officer, agent or employee, it shall be deemed filed or received on the date shown by the post office cancellation mark on the envelope containing it or on the date it was mailed if proof satisfactory to said officer, agent, or employee of the state establishes that the actual mailing occurred on an earlier date: PROVIDED, HOWEVER, That no penalty for delinquency shall attach, nor will the statutory period be deemed to have elapsed in the case of credit or refund claims, if it is established by competent evidence that such application, report, notice, payment, or claim for credit or refund was timely deposited in the United States mail properly addressed to said officer, agent, or employee of the state, even though never received if a duplicate of such document or payment is filed. [1961 c 15 § 82.36.050. Prior: 1957 c 247 § 4; 1947 c 135 § 1; Rem. Supp. 1947 § 8327-8a.]

**82.36.060 Application for license—Federal certificate of registry—Investigation—Fee—Penalty for false statement—Bond or security—Cancellation.** (1) An application for a license issued under this chapter shall be made to the department on forms to be furnished by the department and shall contain such information as the department deems necessary.

(2) Every application for a license must contain the following information to the extent it applies to the applicant:

(a) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

(3) An applicant for a license as a motor vehicle fuel importer must list on the application each state, province, or country from which the applicant intends to import motor vehicle fuel and, if required by the state, province, or country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(4) An applicant for a license as a motor vehicle fuel exporter must list on the application each state, province, or country to which the exporter intends to export motor vehicle fuel received in this state by means of a transfer outside of the bulk transfer-terminal system and, if required by the state, province, or country listed, must be licensed or registered for motor vehicle fuel tax purposes in that state, province, or country.

(5) An applicant for a license as a motor vehicle fuel supplier must have a federal certificate of registry that is issued under the internal revenue code and authorizes the applicant to enter into federal tax-free transactions on motor vehicle fuel in the terminal transfer system.

(6) After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director shall require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

(7) Except as provided by subsection (8) of this section, before granting any license issued under this chapter, the department shall require applicant to file with the department, in such form as shall be prescribed by the department, a corporate surety bond duly executed by the applicant as principal, payable to the state and conditioned for faithful performance of all the requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter. The total amount of the bond or bonds shall be fixed by the department and may be increased or reduced by the department at any time subject to the limitations herein provided. In fixing the total amount of the bond or bonds, the department shall require a bond or bonds equivalent in total amount to twice the estimated monthly excise tax determined in such manner as the department may deem proper. If at any time the estimated excise tax to become due during the succeeding month amounts to more than fifty percent of the established bond, the department shall require additional bonds or securities to maintain the marginal ratio herein specified or shall demand excise tax payments to be

made weekly or semimonthly to meet the requirements hereof.

The total amount of the bond or bonds required of any licensee shall never be less than five thousand dollars nor more than one hundred thousand dollars.

No recoveries on any bond or the execution of any new bond shall invalidate any bond and no revocation of any license shall effect the validity of any bond but the total recoveries under any one bond shall not exceed the amount of the bond.

In lieu of any such bond or bonds in total amount as herein fixed, a licensee may deposit with the state treasurer, under such terms and conditions as the department may prescribe, a like amount of lawful money of the United States or bonds or other obligations of the United States, the state, or any county of the state, of an actual market value not less than the amount so fixed by the department.

Any surety on a bond furnished by a licensee as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty days from the date upon which such surety has lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty day period. The department shall promptly, upon receiving any such request, notify the licensee who furnished the bond; and unless the licensee, on or before the expiration of the thirty day period, files a new bond, or makes a deposit in accordance with the requirements of this section, the department shall forthwith cancel the license. Whenever a new bond is furnished by a licensee, the department shall cancel the old bond as soon as the department and the attorney general are satisfied that all liability under the old bond has been fully discharged.

The department may require a licensee to give a new or additional surety bond or to deposit additional securities of the character specified in this section if, in its opinion, the security of the surety bond theretofore filed by such licensee, or the market value of the properties deposited as security by the licensee, shall become impaired or inadequate; and upon the failure of the licensee to give such new or additional surety bond or to deposit additional securities within thirty days after being requested so to do by the department, the department shall forthwith cancel his or her license.

(8) The department may waive the requirements of subsection (7) of this section for licensed distributors if, upon determination by the department, the licensed distributor has sufficient resources, assets, other financial instruments, or other means, to adequately make payments on the estimated monthly motor vehicle fuel tax payments, penalties, and interest arising out of this chapter. The department shall adopt rules to administer this subsection. An application for an international fuel tax agreement license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department may require. The department shall charge a fee of ten dollars per set of international fuel tax agreement decals issued to each applicant or licensee. The department shall transmit the fee to the state treasurer for deposit in the motor vehicle fund. [2007 c 515 § 10; 2001 c 270 § 5; 1998

c 176 § 18; 1996 c 104 § 3; 1994 c 262 § 19; 1973 c 96 § 1; 1961 c 15 § 82.36.060. Prior: 1933 c 58 § 2; RRS § 8327-2.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.070 Issuance of license—Display—Refusal of issuance—Inspection of records.** The application in proper form having been accepted for filing, the filing fee paid, and the bond or other security having been accepted and approved, the department shall issue to the applicant the appropriate license, and such license shall be valid until canceled or revoked.

The license so issued by the department shall not be assignable, and shall be valid only for the person in whose name issued.

Each licensee shall be assigned a license number, and the department shall issue to each licensee a license certificate which shall be displayed conspicuously at his or her principal place of business. The department may refuse to issue or may revoke a motor vehicle fuel license, to a person:

(1) Who formerly held a motor vehicle fuel license that, before the time of filing for application, has been revoked or canceled for cause;

(2) Who is a subterfuge for the real party in interest whose license has been revoked or canceled for cause;

(3) Who, as an individual licensee or officer, director, owner, or managing employee of a nonindividual licensee, has had a motor vehicle fuel license revoked or canceled for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, or 46.87 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, corporate officer, director, owner, or managing employee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such a refusal or revocation, the department shall grant the applicant a hearing and shall give the applicant at least twenty days' written notice of the time and place of the hearing.

For the purpose of considering an application for a license issued under this chapter, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

The department may, in the exercise of reasonable discretion, suspend a motor vehicle fuel license at any time before and pending such a hearing for unpaid taxes or reasonable cause. [1998 c 176 § 19; 1998 c 115 § 2; 1996 c 104 § 4; 1994 c 262 § 20; 1973 c 96 § 2; 1965 ex.s. c 79 § 3; 1961 c 15 § 82.36.070. Prior: 1957 c 247 § 5; 1955 c 207 § 4; prior: 1933 c 58 § 3, part; RRS § 8327-3, part.]

**Reviser's note:** This section was amended by 1998 c 115 § 2 and by 1998 c 176 § 19, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**82.36.075 Reports by persons other than licensees—Department requirements—Forms.** The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering motor vehicle fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require. [1998 c 176 § 29.]

**82.36.080 Penalty for acting without license—Separate licenses for separate activities—Default assessment.**

(1) It shall be unlawful for any person to engage in business in this state as any of the following unless the person is the holder of an uncanceled license issued by the department authorizing the person to engage in that business:

(a) Motor vehicle fuel supplier;

(b) Motor vehicle fuel distributor;

(c) Motor vehicle fuel exporter;

(d) Motor vehicle fuel importer;

(e) Motor vehicle fuel blender; or

(f) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity, but a motor vehicle fuel supplier is not required to obtain a separate license classification for any other activity for which a license is required.

(3) If any person acts as a licensee without first securing the license required herein the excise tax shall be immediately due and payable on account of all motor vehicle fuel distributed or used by the person. The director shall proceed forthwith to determine from the best available sources, the amount of the tax, and the director shall immediately assess the tax in the amount found due, together with a penalty of one hundred percent of the tax, and shall make a certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty, or both, such certificate shall be prima facie evidence that the person therein named is

indebted to the state in the amount of the tax and penalty therein stated. Any tax or penalty so assessed may be collected in the manner prescribed in this chapter with reference to delinquency in payment of the tax or by an action at law, which the attorney general shall commence and prosecute to final determination at the request of the director. The foregoing remedies of the state shall be cumulative and no action taken pursuant to this section shall relieve any person from the penal provisions of this chapter. [2007 c 515 § 11; 1998 c 176 § 20; 1961 c 15 § 82.36.080. Prior: 1955 c 207 § 5; prior: (i) 1933 c 58 § 3, part; RRS § 8327-3, part. (ii) 1943 c 84 § 2, part; 1933 c 58 § 8, part; Rem. Supp. 1943 § 8327-8, part; prior: 1923 c 81 § 3, part; 1921 c 173 § 5, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.090 Discontinuance, sale, or transfer of business—Notice—Payment of taxes, interest, penalties—Overpayment refunds.** A licensee who ceases to engage in business within the state by reason of the discontinuance, sale, or transfer of the business shall notify the director in writing at the time the discontinuance, sale, or transfer takes effect. Such notice shall give the date of discontinuance, and, in the event of a sale or transfer of the business, the date thereof and the name and address of the purchaser or transferee thereof. All taxes, penalties, and interest under this chapter, not yet due and payable, shall become due and payable concurrently with such discontinuance, sale, or transfer, and any such licensee shall make a report and pay all such taxes, interest, and penalties, and surrender to the director the license certificate theretofore issued to him or her.

If an overpayment of tax was made by the licensee, prior to the discontinuance or transfer of his or her business, such overpayment may be refunded to such licensee. [1998 c 176 § 21; 1967 c 153 § 2; 1965 ex.s. c 79 § 4; 1961 c 15 § 82.36.090. Prior: 1933 c 58 § 4; RRS § 8327-4.]

**82.36.095 Bankruptcy proceedings—Notice.** A motor vehicle fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 7.]

**82.36.100 Tax required of persons not classed as licensees—Duties—Procedure—Distribution of proceeds—Penalties—Enforcement.** Every person other than a licensee who acquires any motor vehicle fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such motor vehicle fuel into this state and sells, distributes, or in any manner uses it in this state shall, if the tax has not been paid, apply for a license to carry on such activities, comply with all the provisions of this chapter, and pay an excise tax at the rate computed in the manner provided in RCW 82.36.025 for each gallon thereof so sold, distributed, or used during the fiscal year for which such rate is applicable. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the motor vehicle fuel excise tax in RCW 82.36.020. For failure to comply with this chapter such per-

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son is subject to the same penalties imposed upon licensees. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to licensees. Nothing in this section may be construed as classifying such persons as licensees. [1998 c 176 § 22; 1983 1st ex.s. c 49 § 28; 1977 ex.s. c 317 § 3; 1967 ex.s. c 83 § 3; 1961 ex.s. c 7 § 2; 1961 c 15 § 82.36.100. Prior: 1957 c 247 § 6; 1951 c 267 § 1; 1939 c 177 § 5; RRS § 8327-5a.]

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**Severability—Effective dates—1967 ex.s. c 83:** See RCW 47.26.900 and 47.26.910.

**82.36.110 Delinquency—Lien of tax—Notice.** If any person liable for the tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person in the prosecution of business or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof.

The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed notice of such lien in the office of the county auditor of the county in which the principal place of business of the taxpayer is located.

The auditor, upon presentation of a notice of lien, and without requiring the payment of any fee, shall file and index it in the manner now provided for deeds and other conveyances except that he shall not be required to include, in the index, any description of the property affected by the lien. The lien shall continue until the amount of the tax, together with any penalties and interest subsequently accruing thereon, is paid. The department may issue a certificate of release of lien when the amount of the tax, together with any penalties and interest subsequently accruing thereon, has been satisfied, and such release may be recorded with the auditor of the county in which the notice of lien has been filed.

The department shall furnish to any person applying therefor a certificate showing the amount of all liens for motor vehicle fuel tax, penalties and interest that may be of record in the files of the department against any person under the provisions of this chapter. [1993 c 54 § 3; 1961 c 15 § 82.36.110. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

**82.36.120 Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer.** If a licensee is delinquent in the payment of an obligation imposed under this chapter, the depart-

ment may give notice of the amount of the delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to such licensee, or owing any debts to such licensee at the time of receipt by them of such notice. Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice. A person so notified shall neither transfer nor make any other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall deliver upon demand the credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the person for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1998 c 176 § 23; 1994 c 262 § 21; 1991 c 339 § 3; 1961 c 15 § 82.36.120. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

**82.36.130 Delinquency—Tax warrant.** If any licensee is in default for more than ten days in the payment of any excise taxes or penalties thereon, the director shall issue a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the goods and chattels of the licensee, without exemption, found within the sheriff's jurisdiction, for the payment of the amount of such delinquency, with the added penalties and interest and the cost of executing the warrant, and to return such warrant to the director and to pay the director the money collected by virtue thereof within the time to be therein specified, which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom the warrant is directed shall proceed upon it in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgment by a court of record and shall be entitled to the same fees for the sheriff's services to be collected in the same manner. [2000 c 103 § 14. Prior: 1998 c 311 § 11; 1998 c 176 § 24; 1961 c 15 § 82.36.130; prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

**82.36.140 State may pursue remedy against licensee or bond.** In a suit or action by the state on any bond filed with the director recovery thereon may be had without first having sought or exhausted its remedy against the licensee; nor shall the fact that the state has pursued, or is in the course of pursuing, any remedy against the licensee waive its right to collect the taxes, penalties, and interest by proceeding against such bond or against any deposit of money or securities made

by the licensee. [1998 c 176 § 25; 1961 c 15 § 82.36.140. Prior: 1933 c 58 § 9, part; RRS § 8327-9, part.]

**82.36.150 Records to be kept by licensees—Inventory—Statement.** Every licensee shall keep a true and accurate record on such form as the director may prescribe of all stock of petroleum products on hand, of all raw gasoline, gasoline stock, diesel oil, kerosene, kerosene distillates, casing-head gasoline and other petroleum products needed in, or which may be used in, compounding, blending, or manufacturing motor vehicle fuel; of the amount of crude oil refined, the gravity thereof and the yield therefrom, as well as of such other matters relating to transactions in petroleum products as the director may require. Every licensee shall take a physical inventory of the petroleum products at least once during each calendar month and have the record of such inventory and of the other matters mentioned in this section available at all times for the inspection of the director. Upon demand of the director every licensee shall furnish a statement under oath as to the contents of any records to be kept hereunder. [1998 c 176 § 26; 1965 ex.s. c 79 § 5; 1961 c 15 § 82.36.150. Prior: 1933 c 58 § 10; RRS § 8327-10; prior: 1921 c 173 § 6, part.]

**82.36.160 Records to be preserved by licensees.** Every licensee shall maintain in the office of his or her principal place of business in this state, for a period of five years, records of motor vehicle fuel received, sold, distributed, or used by the licensee, in such form as the director may prescribe, together with invoices, bills of lading, and other pertinent papers as may be required under the provisions of this chapter. [2007 c 515 § 12; 1998 c 176 § 27; 1996 c 104 § 5; 1961 c 15 § 82.36.160. Prior: 1957 c 247 § 7; 1933 c 58 § 11; RRS § 8327-11; prior: 1921 c 173 § 6, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.170 Additional reports—Filing.** The director may, from time to time, require additional reports from any licensee with reference to any of the matters herein concerned. Such reports shall be made and filed on forms prepared by the director. [1998 c 176 § 28; 1961 c 15 § 82.36.170. Prior: 1933 c 58 § 12; RRS § 8327-12; prior: 1921 c 173 § 9.]

**82.36.180 Examinations and investigations.** The director, or duly authorized agents, may make such examinations of the records, stocks, facilities, and equipment of any licensee, and make such other investigations as deemed necessary in carrying out the provisions of this chapter. If such examinations or investigations disclose that any reports of licensees theretofore filed with the director pursuant to the requirements of this chapter have shown incorrectly the gallonage of motor vehicle fuel distributed or the tax liability thereon, the director may make such changes in subsequent reports and payments of such licensees as deemed necessary to correct the errors disclosed.

Every such licensee or such other person not maintaining records in this state so that an audit of such records may be made by the director or a duly authorized representative shall be required to make the necessary records available to the

director upon request and at a designated office within this state; or, in lieu thereof, the director or a duly authorized representative shall proceed to any out-of-state office at which the records are prepared and maintained to make such examination. [2007 c 515 § 13; 1998 c 176 § 30; 1967 ex.s. c 89 § 6; 1965 ex.s. c 79 § 6; 1961 c 15 § 82.36.180. Prior: 1939 c 177 § 3; 1933 c 58 § 13; RRS § 8327-13; prior: 1921 c 173 § 6, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.190 Suspension, revocation, cancellation of licenses—Notice.** The department shall suspend or revoke the license of any licensee refusing or neglecting to comply with any provision of this chapter. The department shall mail by registered mail addressed to such licensee at the last known address a notice of intention to cancel, which notice shall give the reason for cancellation. The cancellation shall become effective without further notice if within ten days from the mailing of the notice the licensee has not made good his or her default or delinquency.

The department may cancel any license issued to any licensee, such cancellation to become effective sixty days from the date of receipt of the written request of such licensee for cancellation thereof, and the department may cancel the license of any licensee upon investigation and sixty days notice mailed to the last known address of such licensee if the department ascertains and finds that the person to whom the license was issued is no longer engaged in business, and has not been so engaged for the period of six months prior to such cancellation. No license shall be canceled upon the request of any licensee unless the licensee, prior to the date of such cancellation, pays to the state all taxes imposed by the provisions of this chapter, together with all penalties accruing by reason of any failure on the part of the licensee to make accurate reports or pay said taxes and penalties.

In the event the license of any licensee is canceled, and in the further event that the licensee pays to the state all excise taxes due and payable by him or her upon the receipt, sale, or use of motor vehicle fuel, together with any and all penalties accruing by reason of any failure on the part of the licensee to make accurate reports or pay said taxes and penalties, the department shall cancel the bond filed by the licensee. [1998 c 176 § 31; 1990 c 250 § 80; 1961 c 15 § 82.36.190. Prior: 1933 c 58 § 14; RRS § 8327-14.]

**Severability—1990 c 250:** See note following RCW 46.16.301.

**82.36.200 Carriers of motor vehicle fuel—Examination of records, stocks, etc.** The director or authorized agents may at any time during normal business hours examine the records, stocks, facilities and equipment of any person engaged in the transportation of motor vehicle fuel within the state of Washington for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes on same in enforcing the provisions of this chapter. [1998 c 176 § 32; 1965 ex.s. c 79 § 7; 1961 c 15 § 82.36.200. Prior: 1957 c 218 § 1; 1953 c 157 § 1; 1943 c 84 § 3; 1933 c 58 § 15; Rem. Supp. 1943 § 8327-15.]

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**82.36.210 Carriers of motor vehicle fuel—Invoice, bill of sale, etc., required—Inspections.** Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk, shall have and possess during the entire time they are hauling motor vehicle fuel, an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consignor, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person hauling such motor vehicle fuel shall at the request of any law enforcement officer, or authorized representative of the department, or other person authorized by law to inquire into, or investigate said matters, produce for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle. [1998 c 176 § 33; 1965 ex.s. c 79 § 8; 1961 ex.s. c 21 § 30; 1961 c 15 § 82.36.210. Prior: 1933 c 58 § 16; RRS § 8327-16.]

**82.36.230 Exemptions—Imports, exports, federal sales—Invoice—Certificate—Reporting.** The provisions of this chapter requiring the payment of taxes do not apply to motor vehicle fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to motor vehicle fuel exported from this state by a licensee nor to any motor vehicle fuel sold by a licensee to the armed forces of the United States or to the national guard for use exclusively in ships or for export from this state. The licensee shall report such imports, exports and sales to the department at such times, on such forms, and in such detail as the department may require, otherwise the exemption granted in this section is null and void, and all fuel shall be considered distributed in this state fully subject to the provisions of this chapter. Each invoice covering exempt sales shall have the statement "Ex Washington Motor Vehicle Fuel Tax" clearly marked thereon.

To claim any exemption from taxes under this section on account of sales by a licensee of motor vehicle fuel for export, the purchaser shall obtain from the selling licensee, and such selling licensee must furnish the purchaser, an invoice giving such details of the sale for export as the department may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring, or both, of the sales or movement of motor vehicle fuel in that state or foreign jurisdiction. For the purposes of this section, motor vehicle fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

To claim any refund of taxes previously paid on account of sales of motor vehicle fuel to the armed forces of the United States or to the national guard, the licensee shall be required to execute an exemption certificate in such form as shall be furnished by the department, containing a certified statement by an authorized officer of the armed forces having actual knowledge of the purpose for which the exemption is claimed. The provisions of this section exempting motor vehicle fuel sold to the armed forces of the United States or to the national guard from the tax imposed hereunder do not apply to any motor vehicle fuel sold to contractors purchas-

ing such fuel either for their own account or as the agents of the United States or the national guard for use in the performance of contracts with the armed forces of the United States or the national guard.

The department may at any time require of any licensee any information the department deems necessary to determine the validity of the claimed exemption, and failure to supply such data will constitute a waiver of all right to the exemption claimed. The department is hereby empowered with full authority to promulgate rules and regulations and to prescribe forms to be used by licensees in reporting to the department so as to prevent evasion of the tax imposed by this chapter.

Upon request from the officials to whom are entrusted the enforcement of the motor vehicle fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces, or the Dominion of Canada, the department may forward to such officials any information which the department may have relative to the import or export of any motor vehicle fuel by any licensee: PROVIDED, That such governmental unit furnish like information to this state. [1998 c 176 § 34; 1993 c 54 § 4; 1989 c 193 § 1; 1971 ex.s. c 156 § 2; 1967 c 153 § 3; 1965 ex.s. c 79 § 9; 1961 c 15 § 82.36.230. Prior: 1957 c 247 § 10; prior: 1953 c 150 § 1; 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

**82.36.240 Sales to state or political subdivisions not exempt.** Nothing in this chapter shall be construed to exempt from the payment of the tax any motor vehicle fuel sold and delivered to or used by the state or any political subdivision thereof, or any inflammable petroleum products other than motor vehicle fuel, used by the state, or any political subdivision thereof, in the propulsion of motor vehicles as herein defined. [1961 c 15 § 82.36.240. Prior: 1957 c 247 § 11; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

**82.36.245 Exemption—Sales to foreign diplomatic and consular missions.** Sales of motor vehicle fuel to qualified foreign diplomatic and consular missions and their qualified personnel, made under rules prescribed by the director, are exempt from the tax imposed under this chapter if the foreign government represented grants an equivalent exemption to missions and personnel of the United States performing similar services in the foreign country. Only those foreign diplomatic and consular missions and their personnel which are determined by the United States department of state as eligible for the tax exemption, may claim this exemption under rules prescribed by the director. [1989 c 193 § 2.]

**82.36.247 Exemption—Racing fuel.** Motor vehicle fuel that is used exclusively for racing and is illegal for use on the public highways of this state under state or federal law is exempt from the tax imposed under this chapter. [2007 c 515 § 14.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.250 Nongovernmental use of fuels, etc., acquired from United States government—Tax—Unlawful to procure or use.** Any person who purchases or otherwise acquires motor vehicle fuel upon which the tax has not been paid, from the United States government, or any of its agents or officers, for use not specifically associated with any governmental function or operation or so acquires inflammable petroleum products other than motor vehicle fuel and uses the same in the propulsion of motor vehicles as herein defined, for a use not associated with any governmental function or operation, shall pay to the state the tax herein provided upon the motor vehicle fuel, or other inflammable petroleum products so acquired. It shall be unlawful for any person to use or to conspire with any governmental official, agent, or employee for the use of any requisition, purchase order, or any card or any authority to which he is not specifically entitled by government regulations, for the purpose of obtaining any motor vehicle fuel or other inflammable petroleum products upon which the state tax has not been paid. [1961 c 15 § 82.36.250. Prior: 1957 c 247 § 12; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

**82.36.260 Extension of time for filing exportation certificates or claiming exemptions.** The director shall have authority to extend the time prescribed under this chapter for filing exportation certificates or claiming exemption for sales to the armed forces: PROVIDED, That written request is filed with the director showing cause for failure to do so within or prior to the prescribed period. [1965 ex.s. c 79 § 11; 1961 c 15 § 82.36.260. Prior: 1957 c 247 § 13; prior: 1949 c 220 § 13, part; 1943 c 84 § 4, part; 1939 c 177 § 4, part; 1933 c 58 § 17, part; Rem. Supp. 1949 § 8327-17, part.]

**82.36.270 Refund permit.** Any person desiring to claim a refund shall obtain a permit from the department by application therefor on such form as the department shall prescribe, which application shall contain, among other things, the name and address of the applicant, the nature of the business and a sufficient description for identification of the machines or equipment in which the motor vehicle fuel is to be used, for which refund may be claimed under the permit. The permit shall bear a permit number and all applications for refund shall bear the number of the permit under which it is claimed. The department shall keep a record of all permits issued and a cumulative record of the amount of refund claimed and paid thereunder. Such permit shall be obtained before or at the time that the first application for refund is made under the provisions of this chapter. [1977 c 28 § 2; 1973 c 96 § 3; 1967 c 153 § 4; 1961 c 15 § 82.36.270. Prior: 1957 c 218 § 3; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**82.36.275 Refunds for urban transportation systems.** Notwithstanding RCW 82.36.240, every urban passenger transportation system shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used, whether such vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle

fuel was purchased or indirectly by adding the amount of such tax to the price of such fuel.

For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons, over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys (either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system) do not extend for a distance exceeding fifteen road miles beyond the corporate limits of the city in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds authorized by this section shall be granted on fuel used by any urban transportation vehicle on any trip where any portion of said trip is more than fifteen road miles beyond the corporate limits of the city in which said trip originated. [1969 ex.s. c 281 § 27; 1967 c 86 § 1; 1965 c 135 § 1; 1963 c 187 § 1; 1961 c 117 § 1; 1961 c 15 § 82.36.275. Prior: 1959 c 298 § 1; 1957 c 292 § 1.]

**Severability—1969 ex.s. c 281:** See RCW 47.98.045.

**82.36.280 Refunds for nonhighway use of fuel.** Any person who uses any motor vehicle fuel for the purpose of operating any internal combustion engine not used on or in conjunction with any motor vehicle licensed to be operated over and along any of the public highways, and as the motive power thereof, upon which motor vehicle fuel excise tax has been paid, shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. No refund shall be made for motor vehicle fuel consumed by any motor vehicle as herein defined that is required to be registered and licensed as provided in chapter 46.16 RCW; and is operated over and along any public highway except that a refund shall be allowed for motor vehicle fuel consumed:

(1) In a motor vehicle owned by the United States that is operated off the public highways for official use;

(2) By auxiliary equipment not used for motive power, provided such consumption is accurately measured by a metering device that has been specifically approved by the department or is established by either of the following formulae:

(a) For fuel used in pumping fuel or heating oils by a power take-off unit on a delivery truck, refund shall be allowed claimant for tax paid on fuel purchased at the rate of three-fourths of one gallon for each one thousand gallons of fuel delivered: PROVIDED, That claimant when presenting his or her claim to the department in accordance with the provisions of this chapter, shall provide to said claim, invoices of fuel oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim; or

(b) For fuel used in operating a power take-off unit on a cement mixer truck or load compactor on a garbage truck,

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claimant shall be allowed a refund of twenty-five percent of the tax paid on all fuel used in such a truck; and

(c) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regarding the usage of on board computers for the production of records required by this chapter. [1998 c 176 § 36; 1993 c 141 § 1; 1985 c 371 § 5; 1980 c 131 § 5; 1972 ex.s. c 138 § 1; 1971 ex.s. c 36 § 1; 1969 ex.s. c 281 § 23; 1961 c 15 § 82.36.280. Prior: 1957 c 218 § 4; prior: 1951 c 263 § 1; 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**Effective date—1972 ex.s. c 138:** "The effective date of this act shall be July 1, 1972." [1972 ex.s. c 138 § 6.]

**82.36.285 Refunds for transit services to persons with special transportation needs by nonprofit transportation providers.** A private, nonprofit transportation provider regulated under chapter 81.66 RCW shall receive a refund of the amount of the motor vehicle fuel tax paid on each gallon of motor vehicle fuel used to provide transportation services for persons with special transportation needs, whether the vehicle fuel tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of the tax to the price of the fuel. [1996 c 244 § 5; 1983 c 108 § 3.]

**82.36.290 Refunds for use in manufacturing, cleaning, dyeing.** Every person who purchases and uses any motor vehicle fuel as an ingredient for manufacturing or for cleaning or dyeing or for some other similar purpose and upon which the motor vehicle fuel excise tax has been paid shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so used, whether such motor vehicle excise tax has been paid either directly to the vendor from whom the motor vehicle fuel was purchased or indirectly by adding the amount of such excise tax to the price of such fuel. [1961 c 15 § 82.36.290. Prior: 1957 c 218 § 5; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**82.36.300 Refunds on exported fuel.** Every person who shall export any motor vehicle fuel for use outside of this state and who has paid the motor vehicle fuel excise tax upon such motor vehicle fuel shall be entitled to and shall receive a refund of the amount of the motor vehicle fuel excise tax paid on each gallon of motor vehicle fuel so exported. For the purposes of this section, motor vehicle fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state. [1998 c 176 § 37; 1963 ex.s. c 22 § 21; 1961 c 15 § 82.36.300. Prior: 1957 c 218 § 6; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**82.36.310 Claim of refund.** Any person claiming a refund for motor vehicle fuel used or exported as in this chapter provided shall not be entitled to receive such refund until he presents to the director a claim upon forms to be provided by the director with such information as the director shall require, which claim to be valid shall in all cases be accompanied by invoices issued to the claimant at the time of the purchases of the motor vehicle fuel, approved as to invoice form by the director. The requirement to provide invoices may be waived for small refund amounts, as determined by the department. Claims for refund of motor vehicle fuel tax must be at least twenty dollars.

Any person claiming refund by reason of exportation of motor vehicle fuel shall in addition to the invoices required furnish to the director the export certificate therefor, and the signature on the exportation certificate shall be certified by a notary public. In all cases the claim shall be signed by the person claiming the refund, if it is a corporation, by some proper officer of the corporation, or if it is a limited liability company, by some proper manager or member of the limited liability company. [1998 c 176 § 38; 1998 c 115 § 3; 1995 c 318 § 3; 1965 ex.s. c 79 § 13; 1961 c 15 § 82.36.310. Prior: 1957 c 218 § 7; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**Reviser's note:** This section was amended by 1998 c 115 § 3 and by 1998 c 176 § 38, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—1995 c 318:** See note following RCW 82.04.030.

**82.36.320 Information may be required.** Any person claiming refund on motor vehicle fuel used other than in motor vehicles as herein provided may be required by the director to also furnish information regarding the amount of motor vehicle fuel purchased from other sources or for other purposes during the period reported for which no refund is claimed. [2007 c 515 § 15; 1961 c 15 § 82.36.320. Prior: 1957 c 218 § 8; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.330 Payment of refunds—Interest—Penalty.**

(1) Upon the approval of the director of the claim for refund, the state treasurer shall draw a warrant upon the state treasury for the amount of the claim in favor of the person making such claim and the warrant shall be paid from the excise tax collected on motor vehicle fuel: PROVIDED, That the state treasurer shall deduct from each marine use refund claim an amount equivalent to one cent per gallon and shall deposit the same in the coastal protection fund created by RCW 90.48.390.

(2) Applications for refunds of excise tax shall be filed in the office of the director not later than the close of the last business day of a period thirteen months from the date of purchase of such motor fuel, and if not filed within this period the right to refund shall be forever barred, except that such

limitation shall not apply to claims for loss or destruction of motor vehicle fuel as provided by the provisions of RCW 82.36.370.

(3) The department shall pay interest of one percent on any refund payable under this chapter that is issued more than thirty state business days after the receipt of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued.

(4) Any person or the member of any firm or the officer or agent of any corporation who makes any false statement in any claim required for the refund of excise tax, as provided in this chapter, or who collects or causes to be repaid to him or her or to any other person any such refund without being entitled to the same under the provisions of this chapter is guilty of a gross misdemeanor. [2003 c 53 § 401; 1998 c 176 § 39; 1971 ex.s. c 180 § 9; 1965 ex.s. c 79 § 14; 1961 c 15 § 82.36.330. Prior: 1957 c 218 § 9; prior: 1955 c 90 § 1; 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

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

**Severability—Short title—Construction—1971 ex.s. c 180:** See RCW 90.48.903, 90.48.906, and 90.56.900.

*Coastal protection fund:* RCW 90.48.390 and 90.48.400.

*Definitions:* RCW 90.56.010.

*Rules and regulations:* RCW 90.56.050 and 90.56.900.

**82.36.335 Credits on tax in lieu of collection and refund.** In lieu of the collection and refund of the tax on motor vehicle fuel used by a licensee in such a manner as would entitle a purchaser to claim refund under this chapter, credit may be given the licensee upon the licensee's tax return in the determination of the amount of the licensee's tax. Payment credits shall not be carried forward and applied to subsequent tax returns. [1998 c 176 § 40; 1997 c 183 § 8; 1961 c 15 § 82.36.335. Prior: 1957 c 218 § 14.]

**82.36.340 Examination of books and records.** The director may in order to establish the validity of any claim for refund require the claimant to furnish such additional proof of the validity of the claim as the director may determine, and may examine the books and records of the claimant or said person to whom the fuel was sold for such purpose. The records shall be sufficient to substantiate the accuracy of the claim and shall be in such form and contain such information as the director may require. The failure to maintain such records or to accede to a demand for an examination of such records may be deemed by the director as sufficient cause for denial of all right to the refund claimed on account of the transaction in question. [2007 c 515 § 16; 1961 c 15 § 82.36.340. Prior: 1957 c 218 § 10; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.350 Fraudulent invoices—Penalty.** If upon investigation the director determines that any claim has been supported by an invoice or invoices fraudulently made or altered in any manner to support the claim, the director may suspend the pending and all further refunds to any such person making the claim for a period not to exceed one year. [1998 c 176 § 41; 1961 c 15 § 82.36.350. Prior: 1957 c 218 § 11; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**82.36.370 Refunds for fuel lost or destroyed through fire, flood, leakage, etc.** (1) A refund shall be made in the manner provided in this chapter or a credit given to a licensee allowing for the excise tax paid or accrued on all motor vehicle fuel which is lost or destroyed, while the licensee was the owner, through fire, lightning, flood, wind storm, or explosion.

(2) A refund shall be made in the manner provided in this chapter or a credit given allowing for the excise tax paid or accrued on all motor vehicle fuel of five hundred gallons or more which is lost or destroyed, while the licensee was the owner thereof, through leakage or other casualty except evaporation, shrinkage or unknown causes: PROVIDED, That the director shall be notified in writing as to the full circumstances surrounding such loss or destruction and the amount of the loss or destruction within thirty days from the day of discovery of such loss or destruction.

(3) Recovery for such loss or destruction under either subsection (1) or (2) must be susceptible to positive proof thereby enabling the director to conduct such investigation and require such information as the director may deem necessary.

In the event that the director is not satisfied that the fuel was lost or destroyed as claimed, wherefore required information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, the director may deem as sufficient cause the denial of all right relating to the refund or credit for the excise tax on motor vehicle fuel alleged to be lost or destroyed. [2007 c 515 § 17; 1998 c 176 § 42; 1967 c 153 § 5; 1965 ex.s. c 79 § 15; 1961 c 15 § 82.36.370. Prior: 1957 c 218 § 13; prior: 1945 c 38 § 1, part; 1943 c 84 § 5, part; 1937 c 219 § 2, part; 1935 c 109 § 2, part; 1933 c 58 § 18, part; Rem. Supp. 1945 § 8327-18, part; prior: 1923 c 81 § 4, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.36.375 Time limitation on erroneous payment credits or refunds and notices of additional tax.** Unless otherwise provided, any credit for erroneous overpayment of tax made by a licensee to be taken on a subsequent return or any claim of refund for tax erroneously overpaid by a licensee, pursuant to the provisions of RCW 82.36.090, must be so taken within five years after the date on which the overpayment was made to the state. Failure to take such credit or claim such refund within the time prescribed in this section shall constitute waiver of any and all demands against this state on account of overpayment hereunder.

Except in the case of a fraudulent report or neglect or refusal to make a report every notice of additional tax, pen-

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alty or interest assessed hereunder shall be served on the licensee within five years from the date upon which such additional taxes became due. [1998 c 176 § 44; 1965 ex.s. c 79 § 16.]

**82.36.380 Violations—Penalties.** (1) It is unlawful for a person or corporation to:

(a) Evade a tax or fee imposed under this chapter;

(b) File a false statement of a material fact on a motor fuel license application or motor fuel refund application;

(c) Act as a motor fuel importer, motor fuel blender, or motor fuel supplier unless the person holds an uncanceled motor fuel license issued by the department authorizing the person to engage in that business;

(d) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(e) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2) A violation of subsection (1) of this section is a class C felony under chapter 9A.20 RCW. In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state.

(3) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax on the due date as prescribed in this chapter is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax imposed by this chapter is personally liable to the state for the amount of the tax. [2007 c 515 § 18; 2003 c 358 § 13; 2000 2nd sp.s. c 4 § 9; 1995 c 287 § 2; 1961 c 15 § 82.36.380. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**82.36.390 Diversion of export fuel—Penalty.** Any person who obtains motor vehicle fuel for export and fails to export the same or any portion thereof, or causes such motor vehicle fuel or any thereof not to be exported, or who diverts said motor vehicle fuel or any thereof or who causes it to be diverted from interstate or foreign transit begun in this state, or who unlawfully returns such fuel or any thereof to this state and sells or uses it or any thereof in this state or causes

it or any thereof to be used or sold in this state and fails to notify the licensee from whom such motor vehicle fuel was originally purchased, and any licensee or person who conspires with any person to withhold from export, or divert from interstate or foreign transit begun in this state, or to return motor vehicle fuel to this state for sale or use with intent to avoid any of the taxes imposed by this chapter, is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. Each shipment illegally diverted or illegally returned shall be a separate offense, and the unit of each shipment shall be the cargo of one vessel, or one railroad carload, or one automobile truck load, or such truck and trailer load, or one drum, or one barrel, or one case or one can. [1998 c 176 § 45; 1996 c 104 § 6; 1961 c 15 § 82.36.390. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

**82.36.400 Other offenses—Penalties.** (1) It shall be unlawful for any person to commit any of the following acts:

(a) To display, or cause to permit to be displayed, or to have in possession, any motor vehicle fuel license knowing the same to be fictitious or to have been suspended, canceled, revoked or altered;

(b) To lend to, or knowingly permit the use of, by one not entitled thereto, any motor vehicle fuel license issued to the person lending it or permitting it to be used;

(c) To display or to represent as one's own any motor vehicle fuel license not issued to the person displaying the same;

(d) To use a false or fictitious name or give a false or fictitious address in any application or form required under the provisions of this chapter, or otherwise commit a fraud in any application, record, or report;

(e) To refuse to permit the director, or any agent appointed by him or her in writing, to examine his or her books, records, papers, storage tanks, or other equipment pertaining to the use or sale and delivery of motor vehicle fuels within the state.

(2) Except as otherwise provided, any person violating any of the provisions of this chapter is guilty of a gross misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars nor more than one thousand dollars and costs of prosecution, or imprisonment for not more than one year, or both. [2003 c 53 § 402; 1998 c 176 § 46; 1971 ex.s. c 156 § 3; 1967 c 153 § 6; 1961 c 15 § 82.36.400. Prior: 1949 c 234 § 2, part; 1933 c 58 § 19, part; Rem. Supp. 1949 § 8327-19, part; prior: 1921 c 173 § 12, part.]

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

**82.36.410 Revenue to motor vehicle fund.** All moneys collected by the director shall be transmitted forthwith to the state treasurer, together with a statement showing whence the moneys were derived, and shall be by him credited to the motor vehicle fund. [1973 c 95 § 5; 1961 c 15 § 82.36.410. Prior: 1933 c 58 § 20; RRS § 8327-20.]

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**82.36.415 Refund to aeronautics account.** At least once each fiscal year, the director shall request the state treasurer to refund from the motor vehicle fund, to the aeronautics account created under RCW 82.42.090, an amount equal to 0.028 percent of the gross motor vehicle fuel tax less an amount equal to aircraft fuel taxes transferred to that account as a result of nonhighway refunds claimed by motor fuel purchasers. The refund shall be considered compensation for unclaimed motor vehicle fuel that is used in aircraft for purposes taxable under RCW 82.42.020. The director shall also remit from the motor vehicle fund the taxes required by \*RCW 82.12.0256(3)(c) for the unclaimed refunds, provided that the sum of the amount refunded and the amount remitted in accordance with \*RCW 82.12.0256(3)(c) shall not exceed the unclaimed refunds. [1987 c 220 § 4.]

**\*Reviser's note:** RCW 82.12.0256 was amended by 2005 c 443 § 6, changing subsection (3)(c) to subsection (2)(c). RCW 82.12.0256 was subsequently amended by 2007 c 223 § 10, changing subsection (2)(c) to subsection (2)(d).

**Severability—1987 c 220:** See note following RCW 47.68.230.

**82.36.420 Disposition of fees, fines, penalties.** Fifty percent of all fines and forfeitures imposed in any criminal proceeding by any court of this state for violations of the penal provisions of this chapter shall be paid to the current expense fund of the county wherein collected and the remaining fifty percent shall be paid into the motor vehicle fund of the state: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees and penalties collected by the director under the penalty provisions of this chapter shall be paid into the motor vehicle fund. [1987 c 202 § 245; 1969 ex.s. c 199 § 40; 1961 c 15 § 82.36.420. Prior: 1933 c 58 § 21; RRS § 8327-21.]

**Intent—1987 c 202:** See note following RCW 2.04.190.

**82.36.430 Enforcement.** The director is charged with the enforcement of the provisions of this chapter. State patrolmen shall aid the director in the enforcement of this chapter and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on view, without writ, rule, order, or process, any person known to have violated any of the provisions of this chapter. [1961 c 15 § 82.36.430. Prior: 1933 c 58 § 22; RRS § 8327-22.]

**82.36.435 Enforcement and administration—Rule-making authority.** The department shall enforce the provisions of this chapter and may adopt and enforce reasonable rules relating to the administration and enforcement thereof. [1981 c 342 § 5.]

**Effective date—Severability—1981 c 342:** See notes following RCW 82.36.010.

**82.36.440 State preempts tax field.** The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing motor vehicle fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale,

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receipt, distribution, or use of motor vehicle fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020. [2003 c 350 § 5; 1991 c 173 § 4; 1990 c 42 § 204; 1979 ex.s. c 181 § 5; 1961 c 15 § 82.36.440. Prior: 1933 c 58 § 23; RRS § 8327-23.]

**Effective date—1991 c 173:** See note following RCW 82.47.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective date—1979 ex.s. c 181:** "This 1979 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 181 § 10.]

**Severability—1979 ex.s. c 181:** "If any provision of this 1979 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 181 § 8.]

### **82.36.450 Agreement with tribe for fuel taxes.** (1)

The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding motor vehicle fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state motor vehicle fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all motor vehicle fuel only from persons or companies operating lawfully in accordance with this chapter as a motor vehicle fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of motor vehicle fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed to be personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing shall prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2007 c 515 § 19; 1995 c 320 § 2.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Legislative recognition, belief—1995 c 320:** "The legislature recognizes that certain Indian tribes located on reservations within this state dispute the authority of the state to impose a tax upon the tribe, or upon tribal members, based upon the distribution, sale, or other transfer of motor vehicle and other fuels to the tribe or its members when that distribution, sale, or other transfer takes place upon that tribe's reservation. While the legislature believes it has the authority to impose state motor vehicle and other fuel taxes under such circumstances, it also recognizes that all of the state citizens may benefit from resolution of these disputes between the respective governments." [1995 c 320 § 1.]

**Severability—1995 c 320:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 320 § 4.]

**Effective date—1995 c 320:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1995]." [1995 c 320 § 5.]

**82.36.460 Motor vehicle fuel tax cooperative agreement.** The department of licensing may enter into a motor vehicle fuel tax cooperative agreement with another state or Canadian province for the administration, collection, and enforcement of each state's or Canadian province's motor vehicle fuel taxes. [1998 c 176 § 49.]

### **82.36.470 Fuel tax evasion—Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture:

(a) Motor vehicle fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Motor vehicle fuel that is blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances that are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing shall give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant; or

(b) The state patrol has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2003 c 358 § 1.]

**Captions not law—2003 c 358:** "Captions used in this act are not part of the law." [2003 c 358 § 16.]

**Severability—2003 c 358:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 358 § 17.]

### **82.36.475 Fuel tax evasion—Forfeiture procedure.**

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol shall proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol shall list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol shall list and particularly describe in duplicate the fuel seized. The selling price of the fuel seized will be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel will be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture. The money received must be deposited in the motor vehicle account, after deduction for expenses provided for in this section.

(4) The state patrol shall, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department shall promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a

determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2003 c 358 § 2.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

### **82.36.480 Fuel tax evasion—Forfeited property.**

When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. The balance of the proceeds must be deposited in the motor vehicle account. [2003 c 358 § 3.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.36.485 Fuel tax evasion—Return of seized property.** (1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 4.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

### **82.36.490 Fuel tax evasion—Search and seizure.**

When the state patrol has good reason to believe that motor vehicle fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge shall issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2003 c 358 § 5.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.36.495 Fuel tax evasion—Rules.** The department and the state patrol shall adopt rules necessary to implement RCW 82.36.470 through 82.36.490. [2003 c 358 § 6.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.36.800 Rules—1998 c 176.** The department of licensing shall adopt rules necessary to implement chapter 176, Laws of 1998 and shall seek the assistance of the fuel tax advisory committee in developing and adopting the rules. [1998 c 176 § 87.]

**82.36.900 Findings—1998 c 176.** The legislature finds and declares that:

(1) The health, safety, and welfare of the people of the state of Washington are dependent on the state's ability to properly collect the taxes enacted by the legislature;

(2) The current system for collecting special fuel taxes and motor vehicle fuel tax has allowed many parties to fraudulently evade paying the special fuel taxes and motor vehicle fuel tax due the state; and

(3) By changing the point of collection of the special fuel taxes and motor vehicle fuel tax from distributors to suppliers, the department of licensing will have fewer parties to collect tax from and enforcement will be enhanced, thus leading to greater revenues for the state. [1998 c 176 § 1.]

**82.36.901 Effective date—1998 c 176.** This act takes effect January 1, 1999. [1998 c 176 § 91.]

### Chapter 82.38 RCW SPECIAL FUEL TAX ACT

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82.38.930	Effective date—1971 ex.s. c 175.
82.38.940	Findings—1998 c 176.
82.38.941	Effective date—1998 c 176.

**82.38.010 Statement of purpose.** The purpose of this chapter is to supplement the Motor Vehicle Fuel Tax Act, chapter 82.36 RCW, by imposing a tax upon all fuels not taxed under said Motor Vehicle Fuel Tax Act used for the propulsion of motor vehicles upon the highways of this state. [1979 c 40 § 1; 1971 ex.s. c 175 § 2.]

**82.38.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Blended special fuel" means a mixture of undyed diesel fuel and another liquid, other than a de minimis amount of the liquid, that can be used as a fuel to propel a motor vehicle.

(2) "Blender" means a person who produces blended special fuel outside the bulk transfer-terminal system.

(3) "Bond" means a bond duly executed with a corporate surety qualified under chapter 48.28 RCW, which bond is payable to the state of Washington conditioned upon faithful performance of all requirements of this chapter, including the payment of all taxes, penalties, and other obligations arising out of this chapter.

(4) "Bulk transfer-terminal system" means the special fuel distribution system consisting of refineries, pipelines, vessels, and terminals. Special fuel in a refinery, pipeline, vessel, or terminal is in the bulk transfer-terminal system. Special fuel in the fuel tank of an engine, motor vehicle, or in a railcar, trailer, truck, or other equipment suitable for ground transportation is not in the bulk transfer-terminal system.

(5) "Bulk transfer" means a transfer of special fuel by pipeline or vessel.

(6) "Bulk storage" means the placing of special fuel into a receptacle other than the fuel supply tank of a motor vehicle.

(7) "Department" means the department of licensing.

(8) "Dyed special fuel user" means a person authorized by the internal revenue code to operate a motor vehicle on the highway using dyed special fuel, in which the use is not exempt from the special fuel tax.

(9) "Evasion" or "evade" means to diminish or avoid the computation, assessment, or payment of authorized taxes or fees through:

(a) A knowing: False statement; omission; misrepresentation of fact; or other act of deception;

(b) An intentional: Failure to file a return or report; or other act of deception; or

(c) The unlawful use of dyed special fuel.

(10) "Export" means to obtain special fuel in this state for sales or distribution outside the state.

(11) "Highway" means every way or place open to the use of the public, as a matter of right, for the purpose of vehicular travel.

(12) "Import" means to bring special fuel into this state by a means of conveyance other than the fuel supply tank of a motor vehicle.

(13) "International fuel tax agreement licensee" means a special fuel user operating qualified motor vehicles in interstate commerce and licensed by the department under the international fuel tax agreement.

(14) "Lessor" means a person: (a) Whose principal business is the bona fide leasing or renting of motor vehicles without drivers for compensation to the general public; and (b) who maintains established places of business and whose lease or rental contracts require the motor vehicles to be returned to the established places of business.

(15) "Licensee" means a person holding a license issued under this chapter.

(16) "Motor vehicle" means a self-propelled vehicle designed for operation upon land utilizing special fuel as the means of propulsion.

(17) "Natural gas" means naturally occurring mixtures of hydrocarbon gases and vapors consisting principally of methane, whether in gaseous or liquid form.

(18) "Person" means a natural person, fiduciary, association, or corporation. The term "person" as applied to an association means and includes the partners or members thereof, and as applied to corporations, the officers thereof.

(19) "Position holder" means a person who holds the inventory position in special fuel, as reflected by the records of the terminal operator. A person holds the inventory position in special fuel if the person has a contractual agreement with the terminal for the use of storage facilities and terminating services at a terminal with respect to special fuel. "Position holder" includes a terminal operator that owns special fuel in their terminal.

(20) "Rack" means a mechanism for delivering special fuel from a refinery or terminal into a truck, trailer, railcar, or other means of nonbulk transfer.

(21) "Refiner" means a person who owns, operates, or otherwise controls a refinery.

(22) "Removal" means a physical transfer of special fuel other than by evaporation, loss, or destruction.

(23) "Special fuel" means and includes all combustible gases and liquids suitable for the generation of power for propulsion of motor vehicles, except that it does not include motor vehicle fuel as defined in chapter 82.36 RCW, nor does it include dyed special fuel as defined by federal regulations, unless the use is in violation of this chapter. If a person holds for sale, sells, purchases, or uses any dyed special fuel in violation of this chapter, all dyed special fuel held for sale, sold,

purchased, stored, or used by that person is considered special fuel, and the person is subject to all presumptions, reporting, and recordkeeping requirements and other obligations which apply to special fuel, along with payment of any applicable taxes, penalties, or interest for illegal use.

(24) "Special fuel distributor" means a person who acquires special fuel from a supplier, distributor, or licensee for subsequent sale and distribution.

(25) "Special fuel exporter" means a person who purchases special fuel in this state and directly exports the fuel by a means other than the bulk transfer-terminal system to a destination outside of the state.

(26) "Special fuel importer" means a person who imports special fuel into the state by a means other than the bulk transfer-terminal system. If the importer of record is acting as an agent, the person for whom the agent is acting is the importer. If there is no importer of record, the owner of the special fuel at the time of importation is the importer.

(27) "Special fuel supplier" means a person who holds a federal certificate issued under the internal revenue code and authorizes the person to tax-free transactions on special fuel in the bulk transfer-terminal system.

(28) "Special fuel user" means a person engaged in uses of special fuel that are not specifically exempted from the special fuel tax imposed under this chapter.

(29) "Terminal" means a special fuel storage and distribution facility that has been assigned a terminal control number by the internal revenue service, is supplied by pipeline or vessel, and from which reportable special fuel is removed at a rack.

(30) "Terminal operator" means a person who owns, operates, or otherwise controls a terminal.

(31) "Two-party exchange" or "buy-sell agreement" means a transaction in which taxable special fuel is transferred from one licensed supplier to another licensed supplier under an exchange or buy-sell agreement whereby the supplier that is the position holder agrees to deliver taxable special fuel to the other supplier or the other supplier's customer at the rack of the terminal at which the delivering supplier is the position holder. [2002 c 183 § 1; 2001 c 270 § 4; 1998 c 176 § 50; 1995 c 287 § 3; 1994 c 262 § 22; 1988 c 122 § 1; 1979 c 40 § 2; 1971 ex.s. c 175 § 3.]

**82.38.030 Tax imposed—Rate—Incidence—Allocation of proceeds—Expiration of subsection.** (1) There is hereby levied and imposed upon special fuel licensees, other than special fuel distributors, a tax at the rate of twenty-three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature.

(2) Beginning July 1, 2003, an additional and cumulative tax rate of five cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors. This subsection (2) expires when the bonds issued for transportation 2003 projects are retired.

(3) Beginning July 1, 2005, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at

standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(4) Beginning July 1, 2006, an additional and cumulative tax rate of three cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(5) Beginning July 1, 2007, an additional and cumulative tax rate of two cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(6) Beginning July 1, 2008, an additional and cumulative tax rate of one and one-half cents per gallon of special fuel, or each one hundred cubic feet of compressed natural gas, measured at standard pressure and temperature shall be imposed on special fuel licensees, other than special fuel distributors.

(7) Taxes are imposed when:

(a) Special fuel is removed in this state from a terminal if the special fuel is removed at the rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is by a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(b) Special fuel is removed in this state from a refinery if either of the following applies:

(i) The removal is by bulk transfer and the refiner or the owner of the special fuel immediately before the removal is not a licensee; or

(ii) The removal is at the refinery rack unless the removal is to a licensed exporter for direct delivery to a destination outside of the state, or the removal is to a special fuel supplier for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320;

(c) Special fuel enters into this state for sale, consumption, use, or storage, unless the fuel enters this state for direct delivery to an international fuel tax agreement licensee under RCW 82.38.320, if either of the following applies:

(i) The entry is by bulk transfer and the importer is not a licensee; or

(ii) The entry is not by bulk transfer;

(d) Special fuel is sold or removed in this state to an unlicensed entity unless there was a prior taxable removal, entry, or sale of the special fuel;

(e) Blended special fuel is removed or sold in this state by the blender of the fuel. The number of gallons of blended special fuel subject to tax is the difference between the total number of gallons of blended special fuel removed or sold and the number of gallons of previously taxed special fuel used to produce the blended special fuel;

(f) Dyed special fuel is used on a highway, as authorized by the internal revenue code, unless the use is exempt from the special fuel tax;

(g) Dyed special fuel is held for sale, sold, used, or is intended to be used in violation of this chapter;

(h) Special fuel purchased by an international fuel tax agreement licensee under RCW 82.38.320 is used on a highway; and

(i) Special fuel is sold by a licensed special fuel supplier to a special fuel distributor, special fuel importer, or special fuel blender and the special fuel is not removed from the bulk

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transfer-terminal system. [2007 c 515 § 21; 2005 c 314 § 102; 2003 c 361 § 402; 2002 c 183 § 2; 2001 c 270 § 6; 1998 c 176 § 51; 1996 c 104 § 7; 1989 c 193 § 3; 1983 1st ex.s. c 49 § 30; 1979 c 40 § 3; 1977 ex.s. c 317 § 5; 1975 1st ex.s. c 62 § 1; 1973 1st ex.s. c 156 § 1; 1972 ex.s. c 135 § 2; 1971 ex.s. c 175 § 4.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Severability—Effective date—1983 1st ex.s. c 49:** See RCW 36.79.900 and 36.79.901.

**Effective dates—Severability—1977 ex.s. c 317:** See notes following RCW 82.36.010.

**82.38.031 Tax imposed—Intent.** It is the intent and purpose of this chapter that the tax shall be imposed at the time and place of the first taxable event and upon the first taxable person within this state. Any person whose activities would otherwise require payment of the tax imposed by RCW 82.38.030 but who is exempt from the tax nevertheless has a precollection obligation for the tax that must be imposed on the first taxable event within this state. Failure to pay the tax with respect to a taxable event shall not prevent tax liability from arising by reason of a subsequent taxable event. [2007 c 515 § 33.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.38.032 Payment of tax by international fuel tax agreement licensees or persons operating under other reciprocity agreements.** International fuel tax agreement licensees, or persons operating motor vehicles under other reciprocity agreements entered into with the state of Washington, are liable for and must pay the tax under RCW 82.38.030 to the department on special fuel used to operate motor vehicles on the highways of this state. This provision does not apply if the tax under RCW 82.38.030 has previously been imposed and paid by the international fuel tax agreement licensee or if the use of such fuel is exempt from the tax under this chapter. [2007 c 515 § 22; 1998 c 176 § 52.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.38.035 Tax liability.** (1) A licensed supplier shall be liable for and pay tax on special fuel to the department as provided in RCW 82.38.030(7)(a). On a two-party exchange, or buy-sell agreement between two licensed suppliers, the receiving exchange partner or buyer shall be liable for and pay the tax.

(2) A refiner shall be liable for and pay tax to the department on special fuel removed from a refinery as provided in RCW 82.38.030(7)(b).

(3) A licensed importer shall be liable for and pay tax to the department on special fuel imported into this state as provided in RCW 82.38.030(7)(c).

(4) A licensed blender shall be liable for and pay tax to the department on the removal or sale of blended special fuel as provided in RCW 82.38.030(7)(e).

(5) A licensed dyed special fuel user shall be liable for and pay tax to the department on the use of dyed special fuel as provided in RCW 82.38.030(7)(f).

(6) Nothing in this chapter prohibits the licensee liable for payment of the tax under this chapter from including as a part of the selling price an amount equal to such tax. [2007 c 515 § 23; 2005 c 314 § 107; 2003 c 361 § 405; 2001 c 270 § 7; 1998 c 176 § 53.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**82.38.045 Liability of terminal operator for remittance.** A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030 if, at the time of removal:

(1) The position holder with respect to the special fuel is a person other than the terminal operator and is not a licensee;

(2) The terminal operator is not a licensee;

(3) The position holder has an expired internal revenue service notification certificate issued under chapter 26, C.F.R. Part 48; or

(4) The terminal operator had reason to believe that information on the notification certificate was false. [2005 c 314 § 108; 1998 c 176 § 54.]

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**82.38.047 Liability of terminal operator for taxes when documentation incorrectly indicates internal revenue service compliance.** A terminal operator is jointly and severally liable for remitting the tax imposed under RCW 82.38.030 if, in connection with the removal of special fuel that is not dyed or marked in accordance with internal revenue service requirements, the terminal operator provides a person with a bill of lading, shipping paper, or similar document indicating that the special fuel is dyed or marked in accordance with internal revenue service requirements. [2003 c 361 § 406; 1998 c 176 § 55.]

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**82.38.050 Tax liability on leased motor vehicles.** A lessor who is engaged regularly in the business of leasing or renting for compensation motor vehicles and equipment he owns without drivers to carriers or other lessees for interstate operation, may be deemed to be the special fuel user when he supplies or pays for the special fuel consumed in such vehi-

cles, and such lessor may be issued an international fuel tax agreement license when application and bond have been properly filed with and approved by the department for such license. Any lessee may exclude motor vehicles of which he or she is the lessee from reports and liabilities pursuant to this chapter, but only if the motor vehicles in question have been leased from a lessor holding a valid international fuel tax agreement license.

When the license has been secured, such lessor shall make and assign to each motor vehicle leased for interstate operation a photocopy of such license to be carried in the cab compartment of the motor vehicle and on which shall be typed or printed on the back the unit or motor number of the motor vehicle to which it is assigned and the name of the lessee. Such lessor shall be responsible for the proper use of such photocopy of the license issued and its return to the lessor with the motor vehicle to which it is assigned.

The lessor shall be responsible for fuel tax licensing and reporting, as required by this chapter, on the operation of all motor vehicles leased to others for less than thirty days. [2007 c 515 § 24; 1990 c 250 § 82; 1983 c 242 § 1; 1971 ex.s. c 175 § 6.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**82.38.060 Tax computation on mileage basis.** In the event the tax on special fuel imported into this state in the fuel supply tanks of motor vehicles for taxable use on Washington highways can be more accurately determined on a mileage basis the department is authorized to approve and adopt such basis. When a special fuel user imports special fuel into or exports special fuel from the state of Washington in the fuel supply tanks of motor vehicles, the amount of special fuel consumed in such vehicles on Washington highways shall be deemed to be such proportion of the total amount of such special fuel consumed in his entire operations within and without this state as the total number of miles traveled on the public highways within this state bears to the total number of miles traveled within and without the state. The department may also adopt such mileage basis for determining the taxable use of special fuel used in motor vehicles which travel regularly over prescribed courses on and off the highways within the state of Washington. In the absence of records showing the number of miles actually operated per gallon of special fuel consumed, fuel consumption shall be calculated at the rate of one gallon for every: (1) Four miles traveled by vehicles over forty thousand pounds gross vehicle weight; (2) seven miles traveled by vehicles twelve thousand one to forty thousand pounds gross vehicle weight; (3) ten miles traveled by vehicles six thousand one to twelve thousand pounds gross vehicle weight; and (4) sixteen miles traveled by vehicles six thousand pounds or less gross vehicle weight. [1996 c 90 § 1; 1989 c 142 § 1; 1971 ex.s. c 175 § 7.]

**82.38.065 Dyed special fuel use—Authorization, license required—Imposition of tax.** A person may operate or maintain a licensed or required to be licensed motor vehicle with dyed special fuel in the fuel supply tank only if the use is authorized by the internal revenue code and the person is either the holder of an uncanceled dyed special fuel user

license or the use is exempt from the special fuel tax. A person may maintain dyed special fuel for a taxable use in bulk storage if the person is the holder of an uncanceled dyed special fuel user license issued under this chapter. The special fuel tax set forth in RCW 82.38.030 is imposed on users of dyed special fuel authorized by the internal revenue code to operate on-highway motor vehicles using dyed special fuel, unless the use is exempt from the special fuel tax. It is unlawful for any person to sell, use, hold for sale, or hold for intended use dyed special fuel in a manner in violation of this chapter. [2002 c 183 § 3; 1998 c 176 § 56.]

**82.38.066 Dyed special fuel—Requirements—Marking—Notice.** (1) Special fuel that is dyed satisfies the dyeing requirements of this chapter if it meets the dyeing requirements of the internal revenue service, including, but not limited to, requirements respecting type, dosage, and timing.

(2) Marking must meet the marking requirements of the internal revenue service.

(3) As required by the internal revenue service, notice is required with respect to dyed special fuel. A notice stating "DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE" must be:

(a) Provided by the terminal operator to a person who receives dyed special fuel at a terminal rack of that terminal operator;

(b) Provided by a seller of dyed special fuel to its buyer if the special fuel is located outside the bulk transfer-terminal system and is not sold from a retail pump posted in accordance with the requirements of this subsection; or

(c) Posted by a seller on a retail pump where it sells dyed special fuel for use by its buyer. [1998 c 176 § 57.]

**82.38.075 Natural gas, propane—Annual license fee in lieu of special fuel tax for use in motor vehicles—Schedule—Decal or other identifying device.** In order to encourage the use of nonpolluting fuels, an annual license fee in lieu of the tax imposed by RCW 82.38.030 shall be imposed upon the use of natural gas as defined in this chapter or on liquified petroleum gas, commonly called propane, which is used in any motor vehicle, as defined in RCW 46.04.320, which shall be based upon the following schedule as adjusted by the formula set out below:

VEHICLE TONNAGE (GVW)	FEE
0 - 6,000	\$ 45
6,001 - 10,000	\$ 45
10,001 - 18,000	\$ 80
18,001 - 28,000	\$110
28,001 - 36,000	\$150
36,001 and above	\$250

To determine the actual annual license fee imposed by this section for a registration year, the appropriate dollar amount set out in the above schedule shall be multiplied by the motor vehicle fuel tax rate in cents per gallon as established by RCW 82.36.025 effective on July 1st of the preceding calendar year and the product thereof shall be divided by 12 cents.

The department of licensing, in addition to the foregoing fee, shall charge a further fee of five dollars as a handling charge for each license issued.

The director of licensing shall be authorized to prorate the vehicle tonnage fee so that the annual license required by this section will correspond with the staggered vehicle licensing system.

A decal or other identifying device issued upon payment of these annual fees shall be displayed as prescribed by the department as authority to purchase this fuel.

Persons selling or dispensing natural gas or propane may not sell or dispense this fuel for their own use or the use of others into tanks of vehicles powered by this fuel which do not display a valid decal or other identifying device as provided in this section.

Vehicles registered in jurisdictions outside the state of Washington are exempt from this section.

Any person selling or dispensing natural gas or propane into the tank of a motor vehicle powered by this fuel, except as prescribed in this chapter, is subject to the penalty provisions of this chapter. [1983 c 212 § 1; 1981 c 129 § 1; 1979 c 48 § 1; 1977 ex.s. c 335 § 1.]

**Effective date—1979 c 48:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 c 48 § 2.]

**Effective date—1977 ex.s. c 335:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1977." [1977 ex.s. c 335 § 2.]

**82.38.080 Exemptions.** (1) There is exempted from the tax imposed by this chapter, the use of fuel for:

(a) Street and highway construction and maintenance purposes in motor vehicles owned and operated by the state of Washington, or any county or municipality;

(b) Publicly owned fire fighting equipment;

(c) Special mobile equipment as defined in RCW 46.04.552;

(d) Power pumping units or other power take-off equipment of any motor vehicle which is accurately measured by metering devices that have been specifically approved by the department or which is established by any of the following formulae:

(i) Pumping propane, or fuel or heating oils or milk picked up from a farm or dairy farm storage tank by a power take-off unit on a delivery truck, at a rate determined by the department: PROVIDED, That claimant when presenting his or her claim to the department in accordance with this chapter, shall provide to the claim, invoices of propane, or fuel or heating oil delivered, or such other appropriate information as may be required by the department to substantiate his or her claim;

(ii) Operating a power take-off unit on a cement mixer truck or a load compactor on a garbage truck at the rate of twenty-five percent of the total gallons of fuel used in such a truck; or

(iii) The department is authorized to establish by rule additional formulae for determining fuel usage when operating other types of equipment by means of power take-off units when direct measurement of the fuel used is not feasible. The department is also authorized to adopt rules regard-

ing the usage of on board computers for the production of records required by this chapter;

(e) Motor vehicles owned and operated by the United States government;

(f) Heating purposes;

(g) Moving a motor vehicle on a public highway between two pieces of private property when said moving is incidental to the primary use of the motor vehicle;

(h) Transportation services for persons with special transportation needs by a private, nonprofit transportation provider regulated under chapter 81.66 RCW;

(i) Vehicle refrigeration units, mixing units, or other equipment powered by separate motors from separate fuel tanks;

(j) The operation of a motor vehicle as a part of or incidental to logging operations upon a highway under federal jurisdiction within the boundaries of a federal area if the federal government requires a fee for the privilege of operating the motor vehicle upon the highway, the proceeds of which are reserved for constructing or maintaining roads in the federal area, or requires maintenance or construction work to be performed on the highway for the privilege of operating the motor vehicle on the highway; and

(k) Waste vegetable oil as defined under RCW 82.08.0205 if the oil is used to manufacture biodiesel.

(2) There is exempted from the tax imposed by this chapter the removal or entry of special fuel under the following circumstances and conditions:

(a) If it is the removal from a terminal or refinery of, or the entry or sale of, a special fuel if all of the following apply:

(i) The person otherwise liable for the tax is a licensee other than a dyed special fuel user or international fuel tax agreement licensee;

(ii) For a removal from a terminal, the terminal is a licensed terminal; and

(iii) The special fuel satisfies the dyeing and marking requirements of this chapter;

(b) If it is an entry or removal from a terminal or refinery of taxable special fuel transferred to a refinery or terminal and the persons involved, including the terminal operator, are licensed; and

(c)(i) If it is a special fuel that, under contract of sale, is shipped to a point outside this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier;

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point;

(C) Delivery by the supplier to a vessel clearing from port of this state for a port outside this state and actually exported from this state in the vessel.

(ii) For purposes of this subsection (2)(c):

(A) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers; and

(B) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

(3) Notwithstanding any provision of law to the contrary, every urban passenger transportation system and carriers as

defined by chapters 81.68 and 81.70 RCW shall be exempt from the provisions of this chapter requiring the payment of special fuel taxes. For the purposes of this section "urban passenger transportation system" means every transportation system, publicly or privately owned, having as its principal source of revenue the income from transporting persons for compensation by means of motor vehicles and/or trackless trolleys, each having a seating capacity for over fifteen persons over prescribed routes in such a manner that the routes of such motor vehicles and/or trackless trolleys, either alone or in conjunction with routes of other such motor vehicles and/or trackless trolleys subject to routing by the same transportation system, shall not extend for a distance exceeding twenty-five road miles beyond the corporate limits of the county in which the original starting points of such motor vehicles are located: PROVIDED, That no refunds or credits shall be granted on special fuel used by any urban transportation vehicle or vehicle operated pursuant to chapters 81.68 and 81.70 RCW on any trip where any portion of said trip is more than twenty-five road miles beyond the corporate limits of the county in which said trip originated. [2008 c 237 § 1; 1998 c 176 § 60; 1996 c 244 § 6; 1993 c 141 § 2; 1990 c 185 § 1; 1983 c 108 § 4; 1979 c 40 § 4; 1973 c 42 § 1. Prior: 1972 ex.s. c 138 § 2; 1972 ex.s. c 49 § 1; 1971 ex.s. c 175 § 9.]

**Effective date—2008 c 237:** See note following RCW 82.08.0205.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.36.280.

**82.38.090 Penalty for acting without license—Separate licenses for separate activities—Interstate commerce—Exception.** (1) It shall be unlawful for any person to engage in business in this state as any of the following unless the person is the holder of an uncanceled license issued to him or her by the department authorizing the person to engage in that business:

(a) Special fuel supplier;

(b) Special fuel distributor;

(c) Special fuel exporter;

(d) Special fuel importer;

(e) Special fuel blender;

(f) Dyed special fuel user; or

(g) International fuel tax agreement licensee.

(2) A person engaged in more than one activity for which a license is required must have a separate license classification for each activity, but a special fuel supplier is not required to obtain a separate license classification for any other activity for which a license is required.

(3) Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight not exceeding twenty-six thousand pounds are not required to be licensed. Special fuel users operating motor vehicles in interstate commerce having two axles and a gross vehicle weight or registered gross vehicle weight exceeding twenty-six thousand pounds, or having three or more axles regardless of weight, or a combination of vehicles, when the combination exceeds twenty-six thousand pounds gross vehicle weight, must comply with the licensing and reporting requirements of this chapter. A copy of the license must be carried in each motor vehicle entering this state from another state or province. [1998 c 176 § 61; 1995 c 20 § 13; 1994 c 262 § 23; 1993 c 54 § 6; 1991 c 339 § 6;

1990 c 250 § 84; 1986 c 29 § 2; 1979 c 40 § 5; 1971 ex.s. c 175 § 10.]

**Severability—1995 c 20:** See RCW 70.149.901.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**82.38.100 Trip permits—Fees—Tax—Distributions.** (1) Any special fuel user operating a motor vehicle into this state for commercial purposes may make application for a trip permit that shall be good for a period of three consecutive days beginning and ending on the dates specified on the face of the permit issued, and only for the vehicle for which it is issued.

(2) Every permit shall identify, as the department may require, the vehicle for which it is issued and shall be completed in its entirety, signed, and dated by the operator before operation of the vehicle on the public highways of this state. Correction of data on the permit such as dates, vehicle license number, or vehicle identification number invalidates the permit. A violation of, or a failure to comply with, this subsection is a gross misdemeanor.

(3) For each permit issued, there shall be collected a filing fee of one dollar, an administrative fee of fifteen dollars, and an excise tax of nine dollars. Such fees and tax shall be in lieu of the special fuel tax otherwise assessable against the permit holder for importing and using special fuel in a motor vehicle on the public highways of this state, and no report of mileage shall be required with respect to such vehicle. Trip permits will not be issued if the applicant has outstanding fuel taxes, penalties, or interest owing to the state or has had a special fuel license revoked for cause and the cause has not been removed. Five dollars from every fifteen-dollar administration fee shall be deposited into the state patrol highway account and must be used for commercial motor vehicle inspections.

(4) Blank permits may be obtained from field offices of the department of transportation, department of licensing, or other agents appointed by the department. The department may appoint county auditors or businesses as agents for the purpose of selling trip permits to the public. County auditors or businesses so appointed may retain the filing fee collected for each trip permit to defray expenses incurred in handling and selling the permits.

(5) A surcharge of five dollars is imposed on the issuance of trip permits. The portion of the surcharge paid by motor carriers must be deposited in the motor vehicle fund for the purpose of supporting vehicle weigh stations, weigh-in-motion programs, and the commercial vehicle information systems and networks program. The remaining portion of the surcharge must be deposited in the motor vehicle fund for the purpose of supporting congestion relief programs. All other fees and excise taxes collected by the department for trip permits shall be credited and deposited in the same manner as the special fuel tax collected under this chapter and shall not be subject to exchange, refund, or credit. [2007 c 515 § 25; 2007 c 419 § 17; 1999 c 270 § 2; 1998 c 176 § 62; 1983 c 78 § 1; 1979 c 40 § 6; 1973 1st ex.s. c 156 § 3; 1971 ex.s. c 175 § 11.]

**Reviser's note:** This section was amended by 2007 c 419 § 17 and by 2007 c 515 § 25, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

(2008 Ed.)

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Findings—Short title—Application—2007 c 419:** See notes following RCW 46.16.004.

**82.38.110 Application for license—Federal certificate of registry—Investigation—Fee—Penalty for false statement—Bond or security.** (1) Application for a license issued under this chapter shall be made to the department. The application shall be filed upon a form prepared and furnished by the department and shall contain such information as the department deems necessary.

(2) Every application for a special fuel license, other than an application for a dyed special fuel user or international fuel tax agreement license, must contain the following information to the extent it applies to the applicant:

(a) Proof as the department shall require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(b) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(c) The qualification and business history of the applicant and any partner, officer, or director;

(d) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(e) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

(3) An applicant for a license as a special fuel importer must list on the application each state, province, or country from which the applicant intends to import fuel and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.

(4) An applicant for a license as a special fuel exporter must list on the application each state, province, or country to which the exporter intends to export special fuel received in this state by means of a transfer outside the bulk transfer-terminal system and, if required by the state, province, or country listed, must be licensed or registered for special fuel tax purposes in that state, province, or country.

(5) An applicant for a license as a special fuel supplier must have a federal certificate of registry that is issued under the internal revenue code and authorizes the applicant to enter into federal tax-free transactions on special fuel in the terminal transfer system.

(6) After receipt of an application for a license, the director shall conduct an investigation to determine whether the facts set forth are true. The director shall require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history

information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

(7) An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040.

(8) A special fuel license may not be issued to any person or continued in force unless such person has furnished bond, as defined in RCW 82.38.020, in such form as the department may require, to secure his or her compliance with this chapter, and the payment of any and all taxes, interest, and penalties due and to become due hereunder. The requirement of furnishing a bond may be waived: (a) For special fuel distributors who only deliver special fuel into the fuel tanks of marine vessels; (b) for dyed special fuel users; (c) for persons issued licenses under the international fuel tax agreement; or (d) for licensed special fuel distributors who, upon determination by the department, have sufficient resources, assets, other financial instruments, or other means to adequately make payments on the estimated monthly motor vehicle fuel tax payments, penalties, and interest arising out of this chapter. The department shall adopt rules to administer this section.

(9) The department may require a licensee to post a bond if the licensee, after having been licensed, has failed to file timely reports or has failed to remit taxes due, or when an investigation or audit indicates problems severe enough that the department, in its discretion, determines that a bond is required to protect the interests of the state. The department may also adopt rules prescribing conditions that, in the department's discretion, require a bond to protect the interests of the state.

(10) The total amount of the bond or bonds required of any licensee shall be equivalent to three times the estimated monthly fuel tax, determined in such manner as the department may deem proper: PROVIDED, That those licensees having held a special fuel license for five or more years without having said license suspended or revoked by the department shall be permitted to reduce the amount of their bond to twice the estimated monthly tax liability: PROVIDED FURTHER, That the total amount of the bond or bonds shall never be less than five hundred dollars nor more than one hundred thousand dollars.

(11) An application for a dyed special fuel user license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department deems necessary.

(12) An application for an international fuel tax agreement license must be made to the department. The application must be filed upon a form prescribed by the department and contain such information as the department may require. The department shall charge a fee of ten dollars per set of International Fuel Tax Agreement decals issued to each applicant or licensee. The department shall transmit the fee to the state treasurer for deposit in the motor vehicle fund. [2002 c 352 § 26; 2001 c 270 § 8; 1998 c 176 § 63; 1996 c 104 § 8; 1988 c 122 § 2; 1983 c 242 § 2; 1979 c 40 § 7; 1977 c 26 § 1; 1973 1st ex.s. c 156 § 4; 1971 ex.s. c 175 § 12.]

**Effective dates—2002 c 352:** See note following RCW 46.09.070.

**82.38.120 Issuance of license—Refusal—Inspection of records—Posting—Display—Duration—Transferability.** Upon receipt and approval of an application and bond, if required, the department shall issue a license to the applicant. However, the department may refuse to issue a license to any person:

(1) Who formerly held a license issued under chapter 82.36 or 82.42 RCW or this chapter which, prior to the time of filing for application, has been revoked for cause;

(2) Who is a subterfuge for the real party in interest whose license prior to the time of filing for application, has been revoked for cause;

(3) Who, as an individual licensee, or officer, director, owner, or managing employee of a nonindividual licensee, has had a special fuel license revoked for cause;

(4) Who has an unsatisfied debt to the state assessed under either chapter 82.36, 82.38, 82.42, 46.87, or 82.42 RCW;

(5) Who formerly held as an individual, officer, director, owner, managing employee of a nonindividual licensee, or subterfuge for a real party in interest, a license issued by the federal government or a state that allowed a person to buy or sell untaxed motor vehicle or special fuel, which license, before the time of filing for application, has been revoked for cause;

(6) Who pled guilty to or was convicted as an individual, officer, director, owner, or managing employee of a nonindividual licensee in this or any other state or in any federal jurisdiction of a gross misdemeanor or felony crime directly related to the business or has been subject to a civil judgment involving fraud, misrepresentation, conversion, or dishonesty, notwithstanding chapter 9.96A RCW;

(7) Who misrepresented or concealed a material fact in obtaining a license or in reinstatement thereof;

(8) Who violated a statute or administrative rule regulating fuel taxation or distribution;

(9) Who failed to cooperate with the department's investigations by:

(a) Not furnishing papers or documents;

(b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or

(c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(10) Who failed to comply with an order issued by the director; or

(11) Upon other sufficient cause being shown.

Before such refusal, the department shall grant the applicant a hearing and shall grant the applicant at least twenty days written notice of the time and place thereof.

The department shall determine from the information shown in the application or other investigation the kind and class of license to be issued. For the purpose of considering any application for a special fuel license, the department may inspect, cause an inspection, investigate, or cause an investigation of the records of this or any other state or of the federal government to ascertain the veracity of the information on the application form and the applicant's criminal and licensing history.

All licenses shall be posted in a conspicuous place or kept available for inspection at the principal place of business of the owner thereof. License holders shall reproduce the license by photostat or other method and keep a copy on display for ready inspection at each additional place of business or other place of storage from which special fuel is sold, delivered or used and in each motor vehicle used by the license holder to transport special fuel purchased by him or her for resale, delivery or use.

Each special fuel license shall be valid until the expiration date if shown on the license, or until suspended or revoked for cause or otherwise canceled.

No special fuel license shall be transferable. [1998 c 176 § 64; 1998 c 115 § 4; 1996 c 104 § 9; 1995 c 274 § 21; 1990 c 250 § 85; 1979 c 40 § 8; 1973 1st ex.s. c 156 § 5; 1971 ex.s. c 175 § 13.]

**Reviser's note:** This section was amended by 1998 c 115 § 4 and by 1998 c 176 § 64, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—1990 c 250:** See note following RCW 46.16.301.

**82.38.130 Revocation, suspension, cancellation, and surrender of license—Notice—Bond release, discharge—New or additional bond or surety.** The department may revoke the license of any licensee for any of the grounds constituting cause for denial of a license set forth in RCW 82.38.120 or for other reasonable cause. Before revoking such license the department shall notify the licensee to show cause within twenty days of the date of the notice why the license should not be revoked: PROVIDED, That at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license.

The department shall cancel any special fuel license immediately upon surrender thereof by the holder.

Any surety on a bond furnished by a licensee as provided in this chapter shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of forty-five days from the date which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the forty-five day period. The department shall promptly, upon receiving any such request, notify the licensee who furnished the bond, and unless the licensee, on or before the expiration of the forty-five day period, files a new bond, in accordance with this section, the department shall cancel the license.

The department may require a new or additional surety bond of the character specified in RCW 82.38.020(3) if, in its opinion, the security of the surety bond therefor filed by such licensee, shall become impaired or inadequate. Upon failure of the licensee to give such new or additional surety bond within forty-five days after being requested to do so by the department, or after he or she shall fail or refuse to file reports and remit or pay taxes at the intervals fixed by the department, the department forthwith shall cancel his or her license. [2007 c 515 § 26; 1998 c 176 § 65; 1994 c 262 § 24; 1979 c 40 § 9; 1977 c 26 § 2; 1971 ex.s. c 175 § 14.]

(2008 Ed.)

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.38.140 Special fuel records—Reports—Inspection.** (1) Every licensee and every person importing, manufacturing, refining, transporting, blending, or storing special fuel in this state shall keep for a period of not less than five years open to inspection at all times during the business hours of the day to the department or its authorized representatives, a complete record of all special fuel purchased or received and all of such products sold, delivered, or used by them. Such records shall show:

- (a) The date of each receipt;
  - (b) The name and address of the person from whom purchased or received;
  - (c) The number of gallons received at each place of business or place of storage in the state of Washington;
  - (d) The date of each sale or delivery;
  - (e) The number of gallons sold, delivered, or used for taxable purposes;
  - (f) The number of gallons sold, delivered, or used for any purpose not subject to the tax imposed in this chapter;
  - (g) The name, address, and special fuel license number of the purchaser if the special fuel tax is not collected on the sale or delivery;
  - (h) The inventories of special fuel on hand at each place of business at the end of each month.
- (2)(a) All international fuel tax agreement licensees and dyed special fuel users authorized to use dyed special fuel on highway in vehicles licensed for highway operation shall maintain detailed mileage records on an individual vehicle basis.
- (b) Such operating records shall show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle.
  - (c) In the absence of operating records that show both on-highway and off-highway usage of special fuel on a daily basis for each vehicle, fuel consumption must be computed under RCW 82.38.060.

(3) The department may require a person other than a licensee engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering special fuel to submit periodic reports to the department regarding the disposition of the fuel. The reports must be on forms prescribed by the department and must contain such information as the department may require.

(4) Every person operating any conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk shall have and possess during the entire time the person is hauling special fuel, an invoice, bill of sale, or other statement showing the name, address, and license number of the seller or consigner, the destination, name, and address of the purchaser or consignee, license number, if applicable, and the number of gallons. The person hauling such special fuel shall at the request of any law enforcement officer or authorized representative of the department, or other person authorized by law to inquire into, or investigate those types of matters, produce for inspection such invoice, bill of sale, or other statement and shall permit such official to inspect and gauge the contents of the vehicle. [2007 c 515 § 27; 1998 c 176 §

66. Prior: 1996 c 104 § 10; 1996 c 90 § 2; 1995 c 274 § 22; 1988 c 51 § 1; 1979 c 40 § 10; 1971 ex.s. c 175 § 15.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.38.150 Periodic tax reports—Forms—Filing—Time extensions during state of emergency.** (1) For the purpose of determining the amount of liability for the tax herein imposed, and to periodically update license information, each licensee, other than a special fuel distributor, an international fuel tax agreement licensee, or a dyed special fuel user, shall file monthly tax reports with the department, on forms prescribed by the department.

(2) Dyed special fuel users whose estimated yearly tax liability is two hundred fifty dollars or less, shall file a report yearly, and dyed special fuel users whose estimated yearly tax liability is more than two hundred fifty dollars, shall file reports quarterly. Special fuel users licensed under the international fuel tax agreement shall file reports quarterly. Heating oil dealers subject to the pollution liability insurance agency fee and reporting requirements shall remit pollution liability insurance agency returns and any associated payment due to the department annually.

(3) The department shall establish the reporting frequency for each applicant at the time the special fuel license is issued. If it becomes apparent that any licensee is not reporting in accordance with the above schedule, the department shall change the licensee's reporting frequency by giving thirty days' notice to the licensee by mail to the licensee's address of record. A report shall be filed with the department even though no special fuel was used, or tax is due, for the reporting period. Each tax report shall contain a declaration by the person making the same, to the effect that the statements contained therein are true and are made under penalties of perjury, which declaration shall have the same force and effect as a verification of the report and is in lieu of such verification. The report shall show such information as the department may reasonably require for the proper administration and enforcement of this chapter. A licensee shall file a tax report on or before the twenty-fifth day of the next succeeding calendar month following the period to which it relates.

(4) Subject to the written approval of the department, tax reports may cover a period ending on a day other than the last day of the calendar month. Taxpayers granted approval to file reports in this manner will file such reports on or before the twenty-fifth day following the end of the reporting period. No change to this reporting period will be made without the written authorization of the department.

(5) If the final filing date falls on a Saturday, Sunday, or legal holiday the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date shown by the post office cancellation mark stamped upon an envelope containing such report properly addressed to the department, or on the date it was mailed if proof satisfactory to the department is available to establish the date it was mailed.

(6) The department, if it deems it necessary in order to insure payment of the tax imposed by this chapter, or to facilitate the administration of this chapter, has the authority to require the filing of reports and tax remittances at shorter

intervals than one month if, in its opinion, an existing bond has become insufficient.

(7) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the department deems proper. [2008 c 181 § 506; 2007 c 515 § 28; 1998 c 176 § 67; 1996 c 104 § 11; 1995 c 274 § 23; 1991 c 339 § 15; 1990 c 42 § 203; 1988 c 23 § 1; 1983 c 242 § 3; 1979 c 40 § 11; 1973 1st ex.s. c 156 § 6; 1971 ex.s. c 175 § 16.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective date—1988 c 23:** "This act shall take effect January 1, 1989." [1988 c 23 § 2.]

**82.38.160 Computation and payment of tax—Remittance—Electronic funds transfer.** (1) The tax imposed by this chapter shall be computed by multiplying the tax rate per gallon provided in this chapter by the number of gallons of special fuel subject to the special fuel tax.

(2) A special fuel distributor shall remit tax on special fuel purchased from a special fuel supplier, and due to the state for that reporting period, to the special fuel supplier.

(3) At the election of the distributor, the payment of the special fuel tax owed on special fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the distributor and the supplier or no later than seven business days before the twenty-sixth day of the following month. This election shall be subject to a condition that the distributor's remittances of all amounts of special fuel tax due to the supplier shall be paid by electronic funds transfer. The distributor's election may be terminated by the supplier if the distributor does not make timely payments to the supplier as required by this section. This section shall not apply if the distributor is required by the supplier to pay cash or cash equivalent for special fuel purchases.

(4) Except as provided in subsection (5) of this section, the tax return shall be accompanied by a remittance payable to the state treasurer covering the tax amount determined to be due for the reporting period.

(5) If the tax is paid by electronic funds transfer, the tax shall be paid on or before the twenty-sixth calendar day of the month immediately following the reporting period. If the payment due date falls on a Saturday, Sunday, or legal holiday the next business day will be the payment date. If the tax is paid by electronic funds transfer and the reporting period ends on a day other than the last day of a calendar month as provided in RCW 82.38.150, the tax shall be paid on or before the last state business day of the thirty-day period following the end of the reporting period.

(6) The tax shall be paid by electronic funds transfer whenever the amount due is fifty thousand dollars or more. [2005 c 260 § 2; 1998 c 176 § 68; 1987 c 174 § 5; 1979 c 40 § 12; 1971 ex.s. c 175 § 17.]

**Effective date—2005 c 260:** See note following RCW 82.36.035.

**Effective date—1987 c 174:** See note following RCW 82.36.010.

**82.38.170 Civil and statutory penalties and interest—Deficiency assessments.** (1) If any licensee fails to pay any taxes collected or due the state of Washington within the time prescribed by RCW 82.38.150 and 82.38.160, the licensee shall pay in addition to such tax a penalty of ten percent of the amount thereof.

(2) If it be determined by the department that the tax reported by any licensee is deficient it may proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency a penalty of ten percent of the amount of the deficiency.

(3) If any licensee, whether or not he or she is licensed as such, fails, neglects, or refuses to file a special fuel tax report required under this chapter, the department may, on the basis of information available to it, determine the tax liability of the licensee for the period during which no report was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (2) of this section. An assessment made by the department pursuant to this subsection or to subsection (2) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(4) If any licensee establishes by a fair preponderance of evidence that his or her failure to file a report or pay the proper amount of tax within the time prescribed was due to reasonable cause and was not intentional or willful, the department may waive the penalty prescribed in subsections (1), (2), and (3) of this section.

(5) If any licensee files a false or fraudulent report with intent to evade the tax imposed by this chapter, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five percent of the deficiency, in addition to the penalty provided in subsection (2) of this section and all other penalties prescribed by law.

(6) Any special fuel tax, penalties, and interest payable under this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the amount or any portion thereof should have been paid until the date of payment: PROVIDED, That the department may waive the interest when it determines that the cost of processing the collection of the interest exceeds the amount of interest due.

(7) Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter.

(8) Except in the case of a fraudulent report or of neglect or refusal to make a report, every deficiency shall be assessed under subsection (2) of this section within five years from the twenty-fifth day of the next succeeding calendar month following the reporting period for which the amount is proposed

to be determined or within five years after the return is filed, whichever period expires the later.

(9) Any licensee against whom an assessment is made under the provisions of subsection (2) or (3) of this section may petition for a reassessment thereof within thirty days after service upon the licensee of notice thereof. If such petition is not filed within such thirty day period, the amount of the assessment becomes final at the expiration thereof.

If a petition for reassessment is filed within the thirty day period, the department shall reconsider the assessment and, if the licensee has so requested in his or her petition, shall grant such licensee an oral hearing and give the licensee ten days' notice of the time and place thereof. The department may continue the hearing from time to time. The decision of the department upon a petition for reassessment shall become final thirty days after service upon the licensee of notice thereof.

Every assessment made by the department shall become due and payable at the time it becomes final and if not paid to the department when due and payable, there shall be added thereto a penalty of ten percent of the amount of the tax.

(10) Any notice of assessment required by this section shall be served personally or by certified or registered mail; if by mail, service shall be made by depositing such notice in the United States mail, postage prepaid addressed to the licensee at his or her address as the same appears in the records of the department.

(11) Any licensee who has had the licensee's special fuel license revoked shall pay a one hundred dollar penalty prior to the issuance of a new license.

(12) Any person who, upon audit or investigation by the department, is found to have not paid special fuel taxes as required by this chapter shall be subject to cancellation of all vehicle registrations for vehicles utilizing special fuel as a means of propulsion. Any unexpired Washington tonnage on the vehicles in question may be transferred to a purchaser of the vehicles upon application to the department who shall hold such tonnage in its custody until a sale of the vehicle is made or the tonnage has expired.

(13) Unless the use is exempt from the special fuel tax, or expressly authorized by the internal revenue code and this chapter, a person having dyed special fuel in the fuel supply tank of a motor vehicle that is licensed or required to be licensed is subject to a civil penalty of ten dollars for each gallon of dyed special fuel placed into the supply tank of the motor vehicle, or one thousand dollars, whichever is greater. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

(14) A person who maintains dyed special fuel in bulk storage for an intended sale or use in violation of this chapter is subject to a civil penalty of ten dollars for each gallon of dyed special fuel, or one thousand dollars, whichever is greater, currently or previously maintained in bulk storage by the person. The civil penalty collected as a result of this subsection must be deposited in the motor vehicle fund. The penalties must be collected and administered under this chapter.

(15) For the purposes of enforcement of this section, the Washington state patrol or other commercial vehicle safety alliance-certified officers may inspect, collect, and secure samples of special fuel used in the propulsion of a vehicle

operated upon the highways of this state to detect the presence of dye or other chemical compounds.

(16) The Washington state patrol shall, by January 1, 1999, develop and implement procedures for collection, analysis, and storage of fuel samples collected under this chapter.

(17) RCW 43.05.110 does not apply to the civil penalties imposed under subsection (13) of this section. [2002 c 183 § 4; 1998 c 176 § 70; 1996 c 104 § 12; 1995 c 274 § 24; 1994 c 262 § 25; 1991 c 339 § 7; 1987 c 174 § 6; 1983 c 242 § 4; 1979 c 40 § 13; 1977 c 26 § 3; 1973 1st ex.s. c 156 § 7; 1972 ex.s. c 138 § 3; 1971 ex.s. c 175 § 18.]

**Effective date—1987 c 174:** See note following RCW 82.36.010.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.36.280.

**82.38.180 Refunds and credits.** Any person who has purchased special fuel on which tax has been paid may file a claim with the department for a refund of the tax for:

(1) Taxes previously paid on special fuel used for purposes other than for the propulsion of motor vehicles upon the public highways in this state.

(2) Taxes previously paid on special fuel exported for use outside of this state. Special fuel carried from this state in the fuel tank of a motor vehicle is deemed to be exported from this state. Special fuel distributed to a federally recognized Indian tribal reservation located within the state of Washington is not considered exported outside this state.

(3) Tax, penalty, or interest erroneously or illegally collected or paid.

(4) Taxes previously paid on all special fuel which is lost or destroyed, while the licensee shall be the owner thereof, through fire, lightning, flood, wind storm, or explosion.

(5) Taxes previously paid on all special fuel of five hundred gallons or more which is lost or destroyed while the licensee shall be the owner thereof, through leakage or other casualty except evaporation, shrinkage, or unknown causes.

(6) Taxes previously paid on special fuel that is inadvertently mixed with dyed special fuel.

Recovery for such loss or destruction under either subsection (4), (5), or (6) of this section must be susceptible to positive proof thereby enabling the department to conduct such investigation and require such information as it may deem necessary. In the event that the department is not satisfied that the fuel was lost, destroyed, or contaminated as claimed because information or proof as required hereunder is not sufficient to substantiate the accuracy of the claim, it may deem such as sufficient cause to deny all right relating to the refund or credit for the excise tax paid on special fuel alleged to be lost or destroyed.

No refund or claim for credit shall be approved by the department unless the gallons of special fuel claimed as nontaxable satisfy the conditions specifically set forth in this section and the nontaxable event or use occurred during the period covered by the refund claim. Refunds or claims for credit shall not be allowed for anticipated nontaxable use or events. [2007 c 515 § 29; 1998 c 176 § 71; 1972 ex.s. c 138 § 4; 1971 ex.s. c 175 § 19.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.36.280.

**82.38.190 Claim of refund or credit.** (1) Claims under RCW 82.38.180 shall be filed with the department on forms prescribed by the department and shall show the date of filing and the period covered in the claim, the number of gallons of special fuel used for purposes subject to tax refund, and such other facts and information as may be required. Every such claim shall be supported by an invoice or invoices issued to or by the claimant, as may be prescribed by the department, and such other information as the department may require. The requirement to provide invoices may be waived for small refund amounts, as determined by the department. Claims for refund of special fuel tax must be for at least twenty dollars.

(2) Any amount determined to be refundable by the department under RCW 82.38.180 shall first be credited on any amounts then due and payable from a person to whom the refund is due, and the department shall then certify the balance thereof to the state treasurer, who shall thereupon draw his or her warrant for the certified amount to the person.

(3) No refund or credit shall be approved by the department unless a written claim for refund or credit stating the specific grounds upon which the claim is founded is filed with the department:

(a) Within thirteen months from the date of purchase or from the last day of the month following the close of the reporting period for which the refundable amount or credit is due with respect to refunds or credits allowable under RCW 82.38.180 (1), (2), (4), and (5), and if not filed within this period the right to refund shall be forever barred.

(b) Within five years from the last day of the month following the close of the reporting period for which the overpayment is due with respect to the refunds or credits allowable under RCW 82.38.180(3). The department shall refund any amount paid that has been verified by the department to be more than ten dollars over the amount actually due for the reporting period. Payment credits shall not be carried forward and applied to subsequent tax returns for a person licensed under this chapter.

(4) Within thirty days after disallowing any claim in whole or in part, the department shall serve written notice of its action on the claimant.

(5) Interest shall be paid upon any refundable amount or credit due under RCW 82.38.180(3) at the rate of one percent per month from the last day of the calendar month following the reporting period for which the refundable amount or credit is due.

The interest shall be paid:

(a) In the case of a refund, to the last day of the calendar month following the date upon which the person making the overpayment, if he or she has not already filed a claim, is notified by the department that a claim may be filed or the date upon which the claim is approved by the department, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the tax or amount against which the credit is applied.

If the department determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(6) The department shall pay interest of one percent on any refund payable under RCW 82.38.180 (1), (2), or (6) that is issued more than thirty state business days after the receipt

of a claim properly filed and completed in accordance with this section. After the end of the thirty business-day period, additional interest shall accrue at the rate of one percent on the amount payable for each thirty calendar-day period, until the refund is issued.

(7) No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any officer of the state to prevent or enjoin the collection under this chapter of any tax or any amount of tax required to be collected. [1998 c 176 § 74; 1997 c 183 § 10; 1996 c 91 § 4; 1979 c 40 § 14; 1973 1st ex.s. c 156 § 8; 1972 ex.s. c 138 § 5; 1971 ex.s. c 175 § 20.]

**Effective date—1996 c 91:** See note following RCW 46.87.150.

**Effective date—1972 ex.s. c 138:** See note following RCW 82.36.280.

**82.38.200 Suits for recovery of taxes illegally or erroneously collected.** (1) No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been overpaid under RCW 82.38.180 unless a claim for refund or credit has been duly filed pursuant to RCW 82.38.190.

(2) Within ninety days after the mailing of the notice of the department's action upon a claim filed pursuant to RCW 82.38.190, the claimant may bring an action against the department on the grounds set forth in the claim in a court of competent jurisdiction in Thurston county for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed. Failure to bring action within the time specified constitutes a waiver of any demand against the state on account of the alleged overpayments.

(3) If the department fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the department of its intention on the claim, consider the claim disallowed and bring an action against the department, on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

(4) If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any special fuel tax due and payable from the plaintiff. The balance of the judgment shall be refunded to the plaintiff.

(5) In any judgment, interest shall be allowed at the rate of twelve percent per annum upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment or to a date preceding the date of the refund warrant, but not more than thirty days, the date to be determined by the department. [1971 ex.s. c 175 § 21.]

**82.38.210 Tax lien—Filing.** If any licensee liable for the remittance of tax imposed by this chapter fails to pay the same, the amount thereof, including any interest, penalty, or addition to such tax, together with any costs that may accrue in addition thereto, shall be a lien in favor of the state upon all franchises, property, and rights to property, whether real or personal, then belonging to or thereafter acquired by such person, whether such property is employed by such person for personal or business use or is in the hands of a trustee, or receiver, or assignee for the benefit of creditors, from the date

the taxes were due and payable, until the amount of the lien is paid or the property sold in payment thereof. The lien shall have priority over any lien or encumbrance whatsoever, except the lien of other state taxes having priority by law, and except that such lien shall not be valid as against any bona fide mortgagee, pledgee, judgment creditor, or purchaser whose rights have attached prior to the time the department has filed and recorded notice of such lien as hereinafter provided.

In order to avail itself of the lien hereby created, the department shall file with any county auditor a statement of claim and lien specifying the amount of delinquent taxes, penalties and interest claimed by the department. From the time of filing for record, the amount required to be paid shall constitute a lien upon all franchises, property and rights to property, whether real or personal, then belonging to or thereafter acquired by such person in the county. Any lien as provided in this section may also be filed in the office of the secretary of state. Filing in the office of the secretary of state shall be of no effect, however, until the lien or copy thereof shall have been filed with the county auditor in the county where the property is located. When a lien is filed in compliance herewith and with the secretary of state, such filing shall have the same effect as if the lien had been duly filed for record in the office of the auditor in each county of this state. [1998 c 176 § 75; 1979 c 40 § 15; 1971 ex.s. c 175 § 22.]

**82.38.220 Delinquency—Notice to debtors—Transfer or disposition of property, credits, or debts prohibited—Lien—Answer.** In the event any licensee is delinquent in the payment of any obligation imposed under this chapter, the department may give notice of the amount of such delinquency by registered or certified mail to all persons having in their possession or under their control any credits or other personal property belonging to the licensee or owing any debts to the licensee, at the time of the receipt by them of such notice. Any person so notified shall neither transfer nor make other disposition of such credits, personal property, or debts until the department consents to a transfer or other disposition. All persons so notified must, within twenty days after receipt of the notice, advise the department of any and all such credits, personal property, or debts in their possession, under their control or owing by them, as the case may be, and shall immediately deliver such credits, personal property, or debts to the department or its duly authorized representative to be applied to the indebtedness involved.

Upon service, the notice and order to withhold and deliver constitutes a continuing lien on property of the taxpayer. The department shall include in the caption of the notice to withhold and deliver "continuing lien." The effective date of a notice to withhold and deliver served under this section is the date of service of the notice.

If a person fails to answer the notice within the time prescribed by this section, it is lawful for the court, upon application of the department and after the time to answer the notice has expired, to render judgment by default against the party named in the notice to withhold and deliver for the full amount claimed by the department in the notice to withhold and deliver, together with costs. [1998 c 176 § 76; 1994 c 262 § 26; 1983 c 242 § 5; 1979 c 40 § 16; 1971 ex.s. c 175 § 23.]

**82.38.230 Delinquency—Seizure and sale of property—Notice—Distribution of excess.** Whenever any licensee is delinquent in the payment of any obligation imposed hereunder, and such delinquency continues after notice and demand for payment by the department, the department shall proceed to collect the amount due from the licensee in the following manner: The department shall seize any property subject to the lien of said excise tax, penalty, and interest and thereafter sell it at public auction to pay said obligation and any and all costs that may have been incurred on account of the seizure and sale. Notice of such intended sale and the time and place thereof shall be given to such delinquent licensee and to all persons appearing of record to have an interest in such property. The notice shall be given in writing at least ten days before the date set for the sale by enclosing it in an envelope addressed to the licensee at the licensee's address as the same appears in the records of the department and, in the case of any person appearing of record to have an interest in such property, addressed to such person at his or her last known residence or place of business, and depositing such envelope in the United States mail, postage prepaid. In addition, the notice shall be published for at least ten days before the date set for the sale in a newspaper of general circulation published in the county in which the property seized is to be sold. If there is no newspaper of general circulation in such county, the notice shall be posted in three public places in the county for a period of ten days. The notice shall contain a description of the property to be sold, together with a statement of the amount due under this chapter, the name of the licensee and the further statement that unless such amount is paid on or before the time fixed in the notice the property will be sold in accordance with law.

The department shall then proceed to sell the property in accordance with the law and the notice, and shall deliver to the purchaser a bill of sale or deed which shall vest title in the purchaser. If upon any such sale the moneys received exceed the amount due to the state under this chapter from the delinquent licensee, the excess shall be returned to the licensee and the licensee's receipt obtained for the excess. If any person having an interest in or lien upon the property has filed with the department prior to such sale, notice of such interest or lien, the department shall withhold payment of any such excess to the licensee pending a determination of the rights of the respective parties thereto by a court of competent jurisdiction. If for any reason the receipt of the licensee is not available, the department shall deposit such excess with the state treasurer as trustee for the licensee or the licensee's heirs, successors, or assigns: PROVIDED, That prior to making any seizure of property as provided for in this section, the department may first serve upon the licensee's bondsperson a notice of the delinquency, with a demand for the payment of the amount due. [2007 c 218 § 78; 1998 c 176 § 77; 1979 c 40 § 17; 1971 ex.s. c 175 § 24.]

**Intent—Finding—2007 c 218:** See note following RCW 1.08.130.

**82.38.235 Assessments—Warrant—Lien—Filing fee—Writs of execution and garnishment.** Whenever any assessment shall have become final in accordance with the provisions of this chapter, the department may file with the clerk of any county within the state a warrant in the amount of the assessment of taxes, penalties plus interest and a filing

fee under RCW 36.18.012(10). The clerk of the county wherein the warrant is filed shall immediately designate a superior court cause number for such warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the licensee mentioned in the warrant, the amount of the tax, penalties, interest and filing fee and the date when such warrant was filed. The aggregate amount of such warrant as docketed shall become a lien upon the title to, and interest in all real and personal property of named person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. Such warrant so docketed shall be sufficient to support the issuance of writs of execution and writs of garnishment in favor of the state in the manner provided by law in the case of civil judgment, wholly or partially unsatisfied. The clerk of the court shall be entitled to a filing fee under RCW 36.18.012(10), which shall be added to the amount of the warrant. [2001 c 146 § 14; 1998 c 176 § 78; 1979 c 40 § 22.]

**82.38.240 Delinquency—Collection by civil action—Certificate.** Whenever any licensee is delinquent in the payment of any obligation hereunder the department may transmit notice of such delinquency to the attorney general who shall at once proceed to collect by appropriate legal action the amount due the state from the licensee. In any suit brought to enforce the rights of the state hereunder, a certificate by the department showing the delinquency shall be prima facie evidence of the amount of the obligation, of the delinquency thereof and of compliance by the department with all provisions of this chapter relating to such obligation. [1998 c 176 § 79; 1971 ex.s. c 175 § 25.]

**82.38.245 Bankruptcy proceedings—Notice.** A special fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 9.]

**82.38.250 Remedies cumulative.** The foregoing remedies of the state in this chapter shall be cumulative and no action taken by the department shall be construed to be an election on the part of the state or any of its officers to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter. [1971 ex.s. c 175 § 26.]

**82.38.260 Administration and enforcement.** The department shall enforce the provisions of this chapter, and may prescribe, adopt, and enforce reasonable rules and regulations relating to the administration and enforcement thereof. The Washington state patrol and its officers shall aid the department in the enforcement of this chapter, and, for this purpose, are declared to be peace officers, and given police power and authority throughout the state to arrest on sight any person known to have committed a violation of the provisions of this chapter.

The department or its authorized representative is hereby empowered to examine the books, papers, records and equip-

ment of any licensee or any person dealing in, transporting, or storing special fuel as defined in this chapter and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all taxes due hereunder are being properly reported and paid. The fact that such books, papers, records and equipment are not maintained in this state at the time of demand shall not cause the department to lose any right of such examination under this chapter when and where such records become available.

The department or its authorized representative is further empowered to investigate the disposition of special fuel by any person where the department has reason to believe that untaxed special fuel has been diverted to a use subject to the taxes imposed by this chapter without said taxes being paid in accordance with the requirements of this chapter.

For the purpose of enforcing the provisions of this chapter it shall be presumed that all special fuel delivered to service stations as well as all special fuel otherwise received into storage and dispensing equipment designed to fuel motor vehicles is delivered into the fuel supply tanks of motor vehicles and consumed in the propulsion of motor vehicles on the highways of this state, unless the contrary is established by satisfactory evidence.

The department shall, upon request from the officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, the provinces or the Dominion of Canada, forward to such officials any information which he or she may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any licensee if the other state or states furnish like information to this state.

Returns required by this chapter, exclusive of schedules, itemized statements and other supporting evidence annexed thereto, shall at all reasonable times be open to the public. [1998 c 176 § 80; 1995 c 274 § 25; 1979 c 40 § 18; 1971 ex.s. c 175 § 27.]

**82.38.265 Administration, collection, and enforcement of taxes pursuant to chapter 82.41 RCW.** For the purposes of administration, collection, and enforcement of taxes imposed under this chapter, pursuant to an agreement under chapter 82.41 RCW, chapter 82.41 RCW shall control to the extent of any conflict. [1982 c 161 § 14.]

**82.38.270 Violations—Penalties.** (1) It is unlawful for a person or corporation to:

- (a) Have dyed diesel in the fuel supply tank of a vehicle that is licensed or required to be licensed for highway use or maintain dyed diesel in bulk storage for highway use, unless the person or corporation maintains an uncanceled dyed diesel user license or is otherwise exempted by this chapter;
- (b) Evade a tax or fee imposed under this chapter;
- (c) File a false statement of a material fact on a special fuel license application or special fuel refund application;
- (d) Act as a special fuel importer, special fuel blender, or special fuel supplier unless the person holds an uncanceled special fuel license issued by the department authorizing the person to engage in that business;

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(e) Knowingly assist another person to evade a tax or fee imposed by this chapter;

(f) Knowingly operate a conveyance for the purpose of hauling, transporting, or delivering special fuel in bulk and not possess an invoice, bill of sale, or other statement showing the name, address, and tax license number of the seller or consignor, the destination, the name, address, and tax license number of the purchaser or consignee, and the number of gallons.

(2)(a) A single violation of subsection (1)(a) of this section is a gross misdemeanor under chapter 9A.20 RCW.

(b) Multiple violations of subsection (1)(a) of this section and violations of subsection (1)(b) through (f) of this section are a class C felony under chapter 9A.20 RCW.

(3) In addition to other penalties and remedies provided by law, the court shall order a person or corporation found guilty of violating subsection (1)(b) through (f) of this section to:

(a) Pay the tax or fee evaded plus interest, commencing at the date the tax or fee was first due, at the rate of twelve percent per year, compounded monthly; and

(b) Pay a penalty of one hundred percent of the tax evaded, to the multimodal transportation account of the state.

(4) The tax imposed by this chapter is held in trust by the licensee until paid to the department, and a licensee who appropriates the tax to his or her own use or to any use other than the payment of the tax on the due date as prescribed in this chapter is guilty of a felony or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to pay to the department the tax imposed by this chapter is personally liable to the state for the amount of the tax. [2007 c 515 § 30; 2003 c 358 § 14; 2000 2nd sp.s. c 4 § 10; 1995 c 287 § 4; 1979 c 40 § 19; 1977 c 26 § 4; 1971 ex.s. c 175 § 28.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**82.38.275 Investigatory power.** The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with the provisions of this chapter or any rules or regulations issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by him to produce testimony or other evidence touching the matter under investigation or in question.

The failure to obey an order of the court may be punishable by contempt. [1979 c 40 § 20.]

**82.38.280 State preempts tax field.** The tax levied in this chapter is in lieu of any excise, privilege, or occupational tax upon the business of manufacturing, selling, or distributing special fuel, and no city, town, county, township or other subdivision or municipal corporation of the state shall levy or collect any excise tax upon or measured by the sale, receipt, distribution, or use of special fuel, except as provided in chapter 82.80 RCW and RCW 82.47.020. [2003 c 350 § 6; 1991 c 173 § 5; 1990 c 42 § 205; 1979 ex.s. c 181 § 6; 1971 ex.s. c 175 § 29.]

**Effective date—1991 c 173:** See note following RCW 82.47.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective date—Severability—1979 ex.s. c 181:** See notes following RCW 82.36.440.

**82.38.290 Disposition of funds.** All taxes, interest and penalties collected under this chapter shall be credited and deposited in the same manner as are motor vehicle fuel taxes collected under RCW 82.36.410. [1971 ex.s. c 175 § 30.]

**82.38.300 Judicial review and appeals.** Judicial review and appeals shall be governed by the Administrative Procedure Act, chapter 34.05 RCW. [1971 ex.s. c 175 § 31.]

**82.38.310 Agreement with tribe for fuel taxes.** (1) The governor may enter into an agreement with any federally recognized Indian tribe located on a reservation within this state regarding special fuel taxes included in the price of fuel delivered to a retail station wholly owned and operated by a tribe, tribal enterprise, or tribal member licensed by the tribe to operate a retail station located on reservation or trust property. The agreement may provide mutually agreeable means to address any tribal immunities or any preemption of the state special fuel tax.

(2) The provisions of this section do not repeal existing state/tribal fuel tax agreements or consent decrees in existence on May 15, 2007. The state and the tribe may agree to substitute an agreement negotiated under this section for an existing agreement or consent decree, or to enter into an agreement using a methodology similar to the state/tribal fuel tax agreements in effect on May 15, 2007.

(3) If a new agreement is negotiated, the agreement must:

(a) Require that the tribe or the tribal retailer acquire all special fuel only from persons or companies operating lawfully in accordance with this chapter as a special fuel distributor, supplier, importer, or blender, or from a tribal distributor, supplier, importer, or blender lawfully doing business according to all applicable laws;

(b) Provide that the tribe will expend fuel tax proceeds or equivalent amounts on: Planning, construction, and maintenance of roads, bridges, and boat ramps; transit services and facilities; transportation planning; police services; and other highway-related purposes;

(c) Include provisions for audits or other means of ensuring compliance to certify the number of gallons of special

fuel purchased by the tribe for resale at tribal retail stations, and the use of fuel tax proceeds or their equivalent for the purposes identified in (b) of this subsection. Compliance reports must be delivered to the director of the department of licensing.

(4) Information from the tribe or tribal retailers received by the state or open to state review under the terms of an agreement shall be deemed personal information under RCW 42.56.230(3)(b) and exempt from public inspection and copying.

(5) The governor may delegate the power to negotiate fuel tax agreements to the department of licensing.

(6) The department of licensing shall prepare and submit an annual report to the legislature on the status of existing agreements and any ongoing negotiations with tribes. [2007 c 515 § 31; 1995 c 320 § 3.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**Legislative recognition, belief—Severability—Effective date—1995 c 320:** See notes following RCW 82.36.450.

**82.38.320 Bulk storage of special fuel by international fuel tax agreement licensee—Authorization to pay tax at time of filing tax return—Schedule—Report—Exemptions.** (1) An international fuel tax agreement licensee who meets the qualifications in subsection (2) of this section may be given special authorization by the department to purchase special fuel delivered into bulk storage without payment of the special fuel tax at the time the fuel is purchased. The special authorization applies only to full truck-trailer loads filled at a terminal rack and delivered directly to the bulk storage facilities of the special authorization holder. The licensee shall pay special fuel tax on the fuel at the time the licensee files their international fuel tax agreement tax return and accompanying schedule with the department. The accompanying schedule shall be provided in a form and manner determined by the department and shall contain information on purchases and usage of all nondyed special fuel purchased during the reporting period. In addition, by the fifteenth day of the month following the month in which fuel under the special authorization was purchased, the licensee must report to the department, the name of the seller and the number of gallons purchased for each purchase of such fuel, and any other information as the department may require.

(2) To receive or maintain special authorization under subsection (1) of this section, the following conditions regarding the international fuel tax agreement licensee must apply:

(a) During the period encompassing the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year, the number of gallons consumed outside the state of Washington as reported on the licensee's international fuel tax agreement tax returns must have been equal to at least twenty percent of the nondyed special fuel gallons, including fuel used on-road and off-road, purchased by the licensee in the state of Washington, as reported on the accompanying schedules required under subsection (1) of this section;

(b) The licensee must have been licensed under the provisions of the international fuel tax agreement during each of

the four consecutive calendar quarters immediately preceding the fourth calendar quarter of the previous year; and

(c) The licensee has not violated the reporting requirements of this section.

(3) Only a licensed special fuel supplier or special fuel importer may sell special fuel to a special authorization holder in the manner prescribed by this section.

(4) A special fuel supplier or importer who sells special fuel under the special authorization provisions of this section is not liable for the special fuel tax on the fuel. The special fuel supplier or importer will report such sales, in a manner prescribed by the department, at the time the special fuel supplier or importer submits the monthly tax report. [2007 c 515 § 32; 1998 c 176 § 83.]

**Severability—Effective date—2007 c 515:** See notes following RCW 82.36.010.

**82.38.350 Fuel tax cooperative agreement.** The department of licensing may enter into a fuel tax cooperative agreement with another state or Canadian province for the administration, collection, and enforcement of each state's or Canadian province's fuel taxes. [1998 c 176 § 88.]

**82.38.360 Fuel tax evasion—Seizure and forfeiture.**

(1) The following are subject to seizure and forfeiture:

(a) Special fuel imported into this state by a person not licensed in this state in accordance with this chapter to import fuel;

(b) Special fuel that is blended or manufactured by a person not licensed in this state in accordance with this chapter to blend or manufacture fuel;

(c) All conveyances that are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property described in (a) and (b) of this subsection, except where the owner of the conveyance neither had knowledge of nor consented to the transportation of the special fuel by an unlicensed importer, blender, or manufacturer of fuel.

(2) Before seizing a common carrier conveyance, contract carrier conveyance, or a conveyance secured by a bona fide security interest where the secured party neither had knowledge of or consented to the unlawful act or omission, the state patrol or the department of licensing shall give the common carrier, contract carrier, or secured party, or their representatives within twenty-four hours, a notice in writing served by mail or other means to cease transporting fuel for any person not licensed to import, blend, or manufacture fuel in this state.

(3) Property subject to forfeiture under this chapter may be seized by the state patrol upon process issued by a superior court or district court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an administrative inspection; or

(b) The state patrol has probable cause to believe that the property was used or is intended to be used in violation of this chapter and exigent circumstances exist making procurement of a search warrant impracticable. [2003 c 358 § 7.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

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**82.38.365 Fuel tax evasion—Forfeiture procedure.**

In all cases of seizure of property made subject to forfeiture under this chapter, the state patrol shall proceed as follows:

(1) Forfeiture is deemed to have commenced by the seizure.

(2) The state patrol shall list and particularly describe in duplicate the conveyance seized. After the appropriate appeal period has expired, a seized conveyance must be sold at a public auction in accordance with chapter 43.19 RCW.

(3) The state patrol shall list and particularly describe in duplicate the special fuel seized. The selling price of the fuel seized will be the average terminal rack price for similar fuel, at the closest terminal rack on the day of sale, unless circumstance warrants that a different selling price is appropriate. The method used to value the fuel must be documented. The fuel will be sold at the earliest point in time, and the total price must include all appropriate state and federal taxes. The state patrol or the department may enter into contracts for the transportation, handling, storage, and sale of fuel subject to forfeiture. The money received must be deposited in the motor vehicle account, after deduction for expenses provided for in this section.

(4) The state patrol shall, within five days after the seizure of a conveyance or fuel, cause notice to be served on the owner of the property seized, if known, on the person in charge of the property, and on any other person having any known right or interest in the property, of the seizure and intended forfeiture. The notice may be served by any method authorized by law or court rule including but not limited to service by mail. If service is by mail it must be by both certified mail with return receipt requested and regular mail. Service by mail is deemed complete upon mailing within the five-day period after the date of seizure.

(5) If no person notifies the state patrol in writing of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the items seized are considered forfeited.

(6) If any person notifies the state patrol, in writing, of the person's claim of ownership or right to possession of the items seized within fifteen days of the date of the notice of seizure, the person or persons must be given a reasonable opportunity to be heard as to the claim or right. The hearing must be before the director of licensing, or the director's designee. A hearing and any appeals must be in accordance with chapter 34.05 RCW. The burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the items seized. The state patrol and the department shall promptly return the conveyance seized, and money from the sale of fuel seized, to the claimant upon a determination that the claimant is the present lawful owner and is lawfully entitled to possession of the items seized. [2003 c 358 § 8.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.38.370 Fuel tax evasion—Forfeited property.**

When property is forfeited under this chapter, the state patrol or the department may use the proceeds of the sale and all moneys forfeited for the payment of all proper expenses of any investigation leading to the seizure and of the proceed-

ings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs. Proper expenses of investigation include costs incurred by a law enforcement agency or a federal, state, or local agency. The balance of the proceeds must be deposited in the motor vehicle fund. [2003 c 358 § 9.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.38.375 Fuel tax evasion—Return of seized property.** (1) The state patrol and the department may return property seized and proceeds from the sale of fuel under this chapter when it is shown that there was no intention to violate this chapter.

(2) When property is returned under this section, the state patrol and the department may return the goods to the parties from whom they were seized if and when the parties pay all applicable taxes and interest. [2003 c 358 § 10.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.38.380 Fuel tax evasion—Search and seizure.** When the state patrol has good reason to believe that special fuel is being unlawfully imported, kept, sold, offered for sale, blended, or manufactured in violation of this chapter or rules adopted under it, the state patrol may make an affidavit of that fact, describing the place or thing to be searched, before a judge of any court in this state, and the judge shall issue a search warrant directed to the state patrol commanding the officer diligently to search any place or vehicle designated in the affidavit and search warrant, and to seize the fuel and conveyance so possessed and to hold them until disposed of by law, and to arrest the person in possession or control of them. [2003 c 358 § 11.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.38.385 Rules.** The department and the state patrol shall adopt rules necessary to implement RCW 82.38.360 through 82.38.380. [2003 c 358 § 12.]

**Captions not law—Severability—2003 c 358:** See notes following RCW 82.36.470.

**82.38.800 Rules—1998 c 176.** See RCW 82.36.800.

**82.38.900 Section captions.** All section captions used in this chapter do not constitute any part of the law. [1971 ex.s. c 175 § 32.]

**82.38.910 Short title.** This chapter may be cited as the "Special Fuel Tax Act". [1971 ex.s. c 175 § 1.]

**82.38.920 Severability—1971 ex.s. c 175.** If any provision of this 1971 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 175 § 34.]

**82.38.930 Effective date—1971 ex.s. c 175.** The effective date of this Special Fuel Tax Act is January 1, 1972. [1971 ex.s. c 175 § 36.]

**82.38.940 Findings—1998 c 176.** See RCW 82.36.900.

**82.38.941 Effective date—1998 c 176.** See RCW 82.36.901.

## Chapter 82.41 RCW

### MULTISTATE MOTOR FUEL TAX AGREEMENT

#### Sections

82.41.010	Purpose.
82.41.020	Definitions.
82.41.030	Motor fuel tax cooperative agreement authorized—Prohibition.
82.41.040	Amount of tax collected for this state.
82.41.050	Provisions of agreement.
82.41.060	Credits—Refunds.
82.41.070	Audits.
82.41.080	Investigatory power.
82.41.090	Appeal procedures.
82.41.100	Exchange of information.
82.41.110	Construction and application.
82.41.120	Implementing rules required.

**82.41.010 Purpose.** It is the purpose of this chapter to simplify the confusing, unnecessarily duplicative, and burdensome motor fuel use tax licensing, reporting, and remittance requirements imposed on motor carriers involved in interstate commerce by authorizing the state of Washington to participate in a multistate motor fuel tax agreement for the administration, collection, and enforcement of those states' motor fuel use taxes. [1982 c 161 § 1.]

**82.41.020 Definitions.** As used in this chapter unless the context clearly requires otherwise:

- (1) "Department" means the department of licensing;
- (2) "Motor fuel" means all combustible gases and liquids used for the generation of power for propulsion of motor vehicles;
- (3) "Motor carrier" means an individual, partnership, firm, association, or private or public corporation engaged in interstate commercial operation of motor vehicles, any part of which is within this state or any other state which is party to an agreement under this chapter;
- (4) "State" means a state, territory, or possession of the United States, the District of Columbia, a foreign country, or a state or province of a foreign country;
- (5) "Base state" means the state in which the motor carrier is legally domiciled, or in the case of a motor carrier who has no legal domicile, the state from or in which the motor carrier's vehicles are most frequently dispatched, garaged, serviced, maintained, operated, or otherwise controlled;
- (6) "Agreement" means a motor fuel tax agreement under this chapter;
- (7) "Licensee" means a motor carrier who has been issued a fuel tax license under a motor fuel tax agreement. [1982 c 161 § 2.]

**82.41.030 Motor fuel tax cooperative agreement authorized—Prohibition.** The department may enter into a motor fuel tax cooperative agreement with another state or states which provides for the administration, collection, and enforcement of each state's motor fuel taxes on motor fuel used by motor carriers. The agreement shall not contain any provision which exempts any motor vehicle, owner, or operator from complying with the laws, rules, and regulations pertaining to vehicle licensing, size, weight, load, or operation of motor vehicles upon the public highways of this state. [1982 c 161 § 3.]

**82.41.040 Amount of tax collected for this state.** The amount of the tax imposed and collected on behalf of this state under an agreement entered into under this chapter shall be determined as provided in chapter 82.38 RCW. [1995 c 274 § 26; 1982 c 161 § 4.]

**82.41.050 Provisions of agreement.** An agreement entered into under this chapter may provide for:

- (1) Defining the classes of motor vehicles upon which taxes are to be collected under the agreement;
- (2) Establishing methods for base state fuel tax licensing, license revocation, and tax collection from motor carriers on behalf of the states which are parties to the agreement;
- (3) Establishing procedures for the granting of credits or refunds on the purchase of excess tax-paid fuel;
- (4) Defining conditions and criteria relative to bonding requirements, including criteria for exemption from bonding;
- (5) Establishing tax reporting periods not to exceed one calendar quarter, and tax report due dates not to exceed one calendar month after the close of the reporting period;
- (6) Penalties and interest for filing of tax reports after the due dates prescribed by the agreement;
- (7) Establishing procedures for forwarding of fuel taxes, penalties, and interest collected on behalf of another state to that state;
- (8) Recordkeeping requirements for licensees; and
- (9) Any additional provisions which will facilitate the administration of the agreement. [1982 c 161 § 5.]

**82.41.060 Credits—Refunds.** Any licensee purchasing more tax-paid motor fuel in this state than the licensee uses in this state during the course of a reporting period shall be permitted a credit against future tax liability for the excess tax-paid fuel purchased. Upon request, this credit may be refunded to the licensee by the department in accordance with the agreement. [1982 c 161 § 6.]

**82.41.070 Audits.** The agreement may require the department to perform audits of licensees, or persons required to be licensed, based in this state to determine whether motor fuel taxes to be collected under the agreement have been properly reported and paid to each state party to the agreement. The agreement may authorize other states to perform audits on licensees, or persons required to be licensed, based in their states on behalf of the state of Washington and forward the audit findings to the department. Such findings may be served upon the licensee or such other person

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in the same manner as audits performed by the department.

The agreement shall not preclude the department from auditing the records of any person who has used motor fuels in this state. Any licensee or person required to be licensed from whom the department has requested records shall make the records available at the location designated by the department or may request the department to audit such records at that licensee's or person's place of business. If the place of business is located outside this state, the department may require the licensee or such other person to reimburse the department for authorized per diem and travel expenses. [1982 c 161 § 7.]

**82.41.080 Investigatory power.** The department may initiate and conduct investigations as may be reasonably necessary to establish the existence of any alleged violations of or noncompliance with this chapter or any rules issued hereunder.

For the purpose of any investigation or proceeding under this chapter, the director or any officer designated by the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the director deems relevant or material to the inquiry.

In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the director, may issue to that person an order requiring him to appear before the director, or the officer designated by the director, to produce testimony or other evidence touching the matter under investigation or in question. The failure to obey an order of the court may be punishable by contempt. [1982 c 161 § 8.]

**82.41.090 Appeal procedures.** The agreement shall specify procedures by which a licensee may appeal a license revocation or audit assessment by the department. Such appeal procedures shall be in accordance with chapters 34.05 and 82.38 RCW. [1982 c 161 § 9.]

**82.41.100 Exchange of information.** The agreement may require each state to forward to other states any information available which relates to the acquisition, sale, use, or movement of motor fuels by any licensee or person required to be licensed. The department may further disclose to other states information which relates to the persons, offices, motor vehicles and other real and personal property of persons licensed or required to be licensed under the agreement. [1982 c 161 § 10.]

**82.41.110 Construction and application.** This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it for the purpose of participating in a multistate motor fuel tax agreement. [1982 c 161 § 11.]

**82.41.120 Implementing rules required.** The department shall adopt such rules as are necessary to implement this

chapter and any agreement entered into under this chapter. [1982 c 161 § 12.]

**Chapter 82.42 RCW  
AIRCRAFT FUEL TAX**

## Sections

82.42.010	Definitions.
82.42.020	Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability.
82.42.030	Exemptions.
82.42.040	Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement.
82.42.050	Failure of distributor to file report or statement—Determination by director of amount sold, delivered or used—Basis for tax assessment—Penalty—Records public.
82.42.060	Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.070, 82.36.110 through 82.36.140 made applicable.
82.42.070	Imports, exports, sales to United States government exempted—Procedure—Sales to state or political subdivisions not exempt—Refund procedures.
82.42.080	Violations—Penalty.
82.42.090	Tax proceeds—Disposition—Aeronautics account.
82.42.100	Enforcement.
82.42.110	Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement.
82.42.120	Mitigation of assessments.
82.42.125	Bankruptcy proceedings—Notice.
82.42.900	Severability—1967 ex.s. c 10.

**82.42.010 Definitions.** For the purposes of this chapter:

- (1) "Department" means the department of licensing;
- (2) "Director" means the director of licensing;
- (3) "Person" means every natural person, firm, partnership, association, or private or public corporation;
- (4) "Aircraft" means every contrivance now known or hereafter invented, used or designed for navigation of or flight in the air, operated or propelled by the use of aircraft fuel;
- (5) "Aircraft fuel" means gasoline and any other inflammable liquid, by whatever name such liquid is known or sold, the chief use of which is as fuel for the propulsion of aircraft, except gas or liquid, the chief use of which as determined by the director, is for purposes other than the propulsion of aircraft;
- (6) "Dealer" means any person engaged in the retail sale of aircraft fuel;
- (7) "Distributor" means any person engaged in the sale of aircraft fuel to any dealer and shall include any dealer from whom the tax hereinafter imposed has not been collected;
- (8) "Weighted average retail sales price of aircraft fuel" means the average retail sales price, excluding any federal excise tax, of the several grades of aircraft fuel sold by dealers throughout the state (less any state excise taxes on the sale, distribution, or use thereof) upon which fuel the tax levied by this chapter has been collected, weighted to reflect the quantities sold at each price;
- (9) "Fiscal half-year" means a six-month period ending June 30th or December 31st;
- (10) "Local service commuter" means an air taxi operator who operates at least five round-trips per week between two or more points; publishes flight schedules which specify the times, days of the week, and points between which it

operates; and whose aircraft has a maximum capacity of sixty passengers or eighteen thousand pounds of useful load. [1983 c 49 § 1; 1982 1st ex.s. c 25 § 1; 1979 c 158 § 229; 1969 ex.s. c 254 § 1; 1967 ex.s. c 10 § 1.]

**Effective date—1983 c 49:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1983." [1983 c 49 § 3.]

**Severability—1982 1st ex.s. c 25:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 25 § 11.]

**Effective date—1982 1st ex.s. c 25:** "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1982." [1982 1st ex.s. c 25 § 12.]

**Effective date—1969 ex.s. c 254:** "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 254 § 7.]

**82.42.020 Aircraft fuel tax imposed—Exception—Rate to be computed—Misappropriation or conversion—Penalties, liability.** There is hereby levied, and there shall be collected by every distributor of aircraft fuel, an excise tax at the rate of eleven cents on each gallon of aircraft fuel sold, delivered, or used in this state: PROVIDED HOWEVER, That such aircraft fuel excise tax shall not apply to fuel for aircraft that both operate from a private, non-state-funded airfield during at least ninety-five percent of the aircraft's normal use and are used principally for the application of pesticides, herbicides, or other agricultural chemicals and shall not apply to fuel for emergency medical air transport entities: PROVIDED FURTHER, That there shall be collected from every consumer or user of aircraft fuel either the use tax imposed by RCW 82.12.020, as amended, or the retail sales tax imposed by RCW 82.08.020, as amended, collection procedure to be as prescribed by law and/or rule or regulation of the department of revenue. The taxes imposed by this chapter shall be collected and paid to the state but once in respect to any aircraft fuel.

The tax required by this chapter, to be collected by the seller, is held in trust by the seller until paid to the department, and a seller who appropriates or converts the tax collected to his or her own use or to any use other than the payment of the tax to the extent that the money required to be collected is not available for payment on the due date as prescribed in this chapter is guilty of a felony, or gross misdemeanor in accordance with the theft and anticipatory provisions of Title 9A RCW. A person, partnership, corporation, or corporate officer who fails to collect the tax imposed by this section, or who has collected the tax and fails to pay it to the department in the manner prescribed by this chapter, is personally liable to the state for the amount of the tax. [2005 c 341 § 3; 2003 c 375 § 5; 1996 c 104 § 13; 1982 1st ex.s. c 25 § 2; 1969 ex.s. c 254 § 2; 1967 ex.s. c 10 § 2.]

**Effective date—2005 c 341:** See note following RCW 47.68.230.

**Effective date—2003 c 375:** See note following RCW 47.68.240.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.030 Exemptions.** (1) The provision of RCW 82.42.020 imposing the payment of an excise tax on each gallon of aircraft fuel sold, delivered or used in this state shall

not apply to aircraft fuel sold for export, nor to aircraft fuel used for the following purposes: (a) The operation of aircraft when such use is by any air carrier or supplemental air carrier operating under a certificate of public convenience and necessity under the provisions of the Federal Aviation Act of 1958, Public Law 85-726, as amended; (b) the operation of aircraft for testing or experimental purposes; (c) the operation of aircraft when such operation is for the training of crews in Washington state for purchasers of aircraft who are certified air carriers; and (d) the operation of aircraft in the operations of a local service commuter: PROVIDED, That the director's determination as to a particular activity for which aircraft fuel is used as being an exemption under this section, or otherwise, shall be final.

(2) To claim an exemption on account of sales by a licensed distributor of aircraft fuel for export, the purchaser shall obtain from the selling distributor, and such selling distributor must furnish the purchaser, an invoice giving such details of the sale for export as the director may require, copies of which shall be furnished the department and the entity of the state or foreign jurisdiction of destination which is charged by the laws of that state or foreign jurisdiction with the control or monitoring or both, of the sales or movement of aircraft fuel in that state or foreign jurisdiction.

(3) For the purposes of this section, "air carrier" means an airline, air cargo carrier, air taxi, air commuter, or air charter operator, that provides routine air service to the general public for compensation or hire, and operates at least fifteen round-trips per week between two or more points and publishes flight schedules which specify the times, days of the week, and points between which it operates. Where it is doubtful that an operation is for "compensation or hire," the test applied is whether the air service is merely incidental to the person's other business or is, in itself, a major enterprise for profit. [2005 c 341 § 4; 1989 c 193 § 4; 1982 1st ex.s. c 25 § 4; 1967 ex.s. c 10 § 3.]

**Effective date—2005 c 341:** See note following RCW 47.68.230.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.040 Collection of tax—Procedure—Licensing—Surety bond or other security—Records, reports, statements—Extensions during state of emergency—Application—Investigation—Fee—Penalty for false statement.** The director shall by rule and regulation adopted as provided in chapter 34.05 RCW (Administrative Procedure Act) set up the necessary administrative procedure for collection by the department of the aircraft fuel excise tax as provided for in RCW 82.42.020, placing the responsibility of collection of said tax upon every distributor of aircraft fuel within the state; he may require the licensing of every distributor of aircraft fuel and shall require such a corporate surety bond or security of any distributor or person not otherwise bonded under provisions of chapter 82.36 RCW as is provided for distributors of motor vehicle fuel under RCW 82.36.060; he shall provide such forms and may require such reports or statements as in his determination shall be necessary for the proper administration of this chapter. The director may require such records to be kept, and for such periods of time, as deemed necessary for the administration of this chapter, which records shall be available at all times for the

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director or his representative who may require a statement under oath as to the contents thereof. During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing any report or the due date for tax remittances as the director deems proper.

Every application for a distributor's license must contain the following information to the extent it applies to the applicant:

(1) Proof as the department may require concerning the applicant's identity, including but not limited to his or her fingerprints or those of the officers of a corporation making the application;

(2) The applicant's form and place of organization including proof that the individual, partnership, or corporation is licensed to do business in this state;

(3) The qualification and business history of the applicant and any partner, officer, or director;

(4) The applicant's financial condition or history including a bank reference and whether the applicant or any partner, officer, or director has ever been adjudged bankrupt or has an unsatisfied judgment in a federal or state court;

(5) Whether the applicant has been adjudged guilty of a crime that directly relates to the business for which the license is sought and the time elapsed since the conviction is less than ten years, or has suffered a judgment within the preceding five years in a civil action involving fraud, misrepresentation, or conversion and in the case of a corporation or partnership, all directors, officers, or partners.

After receipt of an application for a license, the director may conduct an investigation to determine whether the facts set forth are true. The director may require a fingerprint record check of the applicant through the Washington state patrol criminal identification system and the federal bureau of investigation before issuance of a license. The results of the background investigation including criminal history information may be released to authorized department personnel as the director deems necessary. The department shall charge a license holder or license applicant a fee of fifty dollars for each background investigation conducted.

An applicant who makes a false statement of a material fact on the application may be prosecuted for false swearing as defined by RCW 9A.72.040. [2008 c 181 § 507; 1996 c 104 § 14; 1982 1st ex.s. c 25 § 5; 1969 ex.s. c 254 § 3; 1967 ex.s. c 10 § 4.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.050 Failure of distributor to file report or statement—Determination by director of amount sold, delivered or used—Basis for tax assessment—Penalty—Records public.** Should any distributor fail to file any report or statement, as shall be required by rule and regulation of the director, showing the total number of gallons of aircraft fuel sold, delivered or used by a distributor within the state during the preceding calendar month, the director shall proceed forthwith to determine from the best available sources such amount and said determination shall be presumed to be cor-

rect for that period, until proved by competent evidence to be otherwise. The director shall immediately assess the excise tax in the amount so determined, adding thereto a penalty of ten percent for failure to report. Such penalty shall be cumulative of other penalties herein provided. All statements or reports required to be filed with the director as required in this section shall be public records. [1969 ex.s. c 254 § 4; 1967 ex.s. c 10 § 5.]

**82.42.060 Payment of tax—Penalty for delinquency—Enforcement of collection—Provisions of RCW 82.36.040, 82.36.070, 82.36.110 through 82.36.140 made applicable.** The amount of aircraft fuel excise tax imposed under RCW 82.42.020 for each month shall be paid to the director on or before the twenty-fifth day of the month thereafter, and if not paid prior thereto, shall become delinquent at the close of business on that day, and a penalty of ten percent of such excise tax must be added thereto for delinquency. Any aircraft fuel tax, penalties, and interest payable under the provisions of this chapter shall bear interest at the rate of one percent per month, or fraction thereof, from the first day of the calendar month after the close of the monthly period for which the amount or any portion thereof should have been paid until the date of payment. RCW 82.36.070 applies to the issuance, refusal, or revocation of a license issued under this chapter. The provisions of RCW 82.36.110 relating to a lien for taxes, interests or penalties due, shall be applicable to the collection of the aircraft fuel excise tax provided in RCW 82.42.020, and the provisions of RCW 82.36.120, 82.36.130 and 82.36.140 shall apply to any distributor of aircraft fuel with respect to the aircraft fuel excise tax imposed under RCW 82.42.020. Payment credits shall not be carried forward and applied to subsequent tax returns. [1997 c 183 § 12; 1996 c 104 § 15; 1969 ex.s. c 254 § 5; 1969 c 139 § 4; 1967 ex.s. c 10 § 6.]

**82.42.070 Imports, exports, sales to United States government exempted—Procedure—Sales to state or political subdivisions not exempt—Refund procedures.** The provisions of RCW 82.42.020 requiring the payment of an aircraft fuel excise tax on aircraft fuel shall not apply to aircraft fuel imported into the state in interstate or foreign commerce and intended to be sold while in interstate or foreign commerce, nor to aircraft fuel exported from this state, nor to aircraft fuel sold to the United States government or any agency thereof. PROVIDED, That exemptions granted under this section shall be null and void unless full conformance is made with the requisite administrative procedure set forth for procuring such exemptions under rules and regulations of the director promulgated under the provisions of this chapter. Except as provided in RCW 82.42.030, nothing in this chapter shall be construed to exempt the state or any political subdivision thereof from the payment of the aircraft excise fuel tax provided in RCW 82.42.020. When setting up rules and regulations as provided for in RCW 82.42.040, the director shall provide for such refund procedure as deemed necessary to carry out the provisions of this chapter, and full compliance with such provisions shall be essential before receipt of any refund thereunder. [1982 1st ex.s. c 25 § 6; 1971 ex.s. c 156 § 4; 1967 ex.s. c 10 § 7.]

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.080 Violations—Penalty.** Any person violating any provision of this chapter or any rule or regulation of the director promulgated hereunder, or making any false statement, or concealing any material fact in any report, statement, record or claim, or who commits any act with intent to avoid payment of the aircraft fuel excise tax imposed by this chapter, or who conspires with another person with intent to interfere with the orderly collection of such tax due and owing under this chapter, is guilty of a gross misdemeanor. [1996 c 104 § 16; 1982 1st ex.s. c 25 § 7; 1967 ex.s. c 10 § 8.]

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.090 Tax proceeds—Disposition—Aeronautics account.** All moneys collected by the director from the aircraft fuel excise tax as provided in RCW 82.42.020 shall be transmitted to the state treasurer and shall be credited to the aeronautics account hereby created in the transportation fund of the state treasury. Moneys collected from the consumer or user of aircraft fuel from either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020 shall be transmitted to the state treasurer and credited to the state general fund. [1995 c 170 § 1; 1991 sp.s. c 13 § 37; 1985 c 57 § 86; 1982 1st ex.s. c 25 § 8; 1967 ex.s. c 10 § 9.]

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

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

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.100 Enforcement.** The director is charged with the enforcement of the provisions of this chapter and rules and regulations promulgated hereunder. The director may, in his discretion, call on the state patrol or any peace officer in the state, who shall then aid in the enforcement of this chapter or any rules or regulations promulgated hereunder. [1967 ex.s. c 10 § 10.]

**82.42.110 Tax upon persons other than distributors—Imposition—Collection—Distribution—Enforcement.** Every person other than a distributor who acquires any aircraft fuel within this state upon which payment of tax is required under the provisions of this chapter, or imports such aircraft fuel into this state and sells, delivers, or in any manner uses it in this state shall, if the tax has not been paid, be subject to the provisions of RCW 82.42.040 provided for distributors and shall pay a tax at the rate computed under \*RCW 82.42.025 for each gallon thereof so sold, delivered, or used in the manner provided for distributors. The proceeds of the tax imposed by this section shall be distributed in the manner provided for the distribution of the aircraft fuel tax in RCW 82.42.090. For failure to comply with the terms of this chapter, such person shall be subject to the same penalties imposed upon distributors. The director shall pursue against such persons the same procedure and remedies for audits, adjustments, collection, and enforcement of this chapter as is provided with respect to distributors. Nothing herein shall be

construed as classifying such persons as distributors. [1982 1st ex.s. c 25 § 9; 1971 ex.s. c 156 § 5.]

**\*Reviser's note:** RCW 82.42.025 was repealed by 2003 c 375 § 6, effective July 1, 2003.

**Severability—Effective date—1982 1st ex.s. c 25:** See notes following RCW 82.42.010.

**82.42.120 Mitigation of assessments.** Except in the case of violations of filing a false or fraudulent report, if the department deems mitigation of penalties and interest to be reasonable and in the best interests of carrying out the purpose of this chapter, it may mitigate such assessments upon whatever terms the department deems proper, giving consideration to the degree and extent of the lack of records and reporting errors. The department may ascertain the facts regarding recordkeeping and payment penalties in lieu of more elaborate proceedings under this chapter. [1991 c 339 § 8.]

**82.42.125 Bankruptcy proceedings—Notice.** An aircraft fuel licensee, who files or against whom is filed a petition in bankruptcy, shall, within ten days of the filing, notify the department of the proceedings in bankruptcy, including the identity and location of the court in which the proceedings are pending. [1997 c 183 § 11.]

**82.42.900 Severability—1967 ex.s. c 10.** If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 10 § 11.]

## Chapter 82.44 RCW

### MOTOR VEHICLE EXCISE TAX

#### Sections

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*Boat trailer fee:* RCW 46.16.670.

*Constitutional limitations on certain taxes, highway funds:* State Constitution Art. 2 § 40.

*Highway user tax structure:* Chapter 46.85 RCW.

*Nonresident members of armed forces, exemption from motor vehicle excise tax:* RCW 46.16.480.

*Reciprocal or proportional registration of vehicles:* Chapter 46.85 RCW.

*"Registration year," defined—"Last day of the month," defined:* RCW 46.16.006.

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**82.44.010 Definitions.** For the purposes of this chapter, unless [the] context otherwise requires:

(1) "Department" means the department of licensing.

(2) "Motor vehicle" means all motor vehicles, trailers and semitrailers used, or of the type designed primarily to be used, upon the public streets and highways, for the convenience or pleasure of the owner, or for the conveyance, for hire or otherwise, of persons or property, including fixed loads and facilities for human habitation; but shall not include (a) vehicles carrying exempt licenses, (b) dock and warehouse tractors and their cars or trailers, lumber carriers of the type known as spiders, and all other automotive equipment not designed primarily for use upon public streets, or highways, (c) motor vehicles or their trailers used entirely upon private property, (d) mobile homes and travel trailers as defined in RCW 82.50.010, or (e) motor vehicles owned by nonresident military personnel of the armed forces of the United States stationed in the state of Washington provided personnel were also nonresident at the time of their entry into military service.

(3) "Truck-type power or trailing unit" means any vehicle that is subject to the fees under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, \*46.16.080, 46.16.085, or 46.16.090. [1990 c 42 § 301; 1979 c 107 § 10; 1971 ex.s. c 299 § 54; 1967 c 121 § 4; 1963 c 199 § 1; 1961 c 15 § 82.44.010. Prior: 1957 c 269 § 18; 1955 c 264 § 1; 1945 c 152 § 1; 1943 c 144 § 1; Rem. Supp. 1945 § 6312-115.]

**Reviser's note:** (1) Restored to the RCW November 1, 2000, under the Washington Supreme Court decision in *Amalgamated Transit Union Local 587 et al v. The State of Washington*, 142 Wash.2d 183 (2000), which declared Initiative Measure No. 695 (2000 c 1) unconstitutional in its entirety.

\* (2) RCW 46.16.080 was repealed by 1994 c 262 § 28, effective July 1, 1994.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.44.015 Ride-sharing passenger motor vehicles excluded—Notice—Liability for tax.** For the purposes of this chapter, in addition to the exclusions under RCW 82.44.010, "motor vehicle" shall not include passenger motor vehicles used primarily for commuter ride sharing and ride sharing for persons with special transportation needs, as defined in RCW 46.74.010. The registered owner of one of these vehicles shall notify the department of licensing upon termination of primary use of the vehicle in commuter ride sharing or ride sharing for persons with special transportation needs and shall be liable for the tax imposed by this chapter, prorated on the remaining months for which the vehicle is licensed.

To qualify for the tax exemption, those passenger motor vehicles with five or six passengers, including the driver, used for commuter ride-sharing, must be operated either within the state's eight largest counties that are required to develop commute trip reduction plans as directed by chapter 70.94 RCW or in other counties, or cities and towns within those counties, that elect to adopt and implement a commute trip reduction plan. Additionally at least one of the following conditions must apply: (1) The vehicle must be operated by

a public transportation agency for the general public; or (2) the vehicle must be used by a major employer, as defined in RCW 70.94.524 as an element of its commute trip reduction program for their employees; or (3) the vehicle must be owned and operated by individual employees and must be registered either with the employer as part of its commute trip reduction program or with a public transportation agency serving the area where the employees live or work. Individual employee owned and operated motor vehicles will require certification that the vehicle is registered with a major employer or a public transportation agency. Major employers who own and operate motor vehicles for their employees must certify that the commuter ride-sharing arrangement conforms to a carpool/vanpool element contained within their commute trip reduction program. [1996 c 244 § 7; 1993 c 488 § 3; 1982 c 142 § 1; 1980 c 166 § 3.]

**Reviser’s note:** See note following RCW 82.44.010.

**Finding—Annual recertification rule—Report—1993 c 488:** See notes following RCW 82.08.0287.

**Severability—1980 c 166:** See note following RCW 82.08.0287.

*Ride-sharing vehicles—Special plates:* RCW 46.16.023.

**82.44.035 Valuation of vehicles.** (1) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	67
4	55
5	45
6	37
7	30
8	25
9	20
10	16
11	13
12	11
13	9
14	7
15	3
16 or older	0

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining any locally imposed motor vehicle excise tax, the value of a motor vehicle other than a truck-type power or trailing unit shall be eighty-five percent of the manufacturer’s base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection (3) based on year of service of the vehicle.

If the manufacturer’s base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer’s base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model. The value determined in this subsection (3)(a) shall be divided by the applicable percentage listed in (b) of this subsection (3) to establish a value equivalent to a manufacturer’s base suggested retail price and this value shall be multiplied by eighty-five percent.

(b) The year the vehicle is offered for sale as a new vehicle shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	81
3	72
4	63
5	55
6	47
7	41
8	36
9	32
10	27
11	26
12	24
13	23
14	21
15	16
16 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a person with a disability. [2006 c 318 § 1.]

**82.44.060 Payment of tax based on registration year—Transfer of ownership.** Any locally imposed excise tax shall be due and payable to the department or its agents at the time of registration of a motor vehicle. Whenever an application is made to the department or its agents for a license for a motor vehicle there shall be collected, in addition to the amount of the license fee or renewal license fee, the amount of any locally imposed excise tax, and no dealer's license or license plates, and no license or license plates for a motor vehicle shall be issued unless such tax is paid in full. Locally imposed excise taxes shall be collected for each registration year. Any locally imposed excise tax upon a motor vehicle licensed for the first time in this state shall be levied for one full registration year commencing on the date of the calendar year designated by the department and ending on the same date of the next succeeding calendar year. For vehicles registered under chapter 46.87 RCW, proportional registration, and for vehicle dealer plates issued under chapter 46.70 RCW, the registration year is the period provided in those chapters. However, the tax shall in no case be less than two dollars except for proportionally registered vehicles.

A motor vehicle shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year immediately preceding the registration year in which the application for license is made or when the vehicle has been registered in another jurisdiction subsequent to any prior registration in this state.

No additional tax shall be imposed under this chapter upon any vehicle upon the transfer of ownership thereof if the tax imposed with respect to such vehicle has already been paid for the registration year or fraction of a registration year in which transfer of ownership occurs. [2006 c 318 § 3; 1990 c 42 § 304; 1981 c 222 § 12; 1979 c 158 § 233; 1975-'76 2nd ex.s. c 54 § 2; 1975 1st ex.s. c 118 § 14; 1963 c 199 § 4; 1961 c 15 § 82.44.060. Prior: 1957 c 269 § 15; 1955 c 139 § 25; 1943 c 144 § 6; Rem. Supp. 1943 § 6312-120; prior: 1937 c 228 § 5.]

**Reviser's note:** See note following RCW 82.44.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Effective date—1975-'76 2nd ex.s. c 54:** "This 1976 amendatory act shall take effect on January 1, 1977." [1975-'76 2nd ex.s. c 54 § 3.]

**Effective date—Severability—1975 1st ex.s. c 118:** See notes following RCW 46.16.006.

**82.44.065 Appeal of valuation.** If the department determines a value for a motor vehicle equivalent to a manufacturer's base suggested retail price or the value of a truck-type power or trailing unit under RCW 82.44.035, any person who pays a locally imposed tax for that vehicle may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.44.120. [2006 c 318 § 5; 1990 c 42 § 305.]

**Reviser's note:** See note following RCW 82.44.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**82.44.090 Penalty for issuing plates without collecting tax.** It shall be unlawful for the county auditor or any

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other person to issue a dealer's license or dealer's license plates or a license or identification plates with respect to any motor vehicle without collecting, with the required license fee, the amount of any locally imposed motor vehicle excise tax due. Any violation of this section shall constitute a gross misdemeanor. [2006 c 318 § 6; 1961 c 15 § 82.44.090. Prior: 1943 c 144 § 8; Rem. Supp. 1943 § 6312-122; prior: 1937 c 228 § 7.]

**Reviser's note:** See note following RCW 82.44.010.

**82.44.100 Tax receipt.** The county auditor shall give to each person paying a locally imposed motor vehicle excise tax a receipt therefor which shall sufficiently designate and identify the vehicle with respect to which the tax is paid. The receipt may be incorporated in the receipt given for the motor vehicle license fee or dealer's license fee paid. [2006 c 318 § 7; 1961 c 15 § 82.44.100. Prior: 1943 c 144 § 9; Rem. Supp. 1943 § 6312-123; prior: 1937 c 228 § 8.]

**Reviser's note:** See note following RCW 82.44.010.

**82.44.120 Refunds, collections of erroneous amounts—Claims—False statement, penalty.** (1) Whenever any person has paid a motor vehicle license fee, and together therewith has paid a locally imposed excise tax, and the director determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under the provisions of this chapter. In case the director determines that any person is entitled to a refund of only a part of the license fee so paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected.

(2) In case no claim is to be made for the refund of the license fee or any part thereof, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that such person is entitled to a refund in such amount.

(3) In any case where due to error, a person has been required to pay an excise tax pursuant to this chapter and a vehicle license fee pursuant to Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, regardless of whether or not a refund of the overpayment has been requested. Conversely, if due to error, the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax.

(4) Any claim for refund of an erroneously excessive amount of excise tax or overpayment of excise tax with a motor vehicle license fee must be filed with the director within three years after the claimed erroneous payment was made.

(5) If the department approves the claim it shall notify the state treasurer to that effect, and the treasurer shall make such approved refunds from the general fund and shall mail or deliver the same to the person entitled thereto.

(6) Any person making any false statement under which he or she obtains any amount of refund to which he or she is not entitled under the provisions of this section is guilty of a gross misdemeanor.

(7) Before a local government subject to this chapter may impose a motor vehicle excise tax, the local government shall contract with the department for reimbursement for any refunds paid to a person by the treasurer. [2006 c 318 § 8; 2003 c 53 § 403; 1993 c 307 § 3; 1990 c 42 § 307; 1989 c 68 § 2; 1983 c 26 § 3; 1979 c 120 § 2; 1975 1st ex.s. c 278 § 95; 1974 ex.s. c 54 § 4; 1967 c 121 § 2; 1963 c 199 § 5; 1961 c 15 § 82.44.120. Prior: 1949 c 196 § 18; 1945 c 152 § 3; 1943 c 144 § 11; Rem. Supp. 1949 § 6312-125.]

**Reviser's note:** See note following RCW 82.44.010.

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

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Severability—Effective dates—1974 ex.s. c 54:** See notes following RCW 82.48.080.

**82.44.135 Local government must contract with department of licensing.** Before a local government subject to this chapter may impose a motor vehicle excise tax, the local government must contract with the department for the collection of the tax. The department may charge a reasonable amount, not to exceed one percent of tax collections, for the administration and collection of the tax. [2006 c 318 § 9.]

**82.44.140 Director of licensing may act.** Any duties required by this chapter to be performed by the county auditor may be performed by any other person designated by the director of licensing and authorized by him to receive motor vehicle license fees and issue receipt therefor. [1979 c 158 § 237; 1967 c 121 § 3; 1961 c 15 § 82.44.140. Prior: 1943 c 144 § 13; Rem. Supp. 1943 § 6312-127.]

**Reviser's note:** See note following RCW 82.44.010.

**82.44.180 Transportation fund—Deposits and distributions.** (1) The transportation fund is created in the state treasury. Revenues under RCW \*82.44.110 and 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

(2) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under \*RCW 82.44.150(2) (b) and (c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems as defined by chapters 36.56, 36.57, and 36.57A RCW and RCW 35.84.060 and 81.112.030, and the Washington state ferry system, solely for:

- (a) Planning;
- (b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets;

(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources; and

(g) Reimbursement to the general fund of tax credits authorized under \*\*RCW 82.04.4453 and 82.16.048, subject to appropriation. [1999 c 402 § 5; 1999 c 94 § 31; 1998 c 321 § 41 (Referendum Bill No. 49, approved November 3, 1998); 1995 c 269 § 2601. Prior: 1993 sp.s. c 23 § 64; 1993 c 393 § 1; 1991 c 199 § 224; 1990 c 42 § 312.]

**Reviser's note:** (1) See note following RCW 82.44.010.

\* (2) RCW 82.44.110 and 82.44.150 were repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

\*\* (3) RCW 82.04.4453 and 82.16.048 were repealed by 2002 c 203 § 9, effective January 1, 2003. RCW 82.04.4453 and 82.16.048 were subsequently repealed by 2003 c 364 § 10, effective July 1, 2003.

(4) This section was amended by 1999 c 94 § 31 and by 1999 c 402 § 5, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Legislative finding—Effective dates—1999 c 94:** See notes following RCW 43.84.092.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 35.58.410.

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Effective dates—1993 sp.s. c 23:** See note following RCW 43.89.010.

**Effective date—1993 c 393:** See RCW 47.66.900.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**82.44.190 Transportation infrastructure account—Deposits and distributions—Subaccounts.** The transportation infrastructure account is hereby created in the transportation fund. Public and private entities may deposit moneys in the transportation infrastructure account from federal, state, local, or private sources. Proceeds from bonds or other financial instruments sold to finance surface transportation projects from the transportation infrastructure account shall be deposited into the account. Principal and interest payments made on loans from the transportation infrastructure account shall be deposited into the account. Moneys in the account shall be available for purposes specified in RCW 82.44.195. Expenditures from the transportation infrastructure account shall be subject to appropriation by the legislature. To the extent required by federal law or regulations promulgated by the United States secretary of transportation, the state treasurer is authorized to create separate subaccounts within the transportation infrastructure account. [1996 c 262 § 2.]

**Effective date—1996 c 262:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [March 29, 1996]. [1996 c 262 § 5.]

**82.44.195 Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262.** The legislature finds that new financing mechanisms are necessary to provide greater flexibility and additional funds for needed transportation infrastructure projects in the state. The creation of a financing mechanism, like the one contained in section 350 of the national highway system designation act of 1995, P.L. 104-59, relating to a state infrastructure bank program, will enable the state and local jurisdictions to use federal, state, local, or private funds to construct surface transportation projects for various modes of transportation. It is the intent of the legislature that accounts be created in the state treasury and dedicated funding sources be established to generate revenue to support transportation projects financed with the proceeds of bonds or other financial instruments issued against this dedicated revenue and other revenues which may be available to these accounts. P.L. 104-59 allows the deposit of certain federal highway and transit funds into these accounts to leverage other forms of investment in transportation infrastructure by expanding the eligible uses of the federal funds. Other public and private entities may also deposit funds into these accounts to leverage transportation investments. The purpose of chapter 262, Laws of 1996 is to provide, from these accounts, authorization for loans, grants, or other means of assistance, in amounts equal to all or part of the cost, to public or private entities building surface transportation facilities in this state. It is the further intent of the legislature that projects representing critical mobility or economic development needs and involving various transportation modes and jurisdictions receive top priority in the use of these funds. Funds from the accounts created in chapter 262, Laws of 1996 may be used to support the issuance of public or private debt, to provide credit enhancement for such debt, for direct loans to public or private entities, or for other purposes necessary to facilitate investment in surface transportation facilities in this state. [1996 c 262 § 1.]

**Effective date—1996 c 262:** See note following RCW 82.44.190.

**82.44.900 Severability—Construction—1961 c 15.** If any provision of this chapter relating either to the apportionment or allocation of the revenue derived from the excise tax thereby imposed, or to any appropriation made by this chapter, be adjudged unconstitutional, such adjudication shall not be held to render unconstitutional or ineffectual the remaining portions of said chapter or any part thereof: PROVIDED, HOWEVER, That except as otherwise hereinabove provided by this section, if any section or part of a section of this chapter be adjudged unconstitutional, this entire chapter shall thereupon be and become inoperative and of no force or effect whatsoever. [1961 c 15 § 82.44.900. Prior: 1943 c 144 § 17; Rem. Supp. 1943 § 6312-131.]

**Reviser's note:** See note following RCW 82.44.010.

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## Chapter 82.45 RCW

### EXCISE TAX ON REAL ESTATE SALES

#### Sections

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82.45.070	Tax is lien on property—Enforcement.
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82.45.090	Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest.
82.45.100	Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.
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82.45.180	Disposition of proceeds.
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82.45.200	Real estate excise tax grant account.
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82.45.220	Failure to report transfer of controlling interest.
82.45.900	Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

**Savings—Audits, assessments, and refunds—Disposition of certain funds—1982 c 176; 1980 c 154:** "Chapter 154, Laws of 1980 shall not be construed as invalidating, abating, or otherwise affecting any existing right acquired or any liability or obligation incurred under the provisions of the statutes amended or repealed, nor any process, proceeding, or judgment involving the assessment of any property or the levy or collection of any tax thereunder, nor the validity of any certificate of delinquency, tax deed or other instrument of sale or other proceeding thereunder, nor any criminal or civil proceeding instituted thereunder, nor any rule, regulation or order promulgated thereunder, nor any administrative action taken thereunder: PROVIDED, That the department of revenue may conduct audits, make assessments, and grant refunds under RCW 82.45.100 and 82.45.150 with respect to any sale. Funds received by the county treasurer as payment of a tax liability incurred under a statute repealed by chapter 154, Laws of 1980 shall be paid and accounted for as provided in RCW 82.45.180." [1982 c 176 § 3; 1980 c 154 § 15.]

**Purpose—1980 c 154:** "It is the intent of this 1980 act to simplify the bookkeeping procedures for the state treasurer's office and for the school districts but not to impact the amount of revenues covered by this 1980 act to the various counties and other taxing districts." [1980 c 154 § 16.]

**Effective dates—1980 c 154:** "Sections 17, 18, and 19 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately. The remainder of this act shall take effect on September 1, 1981." [1980 c 154 § 20.]

**Severability—1980 c 154:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 154 § 21.]

**82.45.010 "Sale" defined.** (1) As used in this chapter, the term "sale" shall have its ordinary meaning and shall include any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing tim-

ber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of revenue shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department shall consider the following:

(a) Persons shall be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(b) When persons are not commonly owned or controlled, they shall be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions shall be considered separate acquisitions.

(3) The term "sale" shall not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(f) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(j) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made

pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(k) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(o) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner: PROVIDED, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (2) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes shall become due and payable on the original transfer as otherwise provided by law.

(p)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue Code of 1986, as amended.

(ii) However, the transfer described in (p)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (p)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(p)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive

cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(p)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(q) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018. [2008 c 116 § 3; 2008 c 6 § 701; 2000 2nd sp.s. c 4 § 26; 1999 c 209 § 2; 1993 sp.s. c 25 § 502; 1981 c 93 § 1; 1970 ex.s. c 65 § 1; 1969 ex.s. c 223 § 28A.45.010. Prior: 1955 c 132 § 1; 1953 c 94 § 1; 1951 2nd ex.s. c 19 § 1; 1951 1st ex.s. c 11 § 7. Formerly RCW 28A.45.010, 28.45.010.]

**Reviser's note:** This section was amended by 2008 c 6 § 701 and by 2008 c 116 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Findings—Intent—Severability—2008 c 116:** See notes following RCW 59.20.300.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Findings—Construction—2000 2nd sp.s. c 4 §§ 18-30:** See notes following RCW 81.112.300.

**Intent—1999 c 209:** "In chapter 25, Laws of 1993 sp. sess., the legislature found that transfer of ownership of entities can be equivalent to the sale of real property held by the entity. The legislature further found that all transfers of possession or use of real property should be subject to the same excise tax burdens.

The legislature intended to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1999 c 209 § 1.]

**Findings—Intent—1993 sp.s. c 25:** "(1) The legislature finds that transfers of ownership of entities may be essentially equivalent to the sale of real property held by the entity. The legislature further finds that all transfers of possession or use of real property should be subject to the same excise tax burdens.

(2) The legislature intends to apply the real estate excise tax of chapter 82.45 RCW to transfers of entity ownership when the transfer of entity ownership is comparable to the sale of real property. The legislature intends to equate the excise tax burdens on all sales of real property and transfers of entity ownership essentially equivalent to a sale of real property under chapter 82.45 RCW." [1993 sp.s. c 25 § 501.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Effective date—1981 c 93 § 2:** "Section 2 of this act shall take effect September 1, 1981." [1981 c 93 § 3.]

**Effective date—Severability—1970 ex.s. c 65:** See notes following RCW 82.03.050.

**82.45.020 "Seller" defined.** As used in this chapter the term "seller," unless otherwise indicated by the context, shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, copartnership, joint venture, club, company, joint stock company, business trust, municipal corporation, quasi municipal corporation, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise; but it shall not include the United States or the state of Washington. [1980 c 154 § 1; 1969 ex.s. c 223 § 28A.45.020. Prior: 1951 1st ex.s. c 11 § 6. Formerly RCW 28A.45.020, 28.45.020.]

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

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**82.45.030 "Selling price," "total consideration paid or contracted to be paid," defined.** (1) As used in this chapter, the term "selling price" means the true and fair value of the property conveyed. If property has been conveyed in an arm's length transaction between unrelated persons for a valuable consideration, a rebuttable presumption exists that the selling price is equal to the total consideration paid or contracted to be paid to the transferor, or to another for the transferor's benefit.

(2) If the sale is a transfer of a controlling interest in an entity with an interest in real property located in this state, the selling price shall be the true and fair value of the real property owned by the entity and located in this state. If the true and fair value of the real property located in this state cannot reasonably be determined, the selling price shall be determined according to subsection (4) of this section.

(3) As used in this section, "total consideration paid or contracted to be paid" includes money or anything of value, paid or delivered or contracted to be paid or delivered in return for the sale, and shall include the amount of any lien, mortgage, contract indebtedness, or other incumbrance, either given to secure the purchase price, or any part thereof, or remaining unpaid on such property at the time of sale.

Total consideration shall not include the amount of any outstanding lien or incumbrance in favor of the United States, the state, or a municipal corporation for taxes, special benefits, or improvements.

(4) If the total consideration for the sale cannot be ascertained or the true and fair value of the property to be valued at the time of the sale cannot reasonably be determined, the market value assessment for the property maintained on the county property tax rolls at the time of the sale shall be used as the selling price. [1993 sp.s. c 25 § 503; 1969 ex.s. c 223 § 28A.45.030. Prior: 1951 2nd ex.s. c 19 § 2; 1951 1st ex.s. c 11 § 8. Formerly RCW 28A.45.030, 28.45.030.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

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

(1) "Real estate" or "real property" means any interest, estate, or beneficial interest in land or anything affixed to land, including the ownership interest or beneficial interest in any entity which itself owns land or anything affixed to land. The term includes used mobile homes, used park model trailers, used floating homes, and improvements constructed upon leased land.

(2) "Used mobile home" means a mobile home which has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or which has been previously used and has been subjected to tax under chapter 82.12 RCW, and which has substantially lost its identity as a mobile unit at the time of sale by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe connections with sewer, water, and other utilities.

(3) "Mobile home" means a mobile home as defined by RCW 46.04.302, as now or hereafter amended.

(4) "Park model trailer" means a park model trailer as defined in RCW 46.04.622.

(5) "Used floating home" means a floating home in respect to which tax has been paid under chapter 82.08 or 82.12 RCW.

(6) "Used park model trailer" means a park model trailer that has been previously sold at retail and has been subjected to tax under chapter 82.08 RCW, or that has been previously used and has been subjected to tax under chapter 82.12 RCW, and that has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances.

(7) "Floating home" means a building on a float used in whole or in part for human habitation as a single-family dwelling, which is not designed for self propulsion by mechanical means or for propulsion by means of wind, and which is on the property tax rolls of the county in which it is located. [2001 c 282 § 2; 1993 sp.s. c 25 § 504; 1986 c 211 § 1; 1984 c 192 § 1; 1979 ex.s. c 266 § 1. Formerly RCW 28A.45.032.]

**Intent—Effective date—2001 c 282:** See notes following RCW 82.08.032.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**82.45.033 "Controlling interest" defined.** As used in this chapter, the term "controlling interest" has the following meaning:

(1) In the case of a corporation, either fifty percent or more of the total combined voting power of all classes of stock of the corporation entitled to vote, or fifty percent of the capital, profits, or beneficial interest in the voting stock of the corporation; and

(2) In the case of a partnership, association, trust, or other entity, fifty percent or more of the capital, profits, or beneficial interest in such partnership, association, trust, or other entity. [1993 sp.s. c 25 § 505.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**82.45.035 Determining selling price of leases with option to purchase—Mining property—Payment, security when selling price not separately stated.** The state department of revenue shall provide by rule for the determination of the selling price in the case of leases with option to purchase, and shall further provide that the tax shall not be payable, where inequity will otherwise result, until and unless the option is exercised and accepted. A conditional sale of mining property in which the buyer has the right to terminate the contract at any time, and a lease and option to buy mining property in which the lessee-buyer has the right to terminate the lease and option at any time, shall be taxable at the time of execution only on the consideration received by the seller or lessor for execution of such contract, but the rule shall further provide that the tax due on any additional con-

sideration paid by the buyer and received by the seller shall be paid to the county treasurer (1) at the time of termination, or (2) at the time that all of the consideration due to the seller has been paid and the transaction is completed except for the delivery of the deed to the buyer, or (3) at the time when the buyer unequivocally exercises an option to purchase the property, whichever of the three events occurs first.

The term "mining property" means property containing or believed to contain metallic minerals and sold or leased under terms which require the purchaser or lessor to conduct exploration or mining work thereon and for no other use. The term "metallic minerals" does not include clays, coal, sand and gravel, peat, gypsite, or stone, including limestone.

The state department of revenue shall further provide by rule for cases where the selling price is not separately stated or is not ascertainable at the time of sale, for the payment of the tax at a time when the selling price is ascertained, in which case suitable security may be required for payment of the tax, and may further provide for the determination of the selling price by an appraisal by the county assessor, based on the full and true market value, which appraisal shall be prima facie evidence of the selling price of the real property. [1969 ex.s. c 223 § 28A.45.035. Prior: 1967 ex.s. c 149 § 1; 1959 c 208 § 1; 1951 2nd ex.s. c 19 § 3. Formerly RCW 28A.45.035, 28.45.035.]

**82.45.060 Tax on sale of property.** There is imposed an excise tax upon each sale of real property at the rate of one and twenty-eight one-hundredths percent of the selling price. An amount equal to six and one-tenth percent of the proceeds of this tax to the state treasurer shall be deposited in the public works assistance account created in RCW 43.155.050. An amount equal to one and six-tenths percent of the proceeds of this tax to the state treasurer shall be deposited in the city-county assistance account created in RCW 43.08.290. [2005 c 450 § 1; 2000 c 103 § 15; 1987 c 472 § 14; 1983 2nd ex.s. c 3 § 20; 1982 1st ex.s. c 35 § 14; 1980 c 154 § 2; 1969 ex.s. c 223 § 28A.45.060. Prior: 1951 1st ex.s. c 11 § 5. Formerly RCW 28A.45.060, 28.45.060.]

**Effective date—2005 c 450:** "This act takes effect August 1, 2005." [2005 c 450 § 4.]

**Severability—1987 c 472:** See RCW 79.71.900.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Severability—Effective dates—1982 1st ex.s. c 35:** See notes following RCW 82.08.020.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

**82.45.070 Tax is lien on property—Enforcement.** The tax herein provided for and any interest or penalties thereon shall be a specific lien upon each piece of real property sold from the time of sale until the tax shall have been paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1969 ex.s. c 223 § 28A.45.070. Prior: 1951 1st ex.s. c 11 § 9. Formerly RCW 28A.45.070, 28.45.070.]

**82.45.080 Tax is seller's obligation—Choice of remedies.** The tax levied under this chapter shall be the obligation of the seller and the department of revenue may, at the depart-

ment's option, enforce the obligation through an action of debt against the seller or the department may proceed in the manner prescribed for the foreclosure of mortgages and resort to one course of enforcement shall not be an election not to pursue the other. [1980 c 154 § 3; 1969 ex.s. c 223 § 28A.45.080. Prior: 1951 1st ex.s. c 11 § 10. Formerly RCW 28A.45.080, 28.45.080.]

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

**82.45.090 Payment of tax and fee—Evidence of payment—Recording—Sale of beneficial interest.** (1) Except for a sale of a beneficial interest in real property where no instrument evidencing the sale is recorded in the official real property records of the county in which the property is located, the tax imposed by this chapter shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. In collecting the tax the treasurer shall act as agent for the state. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales and used floating home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter shall be evidence of the satisfaction of the lien imposed hereunder and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax shall be accepted by the county auditor for filing or recording until the tax shall have been paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be so accepted until suitable notation of such fact has been made on the instrument by the treasurer.

(2) For a sale of a beneficial interest in real property where a tax is due under this chapter and where no instrument is recorded in the official real property records of the county in which the property is located, the sale shall be reported to the department of revenue within five days from the date of the sale on such returns or forms and according to such procedures as the department may prescribe. Such forms or returns shall be signed by both the transferor and the transferee and shall be accompanied by payment of the tax due.

(3) Any person who intentionally makes a false statement on any return or form required to be filed with the department under this chapter is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 404; 1993 sp.s. c 25 § 506; 1991 c 327 § 6; 1990 c 171 § 7; 1984 c 192 § 2; 1980 c 154 § 4; 1979 ex.s. c 266 § 2; 1969 ex.s. c 223 § 28A.45.090. Prior: 1951 2nd ex.s. c 19 § 4; 1951 1st ex.s. c 11 § 11. Formerly RCW 28A.45.090, 28.45.090.]

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

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Effective date—1990 c 171 §§ 6, 7, 8:** "Sections 6, 7, and 8 of this act shall take effect July 1, 1990." [1990 c 171 § 11.]

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

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**82.45.100 Tax payable at time of sale—Interest, penalties on unpaid or delinquent taxes—Notice—Prohibition on certain assessments or refunds—Deposit of penalties.** (1) Payment of the tax imposed under this chapter is due and payable immediately at the time of sale, and if not paid within one month thereafter shall bear interest from the time of sale until the date of payment.

(a) Interest imposed before January 1, 1999, shall be computed at the rate of one percent per month.

(b) Interest imposed after December 31, 1998, shall be computed on a monthly basis at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year for use in computing interest for that calendar year. The department of revenue shall provide written notification to the county treasurers of the variable rate on or before December 1st of the year preceding the calendar year in which the rate applies.

(2) In addition to the interest described in subsection (1) of this section, if the payment of any tax is not received by the county treasurer or the department of revenue, as the case may be, within one month of the date due, there shall be assessed a penalty of five percent of the amount of the tax; if the tax is not received within two months of the date due, there shall be assessed a total penalty of ten percent of the amount of the tax; and if the tax is not received within three months of the date due, there shall be assessed a total penalty of twenty percent of the amount of the tax. The payment of the penalty described in this subsection shall be collectible from the seller only, and RCW 82.45.070 does not apply to the penalties described in this subsection.

(3) If the tax imposed under this chapter is not received by the due date, the transferee shall be personally liable for the tax, along with any interest as provided in subsection (1) of this section, unless:

(a) An instrument evidencing the sale is recorded in the official real property records of the county in which the property conveyed is located; or

(b) Either the transferor or transferee notifies the department of revenue in writing of the occurrence of the sale within thirty days following the date of the sale.

(4) If upon examination of any affidavits or from other information obtained by the department or its agents it appears that all or a portion of the tax is unpaid, the department shall assess against the taxpayer the additional amount found to be due plus interest and penalties as provided in subsections (1) and (2) of this section. The department shall notify the taxpayer by mail, or electronically as provided in RCW 82.32.135, of the additional amount and the same shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(5) No assessment or refund may be made by the department more than four years after the date of sale except upon a showing of:

(a) Fraud or misrepresentation of a material fact by the taxpayer;

(b) A failure by the taxpayer to record documentation of a sale or otherwise report the sale to the county treasurer; or

(c) A failure of the transferor or transferee to report the sale under RCW 82.45.090(2).

(6) Penalties collected on taxes due under this chapter under subsection (2) of this section and RCW 82.32.090 (2) through (7) shall be deposited in the housing trust fund as described in chapter 43.185 RCW. [2007 c 111 § 112; 1997 c 157 § 4; 1996 c 149 § 5; 1993 sp.s. c 25 § 507; 1988 c 286 § 5; 1982 c 176 § 1; 1981 c 167 § 2.]

**Part headings not law—2007 c 111:** See note following RCW 82.16.120.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Audits, assessments, and refunds—1982 c 176:** See note following chapter digest.

**Effective date—1981 c 167:** See note following RCW 82.45.150.

**82.45.105 Single family residential property, tax credit when subsequent transfer of within nine months for like property.** Where single family residential property is being transferred as the entire or part consideration for the purchase of other single family residential property and a licensed real estate broker or one of the parties to the transaction accepts transfer of said property, a credit for the amount of the tax paid at the time of the transfer to the broker or party shall be allowed toward the amount of the tax due upon a subsequent transfer of the property by the broker or party if said transfer is made within nine months of the transfer to the broker or party: PROVIDED, That if the tax which would be due on the subsequent transfer from the broker or party is greater than the tax paid for the prior transfer to said broker or party the difference shall be paid, but if the tax initially paid is greater than the amount of the tax which would be due on the subsequent transfer no refund shall be allowed. [1969 ex.s. c 223 § 28A.45.105. Prior: 1967 ex.s. c 149 § 61. Formerly RCW 28A.45.105, 28.45.105.]

**82.45.150 Applicability of general administrative provisions—Departmental rules, scope—Real estate excise tax affidavit form—Departmental audit.** All of chapter 82.32 RCW, except RCW 82.32.030, 82.32.050, 82.32.140, 82.32.270, and \*82.32.090 (1) and (8), applies to the tax imposed by this chapter, in addition to any other provisions of law for the payment and enforcement of the tax imposed by this chapter. The department of revenue shall by rule provide for the effective administration of this chapter. The rules shall prescribe and furnish a real estate excise tax affidavit form verified by both the seller and the buyer, or agents of each, to be used by each county, or the department, as the case may be, in the collection of the tax imposed by this chapter, except that an affidavit given in connection with grant of an easement or right-of-way to a gas, electrical, or telecommunications company, as defined in RCW 80.04.010, or to a public utility district or cooperative that distributes electricity, need be verified only on behalf of the company, district, or cooperative. The department of revenue shall annually conduct audits of transactions and affidavits filed under this chapter. [1996 c 149 § 6; 1994 c 137 § 1; 1993 sp.s. c 25 § 509; 1981 c 167 § 1; 1980 c 154 § 5.]

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\***Reviser's note:** RCW 82.32.090 was amended by 2003 1st sp.s. c 13 § 13, changing subsection (8) to subsection (9).

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Effective date—1981 c 167:** "This act shall take effect September 1, 1981." [1981 c 167 § 4.]

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

*Audits, assessments, and refunds:* See note following chapter digest.

**82.45.180 Disposition of proceeds.** (1)(a) For taxes collected by the county under this chapter, the county treasurer shall collect a five-dollar fee on all transactions required by this chapter where the transaction does not require the payment of tax. A total of five dollars shall be collected in the form of a tax and fee, where the calculated tax payment is less than five dollars. Through June 30, 2006, the county treasurer shall place one percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. After June 30, 2006, the county treasurer shall place one and three-tenths percent of the taxes collected by the county under this chapter and the treasurer's fee in the county current expense fund to defray costs of collection. For taxes collected by the county under this chapter before July 1, 2006, the county treasurer shall pay over to the state treasurer and account to the department of revenue for the proceeds at the same time the county treasurer remits funds to the state under RCW 84.56.280. For taxes collected by the county under this chapter after June 30, 2006, on a monthly basis the county treasurer shall pay over to the state treasurer the month's transmittal. The month's transmittal must be received by the state treasurer by 12:00 p.m. on the last working day of each month. The county treasurer shall account to the department for the month's transmittal by the twentieth day of the month following the month in which the month's transmittal was paid over to the state treasurer. The state treasurer shall deposit the proceeds in the general fund.

(b) For purposes of this subsection, the definitions in this subsection apply.

(i) "Close of business" means the time when the county treasurer makes his or her daily deposit of proceeds.

(ii) "Month's transmittal" means all proceeds deposited by the county through the close of business of the day that is two working days before the last working day of the month. This definition of "month's transmittal" shall not be construed as requiring any change in a county's practices regarding the timing of its daily deposits of proceeds.

(iii) "Proceeds" means moneys collected and receipted by the county from the taxes imposed by this chapter, less the county's share of the proceeds used to defray the county's costs of collection allowable in (a) of this subsection.

(iv) "Working day" means a calendar day, except Saturdays, Sundays, and all legal holidays as provided in RCW 1.16.050.

(2) For taxes collected by the department of revenue under this chapter, the department shall remit the tax to the state treasurer who shall deposit the proceeds of any state tax

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in the general fund. The state treasurer shall deposit the proceeds of any local taxes imposed under chapter 82.46 RCW in the local real estate excise tax account hereby created in the state treasury. Moneys in the local real estate excise tax account may be spent only for distribution to counties, cities, and towns imposing a tax under chapter 82.46 RCW. Except as provided in RCW 43.08.190, all earnings of investments of balances in the local real estate excise tax account shall be credited to the local real estate excise tax account and distributed to the counties, cities, and towns monthly. Monthly the state treasurer shall make distribution from the local real estate excise tax account to the counties, cities, and towns the amount of tax collected on behalf of each taxing authority. The state treasurer shall make the distribution under this subsection without appropriation.

(3)(a) The real estate excise tax electronic technology account is created in the custody of the state treasurer. An appropriation is not required for expenditures and the account is not subject to allotment procedures under chapter 43.88 RCW.

(b) Through June 30, 2010, the county treasurer shall collect an additional five-dollar fee on all transactions required by this chapter, regardless of whether the transaction requires the payment of tax. The county treasurer shall remit this fee to the state treasurer at the same time the county treasurer remits funds to the state under subsection (1) of this section. The state treasurer shall place money from this fee in the real estate excise tax electronic technology account. By the twentieth day of the subsequent month, the state treasurer shall distribute to each county treasurer according to the following formula: Three-quarters of the funds available shall be equally distributed among the thirty-nine counties; and the balance shall be ratably distributed among the counties in direct proportion to their population as it relates to the total state's population based on most recent statistics by the office of financial management.

(c) When received by the county treasurer, the funds shall be placed in a special real estate excise tax electronic technology fund held by the county treasurer to be used exclusively for the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits. Funds may be expended to make the system compatible with the automated real estate excise tax system developed by the department and compatible with the processes used in the offices of the county assessor and county auditor. Any funds held in the account that are not expended by July 1, 2015, revert to the county capital improvements fund in accordance with RCW 82.46.010. [2006 c 312 § 1. Prior: 2005 c 486 § 2; 2005 c 480 § 2; 1998 c 106 § 11; 1993 sp.s. c 25 § 510; 1991 c 245 § 15; 1982 c 176 § 2; 1981 c 167 § 3; 1980 c 154 § 6.]

**Effective date—Severability—2006 c 312:** See notes following RCW 82.45.210.

**Purpose—2005 c 486:** "Over the past decade, traditional school construction funding sources, such as timber revenues, have been declining, while the demand for school facility construction and improvements have been increasing. Washington's youth deserve safe, healthy, and supportive learning environments to help meet their educational needs. To increase state assistance for local school construction projects, the legislature expects to rely more on state bonding authority. The purpose of this act is to expand the constitutional definition of general state revenues by removing the dedication of a portion of the real estate excise tax for common schools. Nothing

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in this act is intended to affect the state's current efforts to support common schools in the state's omnibus appropriations act." [2005 c 486 § 1.]

**Intent—Findings—Effective date—2005 c 480:** See notes following RCW 82.45.210.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Audits, assessments, and refunds—1982 c 176:** See note following chapter digest.

**Effective date—1981 c 167:** See note following RCW 82.45.150.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter digest.

**82.45.190 Exemptions—State route No. 16 corridor transportation systems and facilities.** Sales of the state route number 16 corridor transportation systems and facilities constructed under chapter 47.46 RCW are exempt from tax under this chapter. [1998 c 179 § 7.]

**Finding—1998 c 179:** See note following RCW 35.21.718.

**82.45.195 Exemptions—Standing timber sales.** A sale of standing timber is exempt from tax under this chapter if the gross income from such sale is taxable under RCW 82.04.260(12)(d). [2007 c 48 § 7.]

**Effective date—2007 c 48:** See note following RCW 82.04.260.

**82.45.197 Exemptions—Inheritance—Documents required.** In order to receive an exemption from the tax in this chapter on real property transferred as a result of inheritance under RCW 82.45.010(3)(a), the following documentation must be provided:

(1) If the property is being transferred under the terms of a community property agreement, a copy of the recorded agreement and a certified copy of the death certificate;

(2) If the property is being transferred under the terms of a trust instrument, a certified copy of the death certificate and a copy of the trust instrument showing the authority of the grantor;

(3) If the property is being transferred under the terms of a probated will, a certified copy of the letters testamentary or in the case of intestate administration, a certified copy of the letters of administration showing that the grantor is the court-appointed executor, executrix, or administrator, and a certified copy of the death certificate;

(4) In the case of joint tenants with right of survivorship and remainder interests, a certified copy of the death certificate is recorded to perfect title;

(5) If the property is being transferred pursuant to a court order, a certified copy of the court order requiring the transfer, and confirming that the grantor is required to do so under the terms of the order; or

(6) If the community property interest of the decedent is being transferred to a surviving spouse or surviving domestic partner absent the documentation set forth in subsections (1) through (5) of this section, a certified copy of the death certificate and a signed affidavit from the surviving spouse or surviving domestic partner affirming that he or she is the sole and rightful heir to the property. [2008 c 269 § 1.]

**82.45.200 Real estate excise tax grant account.** (1) The real estate excise tax grant account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for grants authorized under RCW 82.45.210 in the manner provided for in RCW 82.45.210.

(2) Any funds remaining in the real estate excise tax grant account on July 1, 2010, shall be deposited in the general fund. [2005 c 480 § 3.]

**Intent—Findings—Effective date—2005 c 480:** See notes following RCW 82.45.210.

**82.45.210 State assistance for county electronic processing and reporting of taxes—Grant program.** (1) To the extent that funds are appropriated, the department shall administer a grant program for counties to assist in the development, implementation, and maintenance of an electronic processing and reporting system for real estate excise tax affidavits that is compatible with the automated real estate excise tax system developed by the department, and to assist in complying with the requirements of RCW 82.45.180(1).

(2) Subject to the limits in subsection (3) of this section, the amount of the grant shall be equal to the amount paid by a county to:

(a) Purchase computer hardware or software, or to repair or upgrade existing computer hardware or software, used for the electronic processing and reporting of real estate excise tax affidavits and that is compatible with the automated real estate excise tax system developed by the department; and

(b) Make changes to existing software that are necessary to comply with the requirements of RCW 82.45.180(1).

(3)(a) No county is eligible for grants under this section totaling more than one hundred thousand dollars.

(b) Grant funds shall not be awarded for expenditures made by a county with funds distributed to the county by the state treasurer under RCW 82.45.180(3)(b).

(4) No more than three million nine hundred thousand dollars in grants may be awarded under this section.

(5) The source of funds for this grant program is the real estate excise tax grant account created in RCW 82.45.200. [2006 c 312 § 2; 2005 c 480 § 4.]

**Effective date—2006 c 312:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2006]." [2006 c 312 § 4.]

**Severability—2006 c 312:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 312 § 3.]

**Intent—Findings—2005 c 480:** "(1) It is the legislature's intent to provide funding for the development and implementation of an automated system for the electronic processing of the real estate excise tax. The legislature finds that due to the numerous users of the real estate excise tax information, and the many entities involved in its work flow, county systems must be compatible with the automated system developed by the state department of revenue.

(2) The legislature finds that under current law an electronic real estate excise tax affidavit that is signed with a digital signature under chapter 19.34 RCW is a legally valid document and, pursuant to RCW 5.46.010, electronic facsimiles, scanned signatures, and digital and other electronic conversions of written signatures satisfy the signature component of the affidavit requirement under this act." [2005 c 480 § 1.]

**Effective date—2005 c 480:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and takes effect July 1, 2005." [2005 c 480 § 6.]

**82.45.220 Failure to report transfer of controlling interest.** An organization that fails to report a transfer of the controlling interest in the organization under RCW 43.07.390 to the secretary of state and is later determined to be subject to real estate excise taxes due to the transfer, shall be subject to the provisions of RCW 82.45.100 as well as the evasion penalty in RCW 82.32.090(6). [2005 c 326 § 3.]

**82.45.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.** See RCW 82.46.900.

### Chapter 82.46 RCW COUNTIES AND CITIES—EXCISE TAX ON REAL ESTATE SALES

#### Sections

82.46.010	Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates.
82.46.021	Referendum procedure to repeal or alter tax.
82.46.030	Distribution of proceeds.
82.46.035	Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.
82.46.040	Tax is lien on property—Enforcement.
82.46.050	Tax is seller's obligation—Choice of remedies.
82.46.060	Payment of tax—Evidence of payment—Recording.
82.46.070	Additional excise tax—Acquisition and maintenance of conservation areas.
82.46.075	Additional excise tax—Affordable housing.
82.46.080	Notice to county treasurer.
82.46.900	Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.

**82.46.010 Tax on sale of real property authorized—Proceeds dedicated to local capital projects—Additional tax authorized—Maximum rates.** (1) The legislative authority of any county or city shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city may impose an excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. The revenues from this tax shall be used by any city or county with a population of five thousand or less and any city or county that does not plan under RCW 36.70A.040 for any capital purpose identified in a capital improvements plan and local capital improvements, including those listed in RCW 35.43.040.

After April 30, 1992, revenues generated from the tax imposed under this subsection in counties over five thousand population and cities over five thousand population that are required or choose to plan under RCW 36.70A.040 shall be used solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan and housing relocation assistance under RCW 59.18.440 and 59.18.450. However, revenues (a) pledged by such counties and cities to

debt retirement prior to April 30, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to April 30, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(3) In lieu of imposing the tax authorized in RCW 82.14.030(2), the legislative authority of any county or any city may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-half of one percent of the selling price.

(4) Taxes imposed under this section shall be collected from persons who are taxable by the state under chapter 82.45 RCW upon the occurrence of any taxable event within the unincorporated areas of the county or within the corporate limits of the city, as the case may be.

(5) Taxes imposed under this section shall comply with all applicable rules, regulations, laws, and court decisions regarding real estate excise taxes as imposed by the state under chapter 82.45 RCW.

(6) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets; roads; highways; sidewalks; street and road lighting systems; traffic signals; bridges; domestic water systems; storm and sanitary sewer systems; parks; recreational facilities; law enforcement facilities; fire protection facilities; trails; libraries; administrative and/or judicial facilities; river and/or waterway flood control projects by those jurisdictions that, prior to June 11, 1992, have expended funds derived from the tax authorized by this section for such purposes; and, until December 31, 1995, housing projects for those jurisdictions that, prior to June 11, 1992, have expended or committed to expend funds derived from the tax authorized by this section or the tax authorized by RCW 82.46.035 for such purposes. [1994 c 272 § 1; 1992 c 221 § 1; 1990 1st ex.s. c 17 § 36; 1982 1st ex.s. c 49 § 11.]

**Legislative declaration—1994 c 272:** "The legislature declares that, in section 13, chapter 49, Laws of 1982 1st ex. sess., effective July 1, 1982, its original intent in limiting the use of the proceeds of the tax authorized in RCW 82.46.010(2) to "local capital improvements" was to include in such expenditures the acquisition of real and personal property associated with such local capital improvements. Any such expenditures made by cities, towns, and counties on or after July 1, 1982, are hereby declared to be authorized and valid." [1994 c 272 § 2.]

**Expenditures prior to June 11, 1992:** "All expenditures of revenues collected under RCW 82.46.010 made prior to June 11, 1992, are deemed to be in compliance with RCW 82.46.010." [1992 c 221 § 4.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.46.021 Referendum procedure to repeal or alter tax.** Any referendum petition to repeal a county or city ordinance imposing a tax or altering the rate of the tax authorized under RCW 82.46.010(3) shall be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition,

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issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or tax rate increase being imposed and a negative answer to the question and a negative vote on the measure results in the tax or tax rate increase not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner shall have thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form shall contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in \*RCW 29.13.010 as determined by the county legislative authority or city council, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

After April 22, 1983, the referendum procedure provided for in this section shall be the exclusive method for subjecting any county or city ordinance imposing a tax or increasing the rate under RCW 82.46.010(3) to a referendum vote.

Any county or city tax authorized under RCW 82.46.010(3) that has been imposed prior to April 22, 1983, is not subject to the referendum procedure provided for in this section. [2000 c 103 § 16; 1983 c 99 § 3.]

**\*Reviser's note:** RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

**Severability—1983 c 99:** See note following RCW 82.14.200.

**82.46.030 Distribution of proceeds.** (1) The county treasurer shall place one percent of the proceeds of the taxes imposed under this chapter in the county current expense fund to defray costs of collection.

(2) The remaining proceeds from the county tax under RCW 82.46.010(2) shall be placed in a county capital improvements fund. The remaining proceeds from city or town taxes under RCW 82.46.010(2) shall be distributed to the respective cities and towns monthly and placed by the city treasurer in a municipal capital improvements fund.

(3) This section does not limit the existing authority of any city, town, or county to impose special assessments on property specially benefited thereby in the manner prescribed by law. [2000 c 103 § 17; 1992 c 221 § 2; 1990 1st ex.s. c 17 § 37; 1982 1st ex.s. c 49 § 13.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.46.035 Additional tax—Certain counties and cities—Ballot proposition—Use limited to capital projects—Temporary rescindment for noncompliance.** (1) The legislative authority of any county or city shall identify in the adopted budget the capital projects funded in whole or in part from the proceeds of the tax authorized in this section, and shall indicate that such tax is intended to be in addition to other funds that may be reasonably available for such capital projects.

(2) The legislative authority of any county or any city that plans under RCW 36.70A.040(1) may impose an additional excise tax on each sale of real property in the unincorporated areas of the county for the county tax and in the corporate limits of the city for the city tax at a rate not exceeding one-quarter of one percent of the selling price. Any county choosing to plan under RCW 36.70A.040(2) and any city within such a county may only adopt an ordinance imposing the excise tax authorized by this section if the ordinance is first authorized by a proposition approved by a majority of the voters of the taxing district voting on the proposition at a general election held within the district or at a special election within the taxing district called by the district for the purpose of submitting such proposition to the voters.

(3) Revenues generated from the tax imposed under subsection (2) of this section shall be used by such counties and cities solely for financing capital projects specified in a capital facilities plan element of a comprehensive plan. However, revenues (a) pledged by such counties and cities to debt retirement prior to March 1, 1992, may continue to be used for that purpose until the original debt for which the revenues were pledged is retired, or (b) committed prior to March 1, 1992, by such counties or cities to a project may continue to be used for that purpose until the project is completed.

(4) Revenues generated by the tax imposed by this section shall be deposited in a separate account.

(5) As used in this section, "city" means any city or town and "capital project" means those public works projects of a local government for planning, acquisition, construction, reconstruction, repair, replacement, rehabilitation, or improvement of streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, bridges, domestic water systems, storm and sanitary sewer systems, and planning, construction, reconstruction, repair, rehabilitation, or improvement of parks.

(6) When the governor files a notice of noncompliance under RCW 36.70A.340 with the secretary of state and the appropriate county or city, the county or city's authority to impose the additional excise tax under this section shall be temporarily rescinded until the governor files a subsequent notice rescinding the notice of noncompliance. [1992 c 221 § 3; 1991 sp.s. c 32 § 33; 1990 1st ex.s. c 17 § 38.]

**Reviser's note:** This section was amended by 1992 c 221 § 3 without cognizance of its amendment by 1991 sp.s. c 32 § 33. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Sections headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**82.46.040 Tax is lien on property—Enforcement.** Any tax imposed under this chapter or RCW 82.46.070 and

any interest or penalties thereon is a specific lien upon each piece of real property sold from the time of sale until the tax is paid, which lien may be enforced in the manner prescribed for the foreclosure of mortgages. [1990 1st ex.s. c 17 § 39; 1990 1st ex.s. c 5 § 4; 1982 1st ex.s. c 49 § 14.]

**Reviser's note:** This section was amended by 1990 1st ex.s. c 5 § 4 and by 1990 c 17 § 39, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Purpose—1990 1st ex.s. c 5:** See note following RCW 36.32.570.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.46.050 Tax is seller's obligation—Choice of remedies.** The taxes levied under this chapter are the obligation of the seller and may be enforced through an action of debt against the seller or in the manner prescribed for the foreclosure of mortgages. Resort to one course of enforcement is not an election not to pursue the other. [1990 1st ex.s. c 17 § 40; 1982 1st ex.s. c 49 § 15.]

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.46.060 Payment of tax—Evidence of payment—Recording.** Any taxes imposed under this chapter or RCW 82.46.070 shall be paid to and collected by the treasurer of the county within which is located the real property which was sold. The treasurer shall act as agent for any city within the county imposing the tax. The county treasurer shall cause a stamp evidencing satisfaction of the lien to be affixed to the instrument of sale or conveyance prior to its recording or to the real estate excise tax affidavit in the case of used mobile home sales. A receipt issued by the county treasurer for the payment of the tax imposed under this chapter or RCW 82.46.070 shall be evidence of the satisfaction of the lien imposed in RCW 82.46.040 and may be recorded in the manner prescribed for recording satisfactions of mortgages. No instrument of sale or conveyance evidencing a sale subject to the tax may be accepted by the county auditor for filing or recording until the tax is paid and the stamp affixed thereto; in case the tax is not due on the transfer, the instrument shall not be accepted until suitable notation of this fact is made on the instrument by the treasurer. [1990 1st ex.s. c 17 § 41; 1990 1st ex.s. c 5 § 5; 1982 1st ex.s. c 49 § 16.]

**Reviser's note:** This section was amended by 1990 1st ex.s. c 5 § 5 and by 1990 1st ex.s. c 17 § 41, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Purpose—1990 1st ex.s. c 5:** See note following RCW 36.32.570.

**Intent—Construction—Effective date—Fire district funding—1982 1st ex.s. c 49:** See notes following RCW 35.21.710.

**82.46.070 Additional excise tax—Acquisition and maintenance of conservation areas.** (1) Subject to subsection (2) of this section, the legislative authority of any county may impose an additional excise tax on each sale of real

property in the county at a rate not to exceed one percent of the selling price. The proceeds of the tax shall be used exclusively for the acquisition and maintenance of conservation areas.

The taxes imposed under this subsection shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except:

(a) The tax shall be the obligation of the purchaser; and

(b) The tax does not apply to the acquisition of conservation areas by the county.

The county may enforce the obligation through an action of debt against the purchaser or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages.

The tax shall take effect thirty days after the election at which the taxes are authorized.

(2) No tax may be imposed under subsection (1) of this section unless approved by a majority of the voters of the county voting thereon for a specified period and maximum rate after:

(a) The adoption of a resolution by the county legislative authority of the county proposing this action; or

(b) The filing of a petition proposing this action with the county auditor, which petition is signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted at the last preceding general election.

The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election that has been called for such purpose by the county legislative authority.

(3) A plan for the expenditure of the excise tax proceeds shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and a public hearing shall be held to obtain public input. The proceeds of this excise tax must be expended in conformance with this plan.

(4) As used in this section, "conservation area" has the meaning given under RCW 36.32.570. [1990 1st ex.s. c 5 § 3.]

**Purpose—1990 1st ex.s. c 5:** See note following RCW 36.32.570.

**82.46.075 Additional excise tax—Affordable housing.**

(1) Subject to subsections (4) and (5) of this section, the legislative authority of any county may impose an additional excise tax on the purchase and sale of real property in the county at the rate of one-half of one percent of the selling price. The proceeds of the tax shall be used exclusively for the development of affordable housing including acquisition, building, rehabilitation, and maintenance and operation of housing for very low, low, and moderate-income persons and those with special needs.

(2) Revenues generated from the tax imposed under this section shall be placed in an affordable housing account

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administered by the county. Disbursements from the account shall be made following a competitive grant and loan process. The county legislative authority shall determine a mechanism for receiving grant and loan applications, and criteria by which the applications shall be approved and funded. Eligible recipients of grants and loans from the account shall be private nonprofit, affordable housing providers, the housing authority for the county, or other housing programs conducted or funded by a public agency, or by a public agency in partnership with a private nonprofit entity.

(3) The taxes imposed under this section shall be imposed in the same manner and on the same occurrences, and are subject to the same conditions, as the taxes under chapter 82.45 RCW, except that the tax shall be the obligation of both the purchaser and the seller, as determined by the county legislative authority, with at least one-half of the obligation being that of the purchaser. The county may enforce the obligation through an action of debt against the purchaser or seller or may foreclose the lien on the property in the same manner prescribed for the foreclosure of mortgages. The imposition of the tax is effective thirty days after the election at which the tax is authorized.

(4)(a) No tax may be imposed under this section unless approved by a majority of the voters of the county voting, for a specified period and for a specified maximum rate. This vote must follow either:

(i) The adoption of a resolution by the county legislative authority proposing this action; or

(ii) The filing of a petition proposing this action with the county auditor, signed by county voters at least equal in number to ten percent of the total number of voters in the county who voted in the preceding general election.

(b) The ballot proposition shall be submitted to the voters of the county at the next general election occurring at least sixty days after a petition is filed, or at any special election prior to this general election called for this purpose by the county legislative authority.

(5) No tax may be imposed under this section unless the county imposes a tax under RCW 82.46.070 at the maximum rate and the tax was imposed by January 1, 2003.

(6) A plan for the expenditure of the proceeds of the tax imposed by this section shall be prepared by the county legislative authority at least sixty days before the election if the proposal is initiated by resolution of the county legislative authority, or within six months after the tax has been authorized by the voters if the proposal is initiated by petition. Prior to the adoption of this plan, the elected officials of cities located within the county shall be consulted and at least one public hearing shall be held to obtain public comment. The proceeds of the tax shall be expended in conformance with this plan. [2002 c 343 § 1.]

**82.46.080 Notice to county treasurer.** A county, city, or town that imposes an excise tax under this chapter must provide the county treasurer with a copy of the ordinance or other action initially authorizing the tax or altering the rate of the tax that is imposed at least sixty days before change becomes effective. [1998 c 106 § 10.]

**82.46.900 Chapter 82.46 RCW ordinances in effect on July 1, 1993—Application under chapter 82.45 RCW.** Any ordinance imposing a tax under chapter 82.46 RCW which is in effect on July 1, 1993, shall apply to all sales taxable under chapter 82.45 RCW on July 1, 1993, at the rate specified in the ordinance, until such time as the ordinance is otherwise amended or repealed. [1993 sp.s. c 25 § 508.]

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

### Chapter 82.47 RCW

#### BORDER AREA MOTOR VEHICLE FUEL AND SPECIAL FUEL TAX

##### Sections

82.47.010	Definitions.
82.47.020	Tax authority.
82.47.030	Proceeds.

**82.47.010 Definitions.** The definitions set forth in this section shall apply throughout this chapter unless the context clearly requires otherwise.

(1) "Motor vehicle fuel" has the meaning given in RCW 82.36.010.

(2) "Special fuel" has the meaning given in RCW 82.38.020.

(3) "Motor vehicle" has the meaning given in RCW 82.36.010. [1998 c 176 § 85; 1991 c 173 § 2.]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**Effective date—1991 c 173:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 173 § 7.]

**82.47.020 Tax authority.** The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The rate of such tax shall be in increments of one-tenth of a cent per gallon and shall not exceed one cent per gallon.

The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within ten miles of an international border crossing and any transportation benefit district established under RCW 36.73.020 which has within its boundaries an international border crossing. [1991 c 173 § 1.]

**Effective date—1991 c 173:** See note following RCW 82.47.010.

**82.47.030 Proceeds.** The entire proceeds of the tax imposed under this chapter, less refunds authorized by the resolution imposing such tax and less amounts deducted by the border area jurisdiction for administration and collection expenses, shall be used solely for the purposes of border area jurisdiction street maintenance and construction. [1991 c 173 § 3.]

**Effective date—1991 c 173:** See note following RCW 82.47.010.

### Chapter 82.48 RCW AIRCRAFT EXCISE TAX

##### Sections

82.48.010	Definitions.
82.48.020	Excise tax imposed on aircraft—Out-of-state registration to avoid tax, liability—Penalties.
82.48.030	Amount of tax.
82.48.060	Is in addition to other taxes.
82.48.070	Tax receipt.
82.48.080	Payment and distribution of taxes.
82.48.090	Refund of excessive tax payment and interest.
82.48.100	Exempt aircraft.
82.48.110	Aircraft not to be subject to ad valorem tax—Exceptions.

**82.48.010 Definitions.** For the purposes of this chapter, unless otherwise required by the context:

(1) "Aircraft" means any weight-carrying device or structure for navigation of the air which is designed to be supported by the air;

(2) "Secretary" means the secretary of transportation;

(3) "Person" includes a firm, partnership, limited liability company, or corporation;

(4) "Small multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of less than seventy-five hundred pounds; and

(5) "Large multi-engine fixed wing" means any piston-driven multi-engine fixed wing aircraft with a maximum gross weight as listed by the manufacturer of seventy-five hundred pounds or more. [1995 c 318 § 4; 1987 c 220 § 5; 1983 2nd ex.s. c 3 § 21; 1979 c 158 § 239; 1967 ex.s. c 9 § 1; 1961 c 15 § 82.48.010. Prior: 1949 c 49 § 1; Rem. Supp. 1949 § 11219-33.]

**Effective date—1995 c 318:** See note following RCW 82.04.030.

**Severability—1987 c 220:** See note following RCW 47.68.230.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.48.020 Excise tax imposed on aircraft—Out-of-state registration to avoid tax, liability—Penalties.** (1) An annual excise tax is hereby imposed for the privilege of using any aircraft in the state. A current certificate of air worthiness with a current inspection date from the appropriate federal agency and/or the purchase of aviation fuel shall constitute the necessary evidence of aircraft use or intended use. The tax shall be collected annually or under a staggered collection schedule as required by the secretary by rule. No additional tax shall be imposed under this chapter upon any aircraft upon the transfer of ownership thereof, if the tax imposed by this chapter with respect to such aircraft has already been paid for the year in which transfer of ownership occurs. A violation of this subsection is a misdemeanor punishable as provided under chapter 9A.20 RCW.

(2) Persons who are required to register aircraft under chapter 47.68 RCW and who register aircraft in another state or foreign country and avoid the Washington aircraft excise tax are liable for such unpaid excise tax. A violation of this subsection is a gross misdemeanor.

The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) Except as provided under subsections (1) and (2) of this section, a violation of this chapter is a misdemeanor punishable as provided in chapter 9A.20 RCW. [2000 c 229 § 4; 1999 c 277 § 7; 1993 c 238 § 5; 1992 c 154 § 1; 1987 c 220 § 6; 1983 c 7 § 27; 1979 c 158 § 240; 1967 ex.s. c 149 § 27; 1967 ex.s. c 9 § 2; 1961 c 15 § 82.48.020. Prior: 1949 c 49 § 2; Rem. Supp. 1949 § 11219-34.]

**Effective date—2000 c 229:** See note following RCW 46.16.010.

**Effective date—1992 c 154:** "This act shall take effect July 1, 1992." [1992 c 154 § 7.]

**Severability—1987 c 220:** See note following RCW 47.68.230.

**Construction—Severability—Effective dates—1983 c 7:** See notes following RCW 82.08.020.

**82.48.030 Amount of tax.** (1) The amount of the tax imposed by this chapter for each calendar year shall be as follows:

Type of aircraft	Registration fee
Single engine fixed wing	\$ 50
Small multi-engine fixed wing	65
Large multi-engine fixed wing	80
Turboprop multi-engine fixed wing	100
Turbojet multi-engine fixed wing	125
Helicopter	75
Sailplane	20
Lighter than air	20
Home built	20

(2) The amount of tax imposed under subsection (1) of this section for each calendar year shall be divided into twelve parts corresponding to the months of the calendar year and the excise tax upon an aircraft registered for the first time in this state after the last day of any month shall only be levied for the remaining months of the calendar year including the month in which the aircraft is being registered: PROVIDED, That the minimum amount payable shall be three dollars.

An aircraft shall be deemed registered for the first time in this state when such aircraft was not previously registered by this state for the year immediately preceding the year in which application for registration is made. [1983 2nd ex.s. c 3 § 22; 1967 ex.s. c 9 § 3; 1963 c 199 § 6; 1961 c 15 § 82.48.030. Prior: 1949 c 49 § 3; Rem. Supp. 1949 § 11219-35.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**82.48.060 Is in addition to other taxes.** Except as provided in RCW 82.48.110, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.48.060. Prior: 1949 c 49 § 6; Rem. Supp. 1949 § 11219-38.]

(2008 Ed.)

**82.48.070 Tax receipt.** The secretary shall give a receipt to each person paying the excise tax. [1987 c 220 § 7; 1967 ex.s. c 9 § 4; 1961 c 15 § 82.48.070. Prior: 1949 c 49 § 7; Rem. Supp. 1949 § 11219-39.]

**Severability—1987 c 220:** See note following RCW 47.68.230.

**82.48.080 Payment and distribution of taxes.** The secretary shall regularly pay to the state treasurer the excise taxes collected under this chapter, which shall be credited by the state treasurer as follows: Ninety percent to the general fund and ten percent to the aeronautics account in the transportation fund for administrative expenses. [1995 c 170 § 2; 1987 c 220 § 8; 1974 ex.s. c 54 § 8; 1967 ex.s. c 9 § 5; 1961 c 15 § 82.48.080. Prior: 1949 c 49 § 8; Rem. Supp. 1949 § 11219-40.]

**Severability—1987 c 220:** See note following RCW 47.68.230.

**Effective dates—1974 ex.s. c 54:** "Section 6 of this 1974 amendatory act shall not take effect until June 30, 1981, and the remainder of this 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 54 § 13.]

**Severability—1974 ex.s. c 54:** "If any provision of this 1974 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 54 § 14.]

**82.48.090 Refund of excessive tax payment and interest.** In case a claim is made by any person that the person has paid an erroneously excessive amount of excise tax under this chapter, the person may apply to the department of transportation for a refund of the claimed excessive amount together with interest at the rate specified in RCW 82.32.060. The department of transportation shall review such application, and if it determines that an excess amount of tax has actually been paid by the taxpayer, such excess amount and interest at the rate specified in RCW 82.32.060 shall be refunded to the taxpayer by means of a voucher approved by the department of transportation and by the issuance of a state warrant drawn upon and payable from such funds as the legislature may provide for that purpose. No refund shall be allowed, however, unless application for the refund is filed with the department of transportation within ninety days after the claimed excessive excise tax was paid and the amount of the overpayment exceeds five dollars. [1992 c 154 § 2; 1989 c 378 § 25; 1987 c 220 § 9; 1985 c 414 § 5; 1975 1st ex.s. c 278 § 96; 1961 c 15 § 82.48.090. Prior: 1949 c 49 § 9; Rem. Supp. 1949 § 11219-41.]

**Effective date—1992 c 154:** See note following RCW 82.48.020.

**Severability—1987 c 220:** See note following RCW 47.68.230.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**82.48.100 Exempt aircraft.** This chapter shall not apply to:

Aircraft owned by and used exclusively in the service of any government or any political subdivision thereof, including the government of the United States, any state, territory, or possession of the United States, or the District of Columbia, which are not engaged in carrying persons or property for commercial purposes;

Aircraft registered under the laws of a foreign country;

Aircraft which are owned by a nonresident and registered in another state: PROVIDED, That if any such aircraft shall remain in and/or be based in this state for a period of ninety days or longer it shall not be exempt under this section;

Aircraft engaged principally in commercial flying which constitutes interstate or foreign commerce; and aircraft owned by the manufacturer thereof while being operated for test or experimental purposes, or for the purpose of training crews for purchasers of the aircraft;

Aircraft being held for sale, exchange, delivery, test, or demonstration purposes solely as stock in trade of an aircraft dealer licensed under Title 14 RCW;

Aircraft owned by a nonresident of this state if the aircraft is kept at an airport in this state and that airport is jointly owned or operated by a municipal corporation or other governmental entity of this state and a municipal corporation or other governmental entity of another state, and the owner or operator of the aircraft provides the department with proof that the owner or operator has paid all taxes, license fees, and registration fees required by the state in which the owner or operator resides. [1999 c 302 § 3; 1965 ex.s. c 173 § 28; 1961 c 15 § 82.48.100. Prior: 1955 c 150 § 12; 1949 c 49 § 10; Rem. Supp. 1949 § 11219-42.]

**Effective date—1965 ex.s. c 173:** See note following RCW 82.04.050.

**82.48.110 Aircraft not to be subject to ad valorem tax—Exceptions.** The first tax to be collected under this chapter shall be for the calendar year 1968. No aircraft with respect to which the excise tax imposed by this chapter is payable shall be listed and assessed for ad valorem taxation so long as this chapter remains in effect, and any such assessment heretofore made except under authority of section 13, chapter 49, Laws of 1949 and section 82.48.110, chapter 15, Laws of 1961 is hereby directed to be canceled: PROVIDED, That any aircraft, whether or not subject to the provisions of this chapter, with respect to which the excise tax imposed by this chapter will not be paid or has not been paid for any year shall be listed and assessed for ad valorem taxation in that year, and the ad valorem tax liability resulting from such listing and assessment shall be collected in the same manner as though this chapter had not been passed: PROVIDED FURTHER, That this chapter shall not be construed to affect any ad valorem tax based upon assessed valuations made in 1948 and/or any preceding year for taxes payable in 1949 or any preceding year, which ad valorem tax liability tax for any such years shall remain payable and collectible in the same manner as though this chapter had not been passed. [1967 ex.s. c 9 § 6; 1961 c 15 § 82.48.110. Prior: 1949 c 49 § 13; Rem. Supp. 1949 § 11219-43.]

### Chapter 82.49 RCW

#### WATERCRAFT EXCISE TAX

##### Sections

82.49.010	Excise tax imposed—Out-of-state registration to avoid tax, liability—Penalties.
82.49.020	Exemptions.
82.49.030	Payment of tax—Deposit in general fund.
82.49.040	Depreciation schedule for use in determining fair market value.
82.49.050	Appraisal of vessel by department of revenue.

82.49.060	Disputes as to appraised value or status as taxable—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.
82.49.065	Refunds, collections of erroneous amounts—Claims—Penalty for false statement.
82.49.900	Construction—Severability—Effective dates—1983 c 7.

*Boat trailer fee:* RCW 46.16.670.

*Exemption of ships and vessels from ad valorem taxes:* RCW 84.36.079, 84.36.080, and 84.36.090.

**82.49.010 Excise tax imposed—Out-of-state registration to avoid tax, liability—Penalties.** (1) An excise tax is imposed for the privilege of using a vessel upon the waters of this state, except vessels exempt under RCW 82.49.020. The annual amount of the excise tax is one-half of one percent of fair market value, as determined under this chapter, or five dollars, whichever is greater. Violation of this subsection is a misdemeanor.

(2) Persons who are required under chapter 88.02 RCW to register a vessel in this state and who register the vessel in another state or foreign country and avoid the Washington watercraft excise tax are guilty of a gross misdemeanor and are liable for such unpaid excise tax. The department of revenue may assess and collect the unpaid excise tax under chapter 82.32 RCW, including the penalties and interest provided in chapter 82.32 RCW.

(3) The excise tax upon a vessel registered for the first time in this state shall be imposed for a twelve-month period, including the month in which the vessel is registered, unless the director of licensing extends or diminishes vessel registration periods for the purpose of staggered renewal periods under RCW 88.02.050. A vessel is registered for the first time in this state when the vessel was not registered in this state for the immediately preceding registration year, or when the vessel was registered in another jurisdiction for the immediately preceding year. The excise tax on vessels required to be registered in this state on June 30, 1983, shall be paid by June 30, 1983. [2000 c 229 § 5; 1999 c 277 § 8; 1993 c 238 § 6; 1992 c 154 § 3; 1983 2nd ex.s. c 3 § 42; 1983 c 7 § 9.]

**Effective date—2000 c 229:** See note following RCW 46.16.010.

**Effective date—1992 c 154:** See note following RCW 82.48.020.

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

**Credit for 1983 property taxes paid for vessels—1983 c 7:** "Property taxes paid for a vessel for 1983 shall be allowed as a credit against tax due under section 9 of this act for the same vessel." [1983 c 7 § 25.] "Section 9 of this act" consists of the enactment of RCW 82.49.010.

**82.49.020 Exemptions.** The following are exempt from the tax imposed under this chapter:

(1) Vessels exempt from the registration requirements of chapter 88.02 RCW;

(2) Vessels used exclusively for commercial fishing purposes;

(3) Vessels under sixteen feet in overall length;

(4) Vessels owned and operated by the United States, a state of the United States, or any municipality or political subdivision thereof;

(5) Vessels owned by a nonprofit organization or association engaged in character building of boys and girls under eighteen years of age and solely used for such purposes, as determined by the department for the purposes of RCW 84.36.030; and

(6) Vessels owned and held for sale by a dealer, but not rented on a regular commercial basis. [1984 c 250 § 1; 1983 2nd ex.s. c 3 § 43.]

**Construction—Severability—Effective dates—1983 2nd ex.s. c 3:** See notes following RCW 82.04.255.

*Partial exemption from ad valorem taxes of ships and vessels exempt from excise tax under RCW 82.49.020(2): RCW 84.36.080.*

#### **82.49.030 Payment of tax—Deposit in general fund.**

(1) The excise tax imposed under this chapter is due and payable to the department of licensing or its agents at the time of registration of a vessel. The department of licensing shall not issue or renew a registration for a vessel until the tax is paid in full.

(2) The excise tax collected under this chapter shall be deposited in the general fund. [2000 c 103 § 18; 1991 sp.s. c 16 § 925; 1989 c 393 § 10; 1983 c 7 § 10.]

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

#### **82.49.040 Depreciation schedule for use in determining fair market value.**

The department of revenue shall prepare at least once each year a depreciation schedule for use in the determination of fair market value for the purposes of this chapter. The schedule shall be based upon information available to the department of revenue pertaining to the current fair market value of vessels. The fair market value of a vessel for the purposes of this chapter shall be based on the most recent purchase price depreciated according to the year of the most recent purchase of the vessel. The most recent purchase price is the consideration, whether money, credit, rights, or other property expressed in terms of money, paid or given or contracted to be paid or given by the purchaser to the seller for the vessel. [1983 c 7 § 11.]

#### **82.49.050 Appraisal of vessel by department of revenue.**

(1) If a vessel has been acquired by lease or gift, or the most recent purchase price of a vessel is not known to the owner, the department of revenue shall appraise the vessel before registration.

(2) If after registration the department of revenue determines that the purchase price stated by the owner is not a reasonable representation of the true fair market value of a vessel at the time of purchase, the department of revenue shall appraise the vessel.

(3) If a vessel is homemade, the owner shall make a notarized declaration of fair market value. The fair market value of the vessel for the purposes of this chapter shall be the declared value, unless after registration the department of revenue determines that the declared value is not a reasonable representation of the true fair market value of the vessel in which case the department of revenue shall appraise the vessel.

(4) If the department of revenue appraises a vessel, the fair market value of the vessel for the purposes of this chapter shall be the appraised value. If the vessel has been registered before appraisal, the department of revenue shall refund any overpayment of tax to the owner or notify the owner of any additional tax due. The owner shall pay any additional tax due within thirty days after notification by the department. [1983 c 7 § 12.]

(2008 Ed.)

#### **82.49.060 Disputes as to appraised value or status as taxable—Petition for conference or reduction of tax—Appeal to board of tax appeals—Independent appraisal.**

(1) Any vessel owner disputing an appraised value under RCW 82.49.050 or disputing whether the vessel is taxable, may petition for a conference with the department as provided under RCW 82.32.160, or for reduction of the tax due as provided under RCW 82.32.170.

(2) Any vessel owner having received a notice of denial of a petition or a notice of determination made for the owner's vessel under RCW 82.32.160 or 82.32.170 may appeal to the board of tax appeals as provided under RCW 82.03.190. In deciding a case appealed under this section, the board of tax appeals may require an independent appraisal of the vessel. The cost of the independent appraisal shall be apportioned between the department and the vessel owner as provided by the board. [1993 c 33 § 1; 1983 c 7 § 13.]

**Effective date—1993 c 33:** "This act shall take effect January 1, 1994." [1993 c 33 § 8.]

#### **82.49.065 Refunds, collections of erroneous amounts—Claims—Penalty for false statement.**

(1) Whenever any person has paid a vessel license fee, and with the fee has paid an excise tax imposed under this chapter, and the director of licensing determines that the payor is entitled to a refund of the entire amount of the license fee as provided by law, then the payor shall also be entitled to a refund of the entire excise tax collected under this chapter together with interest at the rate specified in RCW 82.32.060. If the director determines that any person is entitled to a refund of only a part of the license fee paid, the payor shall be entitled to a refund of the difference, if any, between the excise tax collected and that which should have been collected together with interest at the rate specified in RCW 82.32.060. The state treasurer shall determine the amount of such refund by reference to the applicable excise tax schedule prepared by the department of revenue in cooperation with the department of licensing.

(2) If no claim is to be made for the refund of the license fee, or any part of the fee, but claim is made by any person that he or she has paid an erroneously excessive amount of excise tax, the department of licensing shall determine in the manner generally provided in this chapter the amount of such excess, if any, that has been paid and shall certify to the state treasurer that the person is entitled to a refund in that amount together with interest at the rate specified in RCW 82.32.060.

(3) If due to error a person has been required to pay an excise tax pursuant to this chapter and a license fee under chapter 88.02 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(4) If the department approves the claim, it shall notify the state treasurer to that effect and the treasurer shall make

such approved refunds and the other refunds provided for in this section from the general fund and shall mail or deliver the same to the person entitled to the refund.

(5) Any person who makes a false statement under which he or she obtains a refund to which he or she is not entitled under this section is guilty of a gross misdemeanor. [2003 c 53 § 405; 1992 c 154 § 4; 1989 c 68 § 3.]

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

**Effective date—1992 c 154:** See note following RCW 82.48.020.

**82.49.900 Construction—Severability—Effective dates—1983 c 7.** See notes following RCW 82.08.020.

## Chapter 82.50 RCW

### TRAVEL TRAILERS AND CAMPERS EXCISE TAX

#### Sections

82.50.010	Definitions.
82.50.060	Tax additional.
82.50.075	Extensions during state of emergency.
82.50.090	Unlawful issuance of tax receipt—Penalty.
82.50.170	Refund, collection of erroneous amounts—Penalty for false statement.
82.50.250	Term "house trailer" construed.

#### TAXATION OF TRAVEL TRAILERS AND CAMPERS

82.50.425	Valuation of travel trailers and campers.
82.50.435	Appeal of valuation.
82.50.440	Tax receipt—Records.
82.50.460	Notice of amount of tax payable—Contents.
82.50.510	Remittance of tax to state—Distribution to cities, towns, counties, and schools.
82.50.520	Exemptions.
82.50.530	Ad valorem taxes prohibited as to mobile homes, travel trailers or campers—Loss of identity, subject to property tax.
82.50.540	Taxed and licensed travel trailers or campers entitled to use of streets and highways.

#### CONSTRUCTION OF 1971 ACT

82.50.901	Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35-76.
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*Boat trailer fee:* RCW 46.16.670.

*"Registration year," defined—"Last day of the month," defined:* RCW 46.16.006.

**82.50.010 Definitions.** (1) "Mobile home" means a mobile home as defined by RCW 46.04.302.

(2) "Park trailer" means a park trailer as defined by RCW 46.04.622.

(3) "Travel trailer" means a travel trailer as defined by RCW 46.04.623.

(4) "Modular home" means a modular home as defined by RCW 46.04.303.

(5) "Camper" means a camper as defined by RCW 46.04.085.

(6) "Motor home" means a motor home as defined by RCW 46.04.305.

(7) "Director" means the director of licensing of the state. [1989 c 337 § 20; 1979 c 107 § 11; 1977 ex.s. c 22 § 6; 1971 ex.s. c 299 § 35; 1967 ex.s. c 149 § 44; 1961 c 15 § 82.50.010. Prior: 1957 c 269 § 1; 1955 c 139 § 1.]

**Reviser's note:** Restored to the RCW November 1, 2000, under the Washington Supreme Court decision in *Amalgamated Transit Union Local 587 et al v. The State of Washington*, 142 Wash.2d 183 (2000), which declared Initiative Measure No. 695 (2000 c 1) unconstitutional in its entirety.

**Severability—1977 ex.s. c 22:** See note following RCW 46.04.302.

**Effective dates—Severability—1971 ex.s. c 299:** See notes following RCW 82.04.050.

**82.50.060 Tax additional.** Except as provided herein, the tax imposed by this chapter is in addition to all other licenses and taxes otherwise imposed. [1961 c 15 § 82.50.060. Prior: 1955 c 139 § 6.]

**Reviser's note:** See note following RCW 82.50.010.

**82.50.075 Extensions during state of emergency.** During a state of emergency declared under RCW 43.06.010(12), the director, on his or her own motion or at the request of any taxpayer affected by the emergency, may grant extensions of the due date of any taxes payable under this chapter as the director deems proper. [2008 c 181 § 508.]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**82.50.090 Unlawful issuance of tax receipt—Penalty.** It shall be unlawful for the county auditor or any person to issue a receipt hereunder to any person without collecting the amount of the excise tax due thereon under the provisions of this chapter and any violation of this section shall constitute a gross misdemeanor. [1961 c 15 § 82.50.090. Prior: 1957 c 269 § 11; 1955 c 139 § 9.]

**Reviser's note:** See note following RCW 82.50.010.

**82.50.170 Refund, collection of erroneous amounts—Penalty for false statement.** (1) In case a claim is made by any person that the person has erroneously paid the tax or a part thereof or any charge hereunder, the person may apply in writing to the department of licensing for a refund of the amount of the claimed erroneous payment within thirteen months of the time of payment of the tax on such a form as is prescribed by the department of licensing. The department of licensing shall review such application for refund, and, if it determines that an erroneous payment has been made by the taxpayer, it shall certify the amount to be refunded to the state treasurer that such person is entitled to a refund in such amount together with interest at the rate specified in RCW 82.32.060, and the treasurer shall make such approved refund together with interest at the rate specified in RCW 82.32.060 herein provided for from the general fund and shall mail or deliver the same to the person entitled thereto.

(2) If due to error a person has been required to pay an excise tax under this chapter and a vehicle license fee under Title 46 RCW which amounts to an overpayment of ten dollars or more, such person shall be entitled to a refund of the entire amount of such overpayment, together with interest at the rate specified in RCW 82.32.060, regardless of whether a refund of the overpayment has been requested. If due to error the department or its agents has failed to collect the full amount of the license fee and excise tax due, which underpayment is in the amount of ten dollars or more, the department shall charge and collect such additional amount as will constitute full payment of the tax and any penalties or interest at the rate specified in RCW 82.32.050.

(3) Any person making any false statement in the claim herein mentioned, under which the person obtains any amount of refund to which the person is not entitled under the

provisions of this section, is guilty of a gross misdemeanor. [2003 c 53 § 406; 1992 c 154 § 6. Prior: 1989 c 378 § 26; 1989 c 68 § 4; 1981 c 260 § 16; prior: 1975 1st ex.s. c 278 § 97; 1975 1st ex.s. c 9 § 1; 1974 ex.s. c 54 § 9; 1961 c 15 § 82.50.170; prior: 1955 c 139 § 17.]

**Reviser's note:** See note following RCW 82.50.010.

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

**Effective date—1992 c 154:** See note following RCW 82.48.020.

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

**Severability—Effective dates—1974 ex.s. c 54:** See notes following RCW 82.48.080.

**82.50.250 Term "house trailer" construed.** Whenever this chapter refers to chapters 46.12, 46.16, or 82.44 RCW, with references to "house trailers", the term "house trailer" as used in those chapters shall be construed to include and embrace "mobile home and travel trailer" as used in chapter 149, Laws of 1967 ex. sess. [1967 ex.s. c 149 § 59.]

**Reviser's note:** See note following RCW 82.50.010.

TAXATION OF TRAVEL TRAILERS AND CAMPERS

**82.50.425 Valuation of travel trailers and campers.** For the purpose of determining the tax under this chapter, the value of a travel trailer or camper is the manufacturer's base suggested retail price of the travel trailer or camper when first offered for sale as new, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this section based on the year of service.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(1) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the travel trailer or camper. The department may use an appraisal by the county assessor. In valuing a travel trailer or camper for which the current value or selling price is not indicative of the value of similar travel trailers or campers of the same year and model, the department shall establish a value that more closely represents the average value of similar travel trailers or campers of the same year and model. If the travel trailer or camper is home-built, the value shall not be less than the cost of construction.

(2) The value determined in subsection (1) of this section shall be divided by the applicable percentage listed in this section to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the travel trailer or camper for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	84
4	79
5	73
6	65
7	60
8	55
9	50
10	45
11	41
12	37
13	33
14	28
15	24
16 or older	20

[1990 c 42 § 323.]

**Reviser's note:** See note following RCW 82.50.010.

**Transitional valuation method and tax limitation—1990 c 42:** "Notwithstanding any other provision of this act, motor vehicles and travel trailers and campers that are valued under the system in effect before September 1, 1990, shall be valued by using the initial valuation of the vehicle under chapter 82.44 or 82.50 RCW multiplied by the applicable percentage under section 303 or 323 of this act [RCW 82.44.041 or 82.50.425]. Before December 1992 vehicle license expirations, no tax may be imposed on any motor vehicle or travel trailer or camper that is greater than one hundred ten percent of the tax imposed during the registration period in effect before September 1, 1990." [1990 c 42 § 326.]

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**82.50.435 Appeal of valuation.** If the department determines a value for a travel trailer or camper under RCW 82.50.425 equivalent to a manufacturer's base suggested retail price, any person who pays the tax for that travel trailer or camper may appeal the valuation to the department under chapter 34.05 RCW. If the taxpayer is successful on appeal, the department shall refund the excess tax in the manner provided in RCW 82.50.170. [1990 c 42 § 324.]

**Reviser's note:** See note following RCW 82.50.010.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**82.50.440 Tax receipt—Records.** The county auditor or the department of licensing upon payment of the tax hereunder shall issue a receipt which shall include such information as may be required by the director, including the name of the taxpayer and a description of the travel trailer or camper, which receipt shall be printed by the department of licensing in such form as it deems proper and furnished by the department to the various county auditors of the state. The county auditor shall keep a record of the excise taxes paid hereunder during the calendar year. [1979 c 158 § 242; 1975 1st ex.s. c 9 § 2; 1971 ex.s. c 299 § 59.]

**Reviser's note:** See note following RCW 82.50.010.

**82.50.460 Notice of amount of tax payable—Contents.** Prior to the end of any registration year of a vehicle, the director shall cause to be mailed to the owners of travel trailers or campers, of record, notice of the amount of tax

payable during the succeeding registration year. The notice shall contain a legal description of the travel trailer or camper, prominent notice of due dates, and such other information as may be required by the director. [1979 c 123 § 3; 1975 1st ex.s. c 118 § 17; 1971 ex.s. c 299 § 61.]

**Reviser's note:** See note following RCW 82.50.010.

**Effective date—Severability—1975 1st ex.s. c 118:** See notes following RCW 46.16.006.

**82.50.510 Remittance of tax to state—Distribution to cities, towns, counties, and schools.** The county auditor shall regularly, when remitting motor vehicle excise taxes, pay to the state treasurer the excise taxes imposed by \*RCW 82.50.400. The treasurer shall then distribute such funds quarterly on the first day of the month of January, April, July and October of each year in the following amount:

(1) 13.64 percent to cities and towns for the use thereof apportioned ratably among such cities and towns on the basis of population;

(2) 13.64 percent to counties for the use thereof to be apportioned ratably among such counties on the basis of moneys collected in such counties from the excise taxes imposed under this chapter;

(3) 63.64 percent for schools to be deposited in the state general fund; and

(4) 9.08 percent to the transportation fund created in RCW 82.44.180. [1998 c 321 § 24 (Referendum Bill No. 49, approved November 3, 1998); 1991 c 199 § 227; 1990 c 42 § 322; 1975-'76 2nd ex.s. c 75 § 1; 1971 ex.s. c 299 § 66.]

**Reviser's note:** (1) See note following RCW 82.50.010.

\*(2) RCW 82.50.400 was repealed by 2000 1st sp.s. c 1 § 2.

**Purpose—Severability—1998 c 321:** See notes following RCW 82.14.045.

**Contingent effective dates—1998 c 321 §§ 23-42:** See note following RCW 35.58.410.

**Finding—1991 c 199:** See note following RCW 70.94.011.

**Effective dates—Severability—Captions not law—1991 c 199:** See RCW 70.94.904 through 70.94.906.

**Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42:** See notes following RCW 82.36.025.

**82.50.520 Exemptions.** The following travel trailers or campers are specifically exempted from the operation of this chapter:

(1) Any unoccupied travel trailer or camper when it is part of an inventory of travel trailers or campers held for sale by a manufacturer or dealer in the course of his business.

(2) A travel trailer or camper owned by any government or political subdivision thereof.

(3) A travel trailer or camper owned by a nonresident and currently licensed in another state, unless such travel trailer or camper is required by law to be licensed in this state.

For the purposes of this subsection only, a camper owned by a nonresident shall be considered licensed in another state if the vehicle to which such camper is attached is currently licensed in another state.

(4) Travel trailers eligible to be used under a dealer's license plate, and taxed under \*RCW 82.44.030 while so eligible. [1983 c 26 § 4; 1979 c 123 § 4; 1971 ex.s. c 299 § 67.]

**Reviser's note:** (1) See note following RCW 82.50.010.

\*(2) RCW 82.44.030 was repealed by 2000 1st sp.s. c 1 § 2.

**82.50.530 Ad valorem taxes prohibited as to mobile homes, travel trailers or campers—Loss of identity, subject to property tax.** No mobile home, travel trailer, or camper which is a part of the inventory of mobile homes, travel trailers, or campers held for sale by a dealer in the course of his or her business and no travel trailer or camper as defined in RCW 82.50.010 shall be listed and assessed for ad valorem taxation. However, if a park trailer as defined in RCW 46.04.622 has substantially lost its identity as a mobile unit by virtue of its being permanently sited in location and placed on a foundation of either posts or blocks with connections with sewer, water, or other utilities for the operation of installed fixtures and appliances, it will be considered real property and will be subject to ad valorem property taxation imposed in accordance with the provisions of Title 84 RCW, including the provisions with respect to omitted property, except that a park trailer located on land not owned by the owner of the park trailer shall be subject to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040. [1999 c 92 § 1; 1993 c 32 § 1; 1981 c 304 § 32; 1971 ex.s. c 299 § 68.]

**Reviser's note:** See note following RCW 82.50.010.

**Application—1999 c 92:** "This act is effective for taxes levied in 1999 for collection in 2000 and thereafter." [1999 c 92 § 2.]

**Applicability—1993 c 32 § 1:** "Section 1 of this act shall be effective for taxes levied for collection in 1993 and thereafter." [1993 c 32 § 2.]

**Severability—1981 c 304:** See note following RCW 26.16.030.

*Real property defined: RCW 84.04.090.*

**82.50.540 Taxed and licensed travel trailers or campers entitled to use of streets and highways.** Travel trailers or campers taxed and licensed under the provisions of this chapter shall be entitled to the use of the public streets and highways subject to the provisions of the motor vehicle laws of this state except as herein otherwise provided. [1971 ex.s. c 299 § 69.]

**Reviser's note:** See note following RCW 82.50.010.

## CONSTRUCTION OF 1971 ACT

**82.50.901 Effective dates—Operative dates—Expiration dates—1971 ex.s. c 299 §§ 35-76.** (1) Sections 35 through 52 and section 54 of this 1971 amendatory act shall take effect on July 1, 1971, except that the provisions of chapter 82.50 RCW imposing a tax on campers shall not take effect until January 1, 1972.

(2) Sections 36 through 50 of this 1971 amendatory act shall be operative and in effect only until and including December 31, 1972, at which time, they, in their entirety, shall expire without any further action of the legislature. The expiration of such sections shall not be construed as affecting any existing right acquired under the expired statutes, nor as affecting any proceeding instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder.

(3) Sections 55 through 76 of this 1971 amendatory act shall take effect on January 1, 1973 without any further action of the legislature. [1971 ex.s. c 299 § 53.]

**Reviser's note:** See note following RCW 82.50.010.

## Chapter 82.52 RCW

## EXTENSION OF EXCISES TO FEDERAL AREAS

## Sections

- 82.52.010 State accepts provisions of federal (Buck) act.  
 82.52.020 State's tax laws made applicable to federal areas—Exception.

*Federal areas and jurisdiction: Title 37 RCW.*

*Taxation of federal agencies and instrumentalities: State Constitution Art. 7 §§ 1, 3.*

**82.52.010 State accepts provisions of federal (Buck) act.** The state hereby accepts jurisdiction over all federal areas located within its exterior boundaries to the extent that the power and authority to levy and collect taxes therein is granted by that certain act of the 76th congress of the United States, approved by the president on October 9, 1940, and entitled: "An Act to permit the states to extend their sales, use, and income taxes to persons residing or carrying on business, or to transactions occurring, in federal areas, and for other purposes." [1961 c 15 § 82.52.010. Prior: 1941 c 175 § 1; Rem. Supp. 1941 § 11337-10.]

**82.52.020 State's tax laws made applicable to federal areas—Exception.** From and after January 1, 1941, all laws of this state relating to revenue and taxation which, except for this chapter and the act of congress described herein, would not be operative within federal areas, are hereby extended to, and shall be construed as being operative in and upon all lands or premises held or acquired by or for the use of the United States or any department, establishment, or agency of the United States located within the exterior boundaries of the state, to the same extent and with the same effect as though such area was not a federal area: PROVIDED, That nothing in this section shall be construed as extending the provisions of this title to the gross income received from, or to sales made for use in performing within a federal military or naval reservation, any contract entered into with the United States of America, or any department or agency thereof or any subcontract made pursuant thereto for which a bid covering such contract or subcontract was submitted prior to October 9, 1940. [1961 c 15 § 82.52.020. Prior: 1941 c 175 § 2; Rem. Supp. 1941 § 11337-11.]

## Chapter 82.56 RCW

## MULTISTATE TAX COMPACT

## Sections

- 82.56.010 Compact.  
 82.56.020 Director of revenue to represent state.  
 82.56.030 Director may be represented by alternate.  
 82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with.  
 82.56.050 Interstate audits article of compact declared to be in force in this state.

**82.56.010 Compact.** The following multistate tax compact, and each and every part thereof, is hereby approved, ratified, adopted, entered into and enacted into law by the state of Washington.

(2008 Ed.)

## MULTISTATE TAX COMPACT

## Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

## Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

## Article III. Elements of Income Tax Laws.

## Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

## Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of \$100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the \$100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the \$100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

## Coverage.

3. Nothing in this article relates to the reporting or payment of any tax other than an income tax.

## Article IV. Division of Income.

1. As used in this article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this article.

(h) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this article, the taxpayer may elect to allocate and apportion his entire net income as provided in this article.

3. For purposes of allocation and apportionment of income under this article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this article.

5.(a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) If and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6.(a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8.(a) Patent and copyright royalties are allocable to this state: (1) If and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax

period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) The individual's service is performed entirely within the state;

(b) The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) Some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) The property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) The property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) The income-producing activity is performed in this state; or

(b) The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) Separate accounting;

(b) The exclusion of any one or more of the factors;

(c) The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales  
and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1.(a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensa-

tion. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2.(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a

view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

#### Finance.

4.(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this article: PROVIDED, That the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

#### Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts

tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

#### Article VIII. Interstate Audits.

1. This article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident: PROVIDED, That such state has adopted this article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated.

The provisions of this paragraph apply only to courts in a state that has adopted this article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

#### Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The

two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X. Entry into Force  
and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws  
and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: PROVIDED, That the definition of "tax" in Article VIII 9 may apply for the purposes of that article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the Constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the Constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1967 c 125 § 1.]

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**82.56.020 Director of revenue to represent state.** The director of revenue shall represent this state on the multistate tax commission. [1979 c 107 § 12; 1967 c 125 § 2.]

**82.56.030 Director may be represented by alternate.** The member representing this state on the multistate tax commission may be represented thereon by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads. [1967 c 125 § 3.]

**82.56.040 Political subdivisions—Appointment of persons to represent—Consultations with.** The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the multistate tax compact. The member of the commission representing this state, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact. [1967 c 125 § 4.]

**82.56.050 Interstate audits article of compact declared to be in force in this state.** Article VIII of the multistate tax compact relating to interaudits shall be in force in and with respect to this state. [1967 c 125 § 5.]

Chapter 82.58 RCW  
SIMPLIFIED SALES AND USE TAX  
ADMINISTRATION ACT

Sections

82.58.005	Findings.
82.58.010	Definitions.
82.58.020	Multistate discussions.
82.58.030	Streamlined sales and use tax agreement.
82.58.040	State adoption of agreement—Existing laws unaffected.
82.58.050	Requirements for agreement.
82.58.060	General purpose of agreement.
82.58.070	Agreement for benefit of member states only—No legal action.
82.58.080	Certified service provider—Certified automated system.
82.58.090	Legislation to conform state law.
82.58.900	Short title.
82.58.901	Effective date—2002 c 267 §§ 1-9.
82.58.902	Contingent effective date—2002 c 267 §§ 10 and 11.

**82.58.005 Findings.** The legislature finds that a simplified sales and use tax system will reduce and over time eliminate the burden and cost for all vendors to collect this state's sales and use tax. The legislature further finds that this state should participate in multistate discussions to review or amend the terms of the agreement to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. [2002 c 267 § 3.]

**82.58.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agreement" means the streamlined sales and use tax agreement as adopted.

(2) "Certified automated system" means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transac-

tion, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(3) "Certified service provider" means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions.

(4) "Person" means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(5) "Sales tax" means the tax levied under chapter 82.08 RCW.

(6) "Seller" means any person making sales, leases, or rentals of personal property or services.

(7) "State" means any state of the United States and the District of Columbia.

(8) "Use tax" means the tax levied under chapter 82.12 RCW. [2002 c 267 § 2.]

**82.58.020 Multistate discussions.** (1) For the purposes of reviewing or amending the agreement embodying the simplification requirements in RCW 82.58.050, the state shall enter into multistate discussions. For purposes of these discussions, the state shall be represented by the department. The governor may appoint up to four persons to consult with the department at these discussions. The persons advising the department shall not be compensated and are not entitled to payment of travel expenses by the state.

(2) The department shall regularly consult with an advisory group composed of one member from each of the two largest caucuses of the senate, appointed by the majority and minority leaders of the senate; one member from each of the two largest caucuses of the house of representatives, appointed by the speaker and minority leader of the house of representatives; representatives of retailers, including those selling via mail, telephone, and the internet; representatives of large and small businesses; and representatives of counties and cities. The department shall use its best efforts to consult with the advisory group before any multistate discussions in which it is anticipated that amendments may be proposed to the agreement embodying the simplification requirements in RCW 82.58.050. [2002 c 267 § 4.]

**82.58.030 Streamlined sales and use tax agreement.**

The department shall enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers. The department is further authorized to take other actions reasonably required to implement this chapter. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department's designee, may represent this state before the other states that are signatories to the agreement. [2002 c 267 § 5.]

**82.58.040 State adoption of agreement—Existing laws unaffected.** No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this state. Adoption of the agreement by this state does not amend or modify any law of this state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of this state. [2002 c 267 § 6.]

**82.58.050 Requirements for agreement.** The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the requirements in this section.

(1) The agreement must set restrictions to limit over time the number of state rates.

(2) The agreement must establish uniform standards for:

- (a) The sourcing of transactions to taxing jurisdictions;
- (b) The administration of exempt sales; and
- (c) Sales and use tax returns and remittances.

(3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:

(a) Restricting variances between the state and local tax bases;

(b) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;

(c) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and

(d) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions.

(6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity.

(7) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(8) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.

(9) The agreement must provide for the appointment of an advisory council of private sector representatives and an

advisory council of nonmember state representatives to consult with in the administration of the agreement. [2004 c 153 § 401; 2002 c 267 § 7.]

**Retroactive effective date—Effective date—2004 c 153:** See note following RCW 82.08.0293.

**82.58.060 General purpose of agreement.** The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state. [2002 c 267 § 8.]

**82.58.070 Agreement for benefit of member states only—No legal action.** (1) The agreement authorized by this chapter binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this state and the other member states and not by the terms of the agreement.

(2) Consistent with subsection (1) of this section, no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, other instrumentality of this state, or any political subdivision of this state on the ground that the action or inaction is inconsistent with the agreement.

(3) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement. [2002 c 267 § 9.]

**82.58.080 Certified service provider—Certified automated system. (Contingent effective date.)** (1) A certified service provider is the agent of a seller, with whom the certified service provider has contracted, for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this section. A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(2) A person that provides a certified automated system is responsible for the proper functioning of that system and is

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liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(3) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard. [2002 c 267 § 10.]

**82.58.090 Legislation to conform state law. (Contingent effective date.)** Upon becoming a member of the streamlined sales and use tax agreement, the department shall prepare legislation conforming state law as necessary and shall provide such legislation to the fiscal committees of the legislature. [2002 c 267 § 11.]

**82.58.900 Short title.** This chapter shall be known and cited as the "simplified sales and use tax administration act." [2002 c 267 § 1.]

**82.58.901 Effective date—2002 c 267 §§ 1-9.** Sections 1 through 9 of this act take effect July 1, 2002. [2002 c 267 § 12.]

**82.58.902 Contingent effective date—2002 c 267 §§ 10 and 11.** Sections 10 and 11 of this act become effective when the state becomes a member of the streamlined sales and use tax agreement. [2002 c 267 § 13.]

## Chapter 82.60 RCW

### TAX DEFERRALS FOR INVESTMENT PROJECTS IN RURAL COUNTIES

(Formerly: Tax deferrals for investment projects in distressed areas)

#### Sections

82.60.010	Legislative findings and declaration.
82.60.020	Definitions.
82.60.030	Application for deferral—Contents.
82.60.040	Issuance of tax deferral certificate.
82.60.049	Additional eligible projects.
82.60.050	Expiration of RCW 82.60.030 and 82.60.040.
82.60.060	Repayment schedule.
82.60.065	Tax deferral on construction labor and investment projects—Repayment forgiven.
82.60.070	Annual survey by recipients—Assessment of taxes, interest.
82.60.080	Employment and wage determinations.
82.60.090	Applicability of general administrative provisions.
82.60.100	Applications, reports, and information subject to disclosure.
82.60.110	Competing projects—Impact study.
82.60.900	Effective date, applicability—1985 c 232.
82.60.901	Effective date—1994 sp.s. c 1.

**82.60.010 Legislative findings and declaration.** The legislature finds that there are several areas in the state that are characterized by very high levels of unemployment and poverty. The legislative [legislature] further finds that economic stagnation is the primary cause of this high unemployment rate and poverty; that new state policies are necessary in order to promote economic stimulation and new employment opportunities in these distressed areas; and that policies providing incentives for economic growth in these distressed areas are essential. For these reasons, the legislature hereby establishes a tax deferral program to be effective solely in

distressed areas and under circumstances where the deferred tax payments are for investments or costs that result in the creation of a specified number of jobs. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and reducing poverty in the distressed areas of the state. [1985 c 232 § 1.]

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a rural county as defined in RCW 82.14.370.

(4)(a) "Eligible investment project" means an investment project in an eligible area as defined in subsection (3) of this section.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.60.070; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(c) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(5), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects which have already received deferrals under this chapter.

(5) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, the activities performed by research and development laboratories and commercial testing laboratories, and the conditioning of vegetable seeds.

(7) "Person" has the meaning given in RCW 82.04.030.

(8) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other pur-

poses, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(9) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(10) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(11) "Recipient" means a person receiving a tax deferral under this chapter.

(12) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars. [2006 c 142 § 1; 2004 c 25 § 3; 1999 sp.s. c 9 § 2; 1999 c 164 § 301; 1996 c 290 § 4; 1995 1st sp.s. c 3 § 5. Prior: 1994 sp.s. c 7 § 704; 1994 sp.s. c 1 § 1; 1993 sp.s. c 25 § 403; 1988 c 42 § 16; 1986 c 116 § 12; 1985 c 232 § 2.]

**Effective date—2006 c 142:** "This act takes effect July 1, 2006." [2006 c 142 § 2.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**Intent—Severability—Effective date—1999 sp.s. c 9:** See notes following RCW 82.04.120.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** "Sections 301 through 303, 305, 306, and 601 through 603 of this act do not affect any existing right acquired or liability or obligation under the sections amended or repealed in those sections or any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections." [1999 c 164 § 803.]

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Severability—1988 c 42:** See note following RCW 4.24.480.

**Severability—1986 c 116:** See RCW 82.62.900.

**82.60.030 Application for deferral—Contents. (Expires July 1, 2010.)** Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the

location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [1994 sp.s. c 1 § 2; 1985 c 232 § 3.]

**Expiration of RCW 82.60.030 and 82.60.040:** See RCW 82.60.050.

**82.60.040 Issuance of tax deferral certificate. (Expires July 1, 2010.)** (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project that is located in an eligible area as defined in RCW 82.60.020.

(2) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) This section expires July 1, 2010. [2004 c 25 § 4; 1999 c 164 § 302; 1997 c 156 § 5; 1995 1st sp.s. c 3 § 6; 1994 sp.s. c 1 § 3; 1986 c 116 § 13; 1985 c 232 § 4.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** See note following RCW 82.60.020.

**Expiration date—1997 c 156 § 5:** "Section 5 of this act expires July 1, 2004." [1997 c 156 § 12.]

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Expiration of RCW 82.60.030 and 82.60.040:** See RCW 82.60.050.

**Severability—1986 c 116:** See RCW 82.62.900.

**82.60.049 Additional eligible projects.** (1) For the purposes of this section:

(a) "Eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020 or a county containing a community empowerment zone.

(b) "Eligible investment project" also means an investment project in an eligible area as defined in this section.

(2) In addition to the provisions of RCW 82.60.040, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW, on each eligible investment project that is located in an eligible area, if the applicant establishes that at the time the project is operationally complete:

(a) The applicant will hire at least one qualified employment position for each seven hundred fifty thousand dollars of investment for which a deferral is requested; and

(b) The positions will be filled by persons who at the time of hire are residents of the community empowerment zone. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section. The persons must be hired after the date the application is filed with the department.

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(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section.

(4) The qualified employment position must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a person does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2004 c 25 § 5; 2000 c 106 § 8; 1999 c 164 § 304.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**82.60.050 Expiration of RCW 82.60.030 and 82.60.040.** RCW 82.60.030 and 82.60.040 shall expire July 1, 2010. [2004 c 25 § 6; 1994 sp.s. c 1 § 7; 1993 sp.s. c 25 § 404; 1988 c 41 § 5; 1985 c 232 § 10.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**82.60.060 Repayment schedule.** (1) The recipient shall begin paying the deferred taxes in the third year after the date certified by the department as the date on which the construction project has been operationally completed. The first payment will be due on December 31st of the third calendar year after such certified date, with subsequent annual payments due on December 31st of the following four years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	15%
3	20%
4	25%
5	30%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2000 c 106 § 5; 1985 c 232 § 5.]

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**82.60.065 Tax deferral on construction labor and investment projects—Repayment forgiven.** Except as provided in RCW 82.60.070:

(1) Taxes deferred under this chapter on the sale or use of labor that is directly used in the construction of an investment project for which a deferral has been granted under this chap-

ter after June 11, 1986, and prior to July 1, 1994, need not be repaid.

(2) Taxes deferred under this chapter on an investment project for which a deferral has been granted under this chapter after June 30, 1994, need not be repaid.

(3) Taxes deferred under this chapter need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995. [1995 1st sp.s. c 3 § 8; 1994 sp.s. c 1 § 6; 1986 c 116 § 14.]

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

**Severability—1986 c 116:** See RCW 82.62.900.

**82.60.070 Annual survey by recipients—Assessment of taxes, interest.** (1)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Each recipient of a deferral granted under this chapter after June 30, 1994, shall complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;  
 (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;  
 (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any cate-

gory. The department shall report these statistics to the legislature each year by September 1st.

(f) The department shall also use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2009. The report shall measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(2)(a) If, on the basis of a survey under this section or other information, the department finds that an investment project is not eligible for tax deferral under this chapter, the amount of deferred taxes outstanding for the project shall be immediately due.

(b) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due, twelve and one-half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.020(4), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(3) Notwithstanding any other subsection of this section, deferred taxes need not be repaid on machinery and equipment for lumber and wood products industries, and sales of or charges made for labor and services, of the type which qualifies for exemption under RCW 82.08.02565 or 82.12.02565 to the extent the taxes have not been repaid before July 1, 1995.

(4) Notwithstanding any other subsection of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2004 c 25 § 7; 1999 c 164 § 303; 1995 1st sp.s. c 3 § 9; 1994 sp.s. c 1 § 5; 1985 c 232 § 6.]

**Effective date—2004 c 25:** See note following RCW 82.04.4483.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** See note following RCW 82.60.020.

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

### **82.60.080 Employment and wage determinations.**

The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages as requested by the department under this chapter. [2000 c 106 § 6; 1985 c 232 § 7.]

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**82.60.090 Applicability of general administrative provisions.** Chapter 82.32 RCW applies to the administration of this chapter. [1985 c 232 § 8.]

**82.60.100 Applications, reports, and information subject to disclosure.** Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [1987 c 49 § 1.]

**82.60.110 Competing projects—Impact study.** If the department determines that an investment project for which an exemption is granted under this chapter competes with an investment project for which a deferral is granted under this chapter, the department shall study the impacts on the project for which a deferral is granted. [1998 c 245 § 169; 1994 sp.s. c 1 § 8.]

**82.60.900 Effective date, applicability—1985 c 232.** This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately, provided that no taxes may be deferred prior to July 1, 1985. [1985 c 232 § 11.]

**Reviser's note:** The effective date of 1985 c 232 is May 10, 1985.

**82.60.901 Effective date—1994 sp.s. c 1.** This act shall take effect July 1, 1994. [1994 sp.s. c 1 § 10.]

## Chapter 82.62 RCW

### TAX CREDITS FOR ELIGIBLE BUSINESS PROJECTS IN RURAL COUNTIES

#### Sections

82.62.010	Definitions.
82.62.020	Application for tax credits—Contents.
82.62.030	Allowance of tax credits—Limitations.
82.62.045	Tax credits for eligible business projects in designated community empowerment zones.
82.62.050	Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients.
82.62.060	Employment and wage determinations.
82.62.070	Applicability of general administrative provisions.
82.62.080	Applications, reports, and other information subject to disclosure.
82.62.900	Severability—1986 c 116.
82.62.901	Effective date—1986 c 116 §§ 15-20.

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

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means an area as defined in RCW 82.60.020.

(4)(a) "Eligible business project" means manufacturing or research and development activities which are conducted by an applicant in an eligible area at a specific facility, provided the applicant's average qualified employment positions at the specific facility will be at least fifteen percent greater in the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled than the applicant's average qualified employment positions at the same facility in the four consecutive full calendar quarters immediately preceding the calendar quarter during which the first qualified employment position is filled.

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(b) "Eligible business project" does not include any portion of a business project undertaken by a light and power business as defined in RCW 82.16.010(5) or that portion of a business project creating qualified full-time employment positions outside an eligible area.

(5) "First qualified employment position" means the first qualified employment position filled for which a credit under this chapter is sought.

(6) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes computer programming, the production of computer software, and other computer-related services, and the activities performed by research and development laboratories and commercial testing laboratories.

(7) "Person" has the meaning given in RCW 82.04.030.

(8)(a)(i) "Qualified employment position" means a permanent full-time employee employed in the eligible business project during four consecutive full calendar quarters.

(ii) For seasonal employers, "qualified employment position" also includes the equivalent of a full-time employee in work hours for four consecutive full calendar quarters.

(b) For purposes of this subsection, "full time" means a normal work week of at least thirty-five hours.

(c) Once a permanent, full-time employee has been employed, a position does not cease to be a qualified employment position solely due to periods in which the position goes vacant, as long as:

(i) The cumulative period of any vacancies in that position is not more than one hundred twenty days in the four-quarter period; and

(ii) During a vacancy, the employer is training or actively recruiting a replacement permanent, full-time employee for the position.

(9) "Recipient" means a person receiving tax credits under this chapter.

(10) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(11) "Seasonal employee" means an employee of a seasonal employer who works on a seasonal basis. For the purposes of this subsection and subsection (12) of this section, "seasonal basis" means a continuous employment period of less than twelve consecutive months.

(12) "Seasonal employer" means a person who regularly hires more than fifty percent of its employees to work on a seasonal basis. [2007 c 485 § 1; 2001 c 320 § 12; 1999 sp.s. c 9 § 3; 1999 c 164 § 305; 1996 c 290 § 5; 1994 sp.s. c 7 § 705; 1993 sp.s. c 25 § 410; 1988 c 42 § 17; 1986 c 116 § 15.]

**Application—2007 c 485:** "Sections 1 through 3 and 5 of this act apply with respect to applications for credit under chapter 82.62 RCW received by the department of revenue on or after January 1, 2008." [2007 c 485 § 7.]

**Application—Effective date—2007 c 485:** See notes following RCW 82.62.020.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Intent—Severability—Effective date—1999 sp.s. c 9:** See notes following RCW 82.04.120.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** See note following RCW 82.60.020.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Severability—1988 c 42:** See note following RCW 4.24.480.

### 82.62.020 Application for tax credits—Contents.

Application for tax credits under this chapter must be made within ninety consecutive days after the first qualified employment position is filled. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the business project, the applicant's average employment, if any, at the facility for the four consecutive full calendar quarters immediately preceding the earlier of the calendar quarter during which the application required by this section is submitted to the department or the first qualified employment position is filled, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall prescribe a method for calculating a seasonal employer's average employment levels. The department shall rule on the application within sixty days. [2007 c 485 § 2; 1986 c 116 § 16.]

**Application—2007 c 485:** "This act applies prospectively only, except that section 4 of this act applies both prospectively and retroactively." [2007 c 485 § 6.]

**Effective date—2007 c 485:** "This act takes effect January 1, 2008." [2007 c 485 § 8.]

**Application—2007 c 485:** See note following RCW 82.62.010.

### 82.62.030 Allowance of tax credits—Limitations.

(1)(a) A person shall be allowed a credit against the tax due under chapter 82.04 RCW as provided in this section. The credit shall equal: (i) Four thousand dollars for each qualified employment position with wages and benefits greater than forty thousand dollars annually that is directly created in an eligible business project and (ii) two thousand dollars for each qualified employment position with wages and benefits less than or equal to forty thousand dollars annually that is directly created in an eligible business project.

(b) For purposes of calculating the amount of credit under (a) of this subsection with respect to qualified employment positions as defined in RCW 82.62.010(8)(a)(ii):

(i) In determining the number of qualified employment positions, a fractional amount is rounded down to the nearest whole number; and

(ii) Wages and benefits for each qualified employment position shall be equal to the quotient derived by dividing: (A) The sum of the wages and benefits earned for the four consecutive full calendar quarter period for which a credit under this chapter is earned by all of the person's new seasonal employees hired during that period; by (B) the number of qualified employment positions plus any fractional amount subject to rounding as provided under (b)(i) of this subsection.

tion. For purposes of this chapter, a credit is earned for the four consecutive full calendar quarters after the calendar quarter during which the first qualified employment position is filled.

(2) The department shall keep a running total of all credits allowed under this chapter during each fiscal year. The department shall not allow any credits which would cause the total to exceed seven million five hundred thousand dollars in any fiscal year. If all or part of an application for credit is disallowed under this subsection, the disallowed portion shall be carried over to the next fiscal year. However, the carryover into the next fiscal year is only permitted to the extent that the cap for the next fiscal year is not exceeded.

(3) No recipient may use the tax credits to decertify a union or to displace existing jobs in any community in the state.

(4) The credit may be used against any tax due under chapter 82.04 RCW, and may be carried over until used. No refunds may be granted for credits under this section. [2007 c 485 § 3; 2001 c 320 § 13; 1999 c 164 § 306; 1997 c 366 § 5; 1996 c 1 § 3; 1986 c 116 § 17.]

**Application—2007 c 485:** See note following RCW 82.62.010.

**Application—Effective date—2007 c 485:** See notes following RCW 82.62.020.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** See note following RCW 82.60.020.

**Intent—Goals—Severability—Captions and part headings not law—1997 c 366:** See notes following RCW 82.14.370.

**Effective date—1996 c 1:** See note following RCW 82.04.255.

**82.62.045 Tax credits for eligible business projects in designated community empowerment zones.** (1) For the purposes of this section "eligible area" also means a designated community empowerment zone approved under RCW 43.31C.020.

(2) An eligible business project located within an eligible area as defined in this section qualifies for a credit under this chapter for those employees who at the time of hire are residents of the community empowerment zone in which the project is located, if the fifteen percent threshold is met. As used in this subsection, "resident" means the person makes his or her home in the community empowerment zone. A mailing address alone is insufficient to establish that a person is a resident for the purposes of this section.

(3) All other provisions and eligibility requirements of this chapter apply to applicants eligible under this section. [2007 c 485 § 4; 1999 c 164 § 307.]

**Application—Effective date—2007 c 485:** See notes following RCW 82.62.020.

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**82.62.050 Tax credit recipients to report to department—Payment of taxes and interest by ineligible recipients.** (1) Each recipient shall submit a report to the department by the last day of the month immediately following the

end of the four consecutive full calendar quarter period for which a credit under this chapter is earned. The report shall contain information, as required by the department, from which the department may determine whether the recipient is meeting the requirements of this chapter. If the recipient fails to submit a report or submits an inadequate report, the department may declare the amount of taxes for which a credit has been used to be immediately assessed and payable. The recipient must keep records, such as payroll records showing the date of hire and employment security reports, to verify eligibility under this section.

(2) If, on the basis of a report under this section or other information, the department finds that a business project is not eligible for tax credit under this chapter for reasons other than failure to create the required number of qualified employment positions, the amount of taxes for which a credit has been used for the project shall be immediately due.

(3) If, on the basis of a report under this section or other information, the department finds that a business project has failed to create the specified number of qualified employment positions, the department shall assess interest, but not penalties, on the credited taxes for which a credit has been used for the project. The interest shall be assessed at the rate provided for delinquent excise taxes, shall be assessed retroactively to the date of the tax credit, and shall accrue until the taxes for which a credit has been used are repaid. [2007 c 485 § 5; 2001 c 320 § 14; 1986 c 116 § 18.]

**Application—2007 c 485:** See note following RCW 82.62.010.

**Application—Effective date—2007 c 485:** See notes following RCW 82.62.020.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

#### **82.62.060 Employment and wage determinations.**

The employment security department shall make, and certify to the department of revenue, all determinations of employment and wages requested by the department under this chapter. [2000 c 106 § 7; 1986 c 116 § 19.]

**Effective date—2000 c 106:** See note following RCW 82.32.330.

**82.62.070 Applicability of general administrative provisions.** Chapter 82.32 RCW applies to the administration of this chapter. [1986 c 116 § 20.]

**82.62.080 Applications, reports, and other information subject to disclosure.** Applications, reports, and any other information received by the department under this chapter shall not be confidential and shall be subject to disclosure. [1987 c 49 § 3.]

**82.62.900 Severability—1986 c 116.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 116 § 23.]

**82.62.901 Effective date—1986 c 116 §§ 15-20.** Sections 15 through 20 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986. [1986 c 116 § 24.]

(2008 Ed.)

## **Chapter 82.63 RCW TAX DEFERRALS FOR HIGH TECHNOLOGY BUSINESSES**

### Sections

82.63.005	Findings—Intent to create a contract.
82.63.010	Definitions.
82.63.020	Application—Annual survey—Reports.
82.63.030	Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing.
82.63.045	Repayment not required—Repayment schedule for unqualified investment project—Exceptions.
82.63.060	Administration.
82.63.070	Public disclosure.
82.63.900	Effective date—1994 sp.s. c 5.

**82.63.005 Findings—Intent to create a contract.** The legislature finds that high-wage, high-skilled jobs are vital to the economic health of the state's citizens, and that targeted tax incentives will encourage the formation of high-wage, high-skilled jobs. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

The legislature also finds that high-technology businesses are a vital and growing source of high-wage, high-skilled jobs in this state, and that the high-technology sector is a key component of the state's effort to encourage economic diversification. However, the legislature finds that many high-technology businesses incur significant costs associated with research and development and pilot scale manufacturing many years before a marketable product can be produced, and that current state tax policy discourages the growth of these companies by taxing them long before they become profitable.

The legislature further finds that stimulating growth of high-technology businesses early in their development cycle, when they are turning ideas into marketable products, will build upon the state's established high-technology base, creating additional research and development jobs and subsequent manufacturing facilities.

For these reasons, the legislature hereby establishes a program of business and occupation tax credits for qualified research and development expenditures. The legislature also hereby establishes a tax deferral program for high-technology research and development and pilot scale manufacturing facilities. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in research and development, supporting, and sustaining as they develop new technologies and products, and creating quality employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [2004 c 2 § 1; 1994 sp.s. c 5 § 1.]

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

(1) "Advanced computing" means technologies used in the designing and developing of computing hardware and software, including innovations in designing the full spec-

trum of hardware from hand-held calculators to super computers, and peripheral equipment.

(2) "Advanced materials" means materials with engineered properties created through the development of specialized processing and synthesis technology, including ceramics, high value-added metals, electronic materials, composites, polymers, and biomaterials.

(3) "Applicant" means a person applying for a tax deferral under this chapter.

(4) "Biotechnology" means the application of technologies, such as recombinant DNA techniques, biochemistry, molecular and cellular biology, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms, to produce or modify products, to improve plants or animals, to develop microorganisms for specific uses, to identify targets for small molecule pharmaceutical development, or to transform biological systems into useful processes and products or to develop microorganisms for specific uses.

(5) "Department" means the department of revenue.

(6) "Electronic device technology" means technologies involving microelectronics; semiconductors; electronic equipment and instrumentation; radio frequency, microwave, and millimeter electronics; optical and optic-electrical devices; and data and digital communications and imaging devices.

(7) "Eligible investment project" means an investment project which either initiates a new operation, or expands or diversifies a current operation by expanding, renovating, or equipping an existing facility. The lessor or owner of the qualified building is not eligible for a deferral unless:

(a) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(b)(i) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(ii) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.63.020(2); and

(iii) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(8) "Environmental technology" means assessment and prevention of threats or damage to human health or the environment, environmental cleanup, and the development of alternative energy sources.

(9) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction or improvement of the project.

(10) "Person" has the meaning given in RCW 82.04.030 and includes state universities as defined in RCW 28B.10.016.

(11) "Pilot scale manufacturing" means design, construction, and testing of preproduction prototypes and models in the fields of biotechnology, advanced computing, electronic device technology, advanced materials, and environmental technology other than for commercial sale. As used in this subsection, "commercial sale" excludes sales of prototypes or sales for market testing if the total gross receipts from such

sales of the product, service, or process do not exceed one million dollars.

(12) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for pilot scale manufacturing or qualified research and development, including plant offices and other facilities that are an essential or an integral part of a structure used for pilot scale manufacturing or qualified research and development. If a building is used partly for pilot scale manufacturing or qualified research and development, and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(13) "Qualified machinery and equipment" means fixtures, equipment, and support facilities that are an integral and necessary part of a pilot scale manufacturing or qualified research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment, instrumentation, and other devices used in a process of experimentation to develop a new or improved pilot model, plant process, product, formula, invention, or similar property; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; vats, tanks, and fermenters; operating structures; and all other equipment used to control, monitor, or operate the machinery. For purposes of this chapter, qualified machinery and equipment must be either new to the taxing jurisdiction of the state or new to the certificate holder, except that used machinery and equipment may be treated as qualified machinery and equipment if the certificate holder either brings the machinery and equipment into Washington or makes a retail purchase of the machinery and equipment in Washington or elsewhere.

(14) "Qualified research and development" means research and development performed within this state in the fields of advanced computing, advanced materials, biotechnology, electronic device technology, and environmental technology.

(15) "Recipient" means a person receiving a tax deferral under this chapter.

(16) "Research and development" means activities performed to discover technological information, and technical and nonroutine activities concerned with translating technological information into new or improved products, processes, techniques, formulas, inventions, or software. The term includes exploration of a new use for an existing drug, device, or biological product if the new use requires separate licensing by the federal food and drug administration under chapter 21, C.F.R., as amended. The term does not include adaptation or duplication of existing products where the products are not substantially improved by application of the technology, nor does the term include surveys and studies, social science and humanities research, market research or testing, quality control, sale promotion and service, computer software developed for internal use, and research in areas such as improved style, taste, and seasonal design.

(17)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (7) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase. [2004 c 2 § 3; 1995 1st sp.s. c 3 § 12; 1994 sp.s. c 5 § 3.]

**Findings—Effective date—1995 1st sp.s. c 3:** See notes following RCW 82.08.02565.

### 82.63.020 Application—Annual survey—Reports.

(1) Application for deferral of taxes under this chapter must be made before initiation of construction of, or acquisition of equipment or machinery for the investment project. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days.

(2)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Applicants for deferral of taxes under this chapter shall agree to complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey shall include the amount of tax deferred, the number of new products or research projects by general classification, and the number of trademarks, patents, and copyrights associated with activities at the investment project. The survey shall also include the following information for employment positions in Washington:

(i) The number of total employment positions;

(ii) Full-time, part-time, and temporary employment positions as a percent of total employment;

(iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band

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containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(4) The department shall use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2009, and December 1, 2013. The reports shall measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. [2004 c 2 § 4; 1994 sp.s. c 5 § 4.]

### 82.63.030 Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing. (Effective until July 1, 2009.)

(1) Except as provided in subsection (2) of this section, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or \*82.61 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section shall expire January 1, 2015. [2004 c 2 § 5; 1994 sp.s. c 5 § 5.]

\*Reviser's note: Chapter 82.61 RCW was repealed in its entirety by 2005 c 443 § 7, effective July 1, 2006.

### 82.63.030 Sales and use tax deferral certificate—Eligible investment projects and pilot scale manufacturing. (Effective July 1, 2009, until January 1, 2015.)

(1) Except as provided in subsection (2) of this section, the department shall issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 RCW or this chapter, except that an investment project for qualified research and development that has already

received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) This section shall expire January 1, 2015. [2008 c 15 § 4; 2004 c 2 § 5; 1994 sp.s. c 5 § 5.]

Effective date—2008 c 15: See note following RCW 82.82.010.

**82.63.045 Repayment not required—Repayment schedule for unqualified investment project—Exceptions.**

(1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of survey under RCW 82.63.020 or other information, the department finds that an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If a recipient of the deferral fails to complete the annual survey required under RCW 82.63.020 by the date due, 12.5 percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(c) If an investment project is used for purposes other than qualified research and development or pilot scale manufacturing at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete the annual survey due under RCW 82.63.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.63.010(7), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit.

(3) The department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2004 c 2 § 6; 2000 c 106 § 10; 1995 1st sp.s. c 3 § 13.]

Effective date—2000 c 106: See note following RCW 82.32.330.

Findings—Effective date—1995 1st sp.s. c 3: See notes following RCW 82.08.02565.

**82.63.060 Administration.** Chapter 82.32 RCW applies to the administration of this chapter. [1994 sp.s. c 5 § 8.]

**82.63.070 Public disclosure.** Applications received by the department under this chapter are not confidential and are subject to disclosure. [2004 c 2 § 7; 1994 sp.s. c 5 § 9.]

**82.63.900 Effective date—1994 sp.s. c 5.** This act shall take effect January 1, 1995. [1994 sp.s. c 5 § 12.]

**Chapter 82.64 RCW**

**SYRUP TAX**

(Formerly: Carbonated beverage tax)

Sections

- 82.64.010 Definitions.
- 82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in violence reduction and drug enforcement account.
- 82.64.030 Exemptions.
- 82.64.040 Credit against tax.
- 82.64.050 Wholesaler to collect tax from buyer.
- 82.64.901 Effective dates—1989 c 271.
- 82.64.902 Severability—1989 c 271.

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

(1) "Carbonated beverage" has its ordinary meaning and includes any nonalcoholic liquid intended for human consumption which contains carbon dioxide, whether carbonation is obtained by natural or artificial means.

(2) "Previously taxed syrup" means syrup in respect to which a tax has been paid under this chapter.

(3) "Syrup" means a concentrated liquid which is added to carbonated water to produce a carbonated beverage.

(4) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter. [1994 sp.s. c 7 § 905 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 1; 1989 c 271 § 505.]

**Construction—1994 sp.s. c 7 §§ 905-908:** "Sections 905 through 908, chapter 7, Laws of 1994 sp. sess. shall not be construed as affecting any existing right acquired or liability or obligation incurred, nor as affecting any proceeding instituted under those sections, before July 1, 1995." [1994 sp.s. c 7 § 912 (Referendum Bill No. 43, approved November 8, 1994).]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Policy—1991 c 80:** "The taxes imposed in this act are intended to raise revenue for the enforcement of the drug laws of the state. It is the policy of the state to actively combat the problem of drug abuse by aggressive enforcement of the state's drug laws and by extensive promotion of public education programs designed to increase public and consumer awareness of the state's drug problem and its enforcement measures." [1991 c 80 § 6.]

**Savings—1991 c 80:** "The amendatory sections of this act shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections as they existed before this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1991 c 80 § 8.]

**Effective date—1991 c 80:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 1, 1991." [1991 c 80 § 9.]

**82.64.020 Tax imposed—Wholesale, retail—Revenue deposited in violence reduction and drug enforcement account.** (1) A tax is imposed on each sale at wholesale of syrup in this state. The rate of the tax shall be equal to one dollar per gallon. Fractional amounts shall be taxed proportionally.

(2) A tax is imposed on each sale at retail of syrup in this state. The rate of the tax shall be equal to the rate imposed under subsection (1) of this section.

(3) Moneys collected under this chapter shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(4) Chapter 82.32 RCW applies to the taxes imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the taxes imposed in this chapter. [1994 sp.s. c 7 § 906 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 2; 1989 c 271 § 506.]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Construction—1994 sp.s. c 7 §§ 905-908:** See note following RCW 82.64.010.

**Policy—Savings—Effective date—1991 c 80:** See notes following RCW 82.64.010.

**82.64.030 Exemptions.** The following are exempt from the taxes imposed in this chapter:

(1) Any successive sale of a previously taxed syrup.

(2) Any syrup that is transferred to a point outside the state for use outside the state. The department shall provide by rule appropriate procedures and exemption certificates for the administration of this exemption.

(3) Any sale at wholesale of a trademarked syrup by any person to a person commonly known as a bottler who is appointed by the owner of the trademark to manufacture, distribute, and sell such trademarked syrup within a specified geographic territory.

(4) Any sale of syrup in respect to which a tax on the privilege of possession was paid under this chapter before June 1, 1991. [1994 sp.s. c 7 § 907 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 3; 1989 c 271 § 507.]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

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**Construction—1994 sp.s. c 7 §§ 905-908:** See note following RCW 82.64.010.

**Policy—Savings—Effective date—1991 c 80:** See notes following RCW 82.64.010.

**82.64.040 Credit against tax.** (1) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any syrup tax paid to another state with respect to the same syrup. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that syrup.

(2) For the purpose of this section:

(a) "Syrup tax" means a tax:

(i) That is imposed on the sale at wholesale of syrup and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the volume of the syrup.

(b) "State" means (i) a state of the United States other than Washington, or any political subdivision of such other state, (ii) the District of Columbia, and (iii) any foreign country or political subdivision thereof. [1994 sp.s. c 7 § 908 (Referendum Bill No. 43, approved November 8, 1994); 1991 c 80 § 7; 1989 c 271 § 508.]

**Contingent partial referendum—1994 sp.s. c 7 §§ 901-909:** See note following RCW 66.24.210.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Construction—1994 sp.s. c 7 §§ 905-908:** See note following RCW 82.64.010.

**Policy—Savings—Effective date—1991 c 80:** See notes following RCW 82.64.010.

**82.64.050 Wholesaler to collect tax from buyer.** (1) The tax imposed in RCW 82.64.020(1) shall be paid by the buyer to the wholesaler and each wholesaler shall collect from the buyer the full amount of the tax payable in respect to each taxable sale, unless the wholesaler is prohibited from collecting the tax from the buyer under the Constitution of this state or the Constitution or laws of the United States. Regardless of the obligation to collect the tax from the buyer, the wholesaler is liable to the state for the amount of the tax. The tax imposed in RCW 82.64.020(2) shall be paid by the retailer. The buyer is not obligated to pay or report to the department the taxes imposed in RCW 82.64.020.

(2) The tax required to be collected by the wholesaler shall be stated separately from the selling price in any sales invoice or other instrument of sale.

(3) Any wholesaler who fails or refuses to collect tax under this section, with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, is guilty of a misdemeanor.

(4) The amount of tax required to be collected under this section shall constitute a debt from the buyer to the wholesaler until paid by the buyer to the wholesaler. [1991 c 80 § 4.]

**Policy—Savings—Effective date—1991 c 80:** See notes following RCW 82.64.010.

**82.64.901 Effective dates—1989 c 271.** See note following RCW 66.28.200.

**82.64.902 Severability—1989 c 271.** See note following RCW 9.94A.510.

**Chapter 82.65A RCW**  
**INTERMEDIATE CARE FACILITIES FOR**  
**THE MENTALLY RETARDED**

Sections

82.65A.010	Expiration date defined.
82.65A.020	Definitions.
82.65A.030	Tax imposed.
82.65A.040	Administration.
82.65A.900	Expiration date—Savings—Application—1992 c 80.
82.65A.901	Effective date—1992 c 80.

**82.65A.010 Expiration date defined.** As used in this chapter, "expiration date" means the earliest of:

(1) The effective date that federal medicaid matching funds for the purposes specified in \*section 7 of this act become unavailable or are substantially reduced, as such date is certified by the secretary of social and health services;

(2) The effective date that federal medicaid matching funds for the purposes specified in \*section 7 of this act become unavailable or are substantially reduced, as determined by a permanent injunction, court order, or final court decision; or

(3) The effective date of a permanent injunction, court order, or final court decision that prohibits in whole or in part the collection of taxes under RCW 82.65A.030. [1992 c 80 § 1.]

**\*Reviser's note:** "Section 7 of this act" was originally an appropriation section, however a senate amendment removed the appropriation section, and the corresponding internal and substantive references were not corrected.

**82.65A.020 Definitions. (Contingent expiration date.)** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Gross income" means all income from whatever source derived, including but not limited to gross income of the business as defined in RCW 82.04.080 and moneys received from state appropriations.

(2) "Intermediate care facility for the mentally retarded" means an intermediate care facility certified by the department of social and health services and the federal department of health and human services to provide residential care under 42 U.S.C. Sec. 1396d(d). [1992 c 80 § 2.]

**82.65A.030 Tax imposed. (Contingent expiration date.)** In addition to any other tax, a tax is imposed on every intermediate care facility for the mentally retarded for the act or privilege of engaging in business within this state. The tax is equal to the gross income attributable to services for the mentally retarded, multiplied by the rate of six percent. [1993 c 276 § 1; 1992 c 80 § 3.]

**Contingent effective date—1993 c 276:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take \*effect on such date as shall be certified by the secretary of social and health services by which states must modify health care related taxes to prevent the loss of federal medicaid participation in the cost of the tax." [1993 c 276 § 2.]

**\*Reviser's note:** 1993 c 276 took effect in 1993. See RCW 82.65A.900 for the contingent expiration of this section.

**82.65A.040 Administration. (Contingent expiration date.)** Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter, except the department may not permit returns for taxes under this chapter to cover periods longer than one month. The appropriations in \*section 7 of this act shall not be construed as modifying in any manner the obligation of the taxpayer to pay taxes on an accrual basis as ordinarily required under chapter 82.04 RCW. [1992 c 80 § 4.]

**\*Reviser's note:** See note following RCW 82.65A.010.

**82.65A.900 Expiration date—Savings—Application—1992 c 80.** (1) RCW 82.65A.020 through 82.65A.040 shall expire on the expiration date determined under RCW 82.65A.010.

(2) The expiration of RCW 82.65A.020 through 82.65A.040 shall not be construed as affecting any existing right acquired or liability or obligation incurred under those sections or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections.

(3) Taxes that have been paid under RCW 82.65A.020 through 82.65A.040, but are properly attributable to taxable events occurring after the expiration of those sections, shall be credited or refunded as provided in RCW 82.32.060. [1992 c 80 § 6.]

**82.65A.901 Effective date—1992 c 80.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect April 1, 1992. [1992 c 80 § 7.]

**Chapter 82.66 RCW**  
**TAX DEFERRALS FOR NEW THOROUGHbred**  
**RACE TRACKS**

Sections

82.66.010	Definitions.
82.66.020	Application for deferral—Contents—Ruling.
82.66.040	Repayment schedule—Interest, penalties.
82.66.050	Applications not confidential.
82.66.060	Administration.
82.66.900	Severability—1995 c 352.
82.66.901	Effective date—1995 c 352.

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Person" has the meaning given in RCW 82.04.030.

(3) "Department" means the department of revenue.

(4) "Investment project" means construction of buildings, site preparation, and the acquisition of related machinery and equipment when the buildings, machinery, and

equipment are to be used in the operation of a new thoroughbred race track.

(5) "New thoroughbred race track" means a site for thoroughbred horse racing located west of the Cascade mountains on which construction is commenced prior to July 1, 1998.

(6) "Buildings" means only those new structures such as ticket offices, concession areas, grandstands, stables, and other structures that are an essential or an integral part of a thoroughbred race track. If a building is used partly for use as an essential or integral part of a thoroughbred race track and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(7) "Machinery and equipment" means all fixtures, equipment, and support facilities that are an integral and necessary part of a thoroughbred race track.

(8) "Recipient" means a person receiving a tax deferral under this chapter.

(9) "Certificate holder" means an applicant to whom a tax deferral certificate has been issued.

(10) "Operationally complete" means constructed or improved to the point of being functionally useable for thoroughbred horse racing.

(11) "Initiation of construction" means that date upon which on-site construction commences. [1995 c 352 § 1.]

**82.66.020 Application for deferral—Contents—Ruling.** Application for deferral of taxes under this chapter shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [1995 c 352 § 2.]

**82.66.040 Repayment schedule—Interest, penalties.** (1) The recipient shall begin paying the deferred taxes in the tenth year after the date certified by the department as the date on which the investment project is operationally complete. The first payment is due on December 31st of the tenth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	10%
3	10%
4	10%
5	10%
6	10%
7	10%
8	10%
9	10%
10	10%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise

taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient. [1998 c 339 § 1; 1995 c 352 § 4.]

**82.66.050 Applications not confidential.** Applications and any other information received by the department under this chapter is not confidential and is subject to disclosure. [1995 c 352 § 6.]

**82.66.060 Administration.** Chapter 82.32 RCW applies to the administration of this chapter. [1995 c 352 § 5.]

**82.66.900 Severability—1995 c 352.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 352 § 7.]

**82.66.901 Effective date—1995 c 352.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]. [1995 c 352 § 9.]

**Chapter 82.70 RCW**

**COMMUTE TRIP REDUCTION INCENTIVES**

Sections

82.70.010	Definitions.
82.70.020	Tax credit authorized.
82.70.025	Application for tax credit.
82.70.030	False statement in application—Penalty.
82.70.040	Tax credit limitations.
82.70.050	Fund transfer.
82.70.060	Commute trip reduction task force report.
82.70.070	Administration.
82.70.900	Expiration of chapter.

**82.70.010 Definitions.** (*Expires July 1, 2013.*) The definitions in this section apply throughout this chapter and RCW 70.94.996 unless the context clearly requires otherwise.

(1) "Public agency" means any county, city, or other local government agency or any state government agency, board, or commission.

(2) "Public transportation" means the same as "public transportation service" as defined in RCW 36.57A.010 and includes passenger services of the Washington state ferries.

(3) "Nonmotorized commuting" means commuting to and from the workplace by an employee by walking or running or by riding a bicycle or other device not powered by a motor.

(4) "Ride sharing" means the same as "flexible commuter ride sharing" as defined in RCW 46.74.010, including ride sharing on Washington state ferries.

(5) "Car sharing" means a membership program intended to offer an alternative to car ownership under which persons or entities that become members are permitted to use vehicles from a fleet on an hourly basis.

(6) "Telework" means a program where work functions that are normally performed at a traditional workplace are

instead performed by an employee at his or her home at least one day a week for the purpose of reducing the number of trips to the employee's workplace.

(7) "Applicant" means a person applying for a tax credit under this chapter. [2005 c 297 § 1; 2003 c 364 § 1.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.020 Tax credit authorized. (Expires July 1, 2013.)** (1) Employers in this state who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to their own or other employees for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per employee per fiscal year.

(2) Property managers who are taxable under chapter 82.04 or 82.16 RCW and provide financial incentives to persons employed at a worksite in this state managed by the property manager for ride sharing, for using public transportation, for using car sharing, or for using nonmotorized commuting before July 1, 2013, are allowed a credit against taxes payable under chapters 82.04 and 82.16 RCW for amounts paid to or on behalf of these persons for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, not to exceed sixty dollars per person per fiscal year.

(3) The credit under this section is equal to the amount paid to or on behalf of each employee multiplied by fifty percent, but may not exceed sixty dollars per employee per fiscal year. No refunds may be granted for credits under this section.

(4) A person may not receive credit under this section for amounts paid to or on behalf of the same employee under both chapters 82.04 and 82.16 RCW.

(5) A person may not take a credit under this section for amounts claimed for credit by other persons. [2005 c 297 § 3; 2003 c 364 § 2.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—2003 c 364:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect on July 1, 2003, but only if Engrossed Substitute House Bill No. 2231 becomes law by July 1, 2003. If Engrossed Substitute House Bill No. 2231 does not become law by July 1, 2003, this act is null and void." [2003 c 364 § 13.] Engrossed Substitute House Bill No. 2231 was signed into law by the governor on May 19, 2003.

**Captions not law—2003 c 364:** "Captions used in this act are not part of the law." [2003 c 364 § 14.]

**82.70.025 Application for tax credit. (Expires July 1, 2013.)** (1) Application for tax credits under this chapter must be received by the department between the first day of January and the 31st day of January, following the calendar year in which the applicant made payments to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing,

or for using nonmotorized commuting. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the number of employees for which incentives are paid during the calendar year, the amounts paid to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, the amount of credit deferred under RCW 82.70.040(2)(b)(i) to be used, and other information required by the department. For applications due by January 31, 2006, the application shall not include amounts paid from January 1, 2005, through June 30, 2005, to or on behalf of employees for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting.

(2) The department shall rule on the application within sixty days of the deadline provided in subsection (1) of this section.

(3) The department shall disapprove any application not received by the deadline provided in subsection (1) of this section regardless of the reason that the application was received after the deadline.

(4) After an application is approved and tax credit granted, no increase in the credit shall be allowed. [2005 c 297 § 2.]

**Effective date—2005 c 297:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 297 § 6.]

**82.70.030 False statement in application—Penalty. (Expires July 1, 2013.)** Any person who knowingly makes a false statement of a material fact in the application required under RCW 82.70.025 for a credit under RCW 82.70.020 is guilty of a gross misdemeanor. [2005 c 297 § 4; 2003 c 364 § 3.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.040 Tax credit limitations. (Expires July 1, 2013.)** (1)(a) The department shall keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department shall not allow any credits that would cause the total amount allowed to exceed two million seven hundred fifty thousand dollars in any fiscal year. This limitation includes any deferred credits carried forward under subsection (2)(b)(i) of this section from prior years.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department shall ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b)(i) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and there-

fore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. No credits deferred under this subsection (2)(b)(i) may be used after June 30, 2008. A person deferring tax credits under this subsection (2)(b)(i) must submit an application as provided in RCW 82.70.025 in the year in which the deferred tax credits will be used. This application is subject to the provisions of subsection (1) of this section for the year in which the tax credits will be applied. If a deferred credit is reduced under subsection (1)(b) of this section, the amount of deferred credit disallowed because of the reduction may be carried forward as long as the period of deferral does not exceed three years after the year in which the credit was earned.

(ii) For credits approved by the department after June 30, 2005, the approved credit may be carried forward to subsequent years until used. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person shall be approved for tax credits under RCW 82.70.020 in excess of two hundred thousand dollars in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, 2013.

(5) Credits may not be carried forward other than as authorized in subsection (2)(b) of this section.

(6) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by Engrossed Substitute House Bill No. 2231 are terminated. [2005 c 297 § 5; 2003 c 364 § 4.]

**Effective date—2005 c 297:** See note following RCW 82.70.025.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

#### **82.70.050 Fund transfer. (Expires January 1, 2014.)**

(1) The director shall on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under RCW 82.70.020 during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

(2) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, shall deposit to the general fund a sum equal to the dollar amount of the credit provided under RCW 82.70.020 from the multimodal transportation account. [2003 c 364 § 5.]

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.060 \*Commuter trip reduction task force report. (Expires July 1, 2013.)** The \*commuter trip reduction task force shall determine the effectiveness of the tax credit under RCW 82.70.020, the grant program in RCW 70.94.996, and the relative effectiveness of the tax credit and the grant program as part of its ongoing evaluation of the commuter trip reduction law and report to the senate and house transportation committees and to the fiscal committees of the house of representatives and the senate. The report must include information on the amount of tax credits

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claimed to date and recommendations on future funding between the tax credit program and the grant program. The report must be incorporated into the recommendations required in \*\*RCW 70.94.537(5). [2005 c 319 § 138; 2003 c 364 § 6.]

**Reviser's note:** \*(1) The "commuter trip reduction task force" was renamed the "commuter trip reduction board" by 2006 c 329 § 7.

\*\* (2) RCW 70.94.537 was amended by 2006 c 329 § 7, changing subsection (5) to subsection (6).

**Expiration date—2005 c 319 § 138:** "Section 138 of this act expires July 1, 2013." [2005 c 319 § 146.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.070 Administration. (Expires July 1, 2013.)** Chapter 82.32 RCW applies to the administration of this chapter. [2003 c 364 § 7.]

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

**82.70.900 Expiration of chapter. (Expires July 1, 2013.)** This chapter expires July 1, 2013, except for RCW 82.70.050, which expires January 1, 2014. [2003 c 364 § 8.]

**Effective date—Contingency—Captions not law—2003 c 364:** See notes following RCW 82.70.020.

## **Chapter 82.72 RCW TELEPHONE PROGRAM EXCISE TAX ADMINISTRATION**

### Sections

82.72.010	Definitions.
82.72.020	Authorization to administer telephone program excise taxes.
82.72.030	Collection of tax by local exchange company.
82.72.040	Tax payment and collection requirements.
82.72.050	Administration of telephone program excise taxes.
82.72.060	Tax returns.
82.72.070	Liability for payment of taxes.
82.72.080	Liability for payment of taxes upon termination, dissolution, or abandonment of business.
82.72.090	Applicability of chapter 82.32 RCW.

**82.72.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Switched access line" has the meaning provided in RCW 82.14B.020.

(2) "Local exchange company" has the meaning provided in RCW 80.04.010.

(3) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.16.010.

(4) "Telephone program excise taxes" means the taxes on switched access lines imposed by RCW 43.20A.725 and 80.36.430. [2007 c 6 § 1010; 2004 c 254 § 3.]

**Part headings not law—Savings—Effective date—Severability—2007 c 6:** See notes following RCW 82.32.020.

**Findings—Intent—2007 c 6:** See note following RCW 82.14.495.

**Effective date—2004 c 254:** "This act takes effect July 1, 2004." [2004 c 254 § 14.]

**82.72.020 Authorization to administer telephone program excise taxes.** The department shall collect the tele-

phone program excise taxes on behalf of the department of social and health services at no cost to the department of social and health services. The telephone program excise taxes shall be remitted to the department by local exchange companies on a tax return provided by the department. All telephone program excise taxes shall be deposited by the treasurer into the account described in RCW 43.20A.725 and the account described in RCW 80.36.430. [2004 c 254 § 4.]

**Responsibility for collection of tax—Implementation—2004 c 254:** See notes following RCW 43.20A.725.

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.030 Collection of tax by local exchange company.** Telephone program excise taxes shall be collected from the subscriber by the local exchange company providing the switched access line. [2004 c 254 § 5.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.040 Tax payment and collection requirements.**

(1) Telephone program excise taxes must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the taxes payable. Telephone program excise taxes to be collected by the local exchange company are deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect telephone program excise taxes or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith a properly executed resale certificate under RCW 82.72.070.

(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect telephone program excise taxes as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any telephone excise tax is guilty of a misdemeanor.

(4) If a subscriber has failed to pay to the local exchange company the telephone program excise taxes and the local exchange company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company, regardless of when the tax is collected by the department. Telephone program excise taxes are due as provided under RCW 82.72.050. [2004 c 254 § 6.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.050 Administration of telephone program excise taxes.** (1) The department shall administer and shall adopt rules necessary to enforce and administer the collection of telephone program excise taxes. Chapter 82.32 RCW, with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the administration, collection, and enforcement of telephone program excise taxes.

(2) Telephone program excise taxes, along with reports and returns on forms prescribed by the department, are due at the same time the taxpayer reports other taxes under RCW 82.32.045. If no other taxes are reported under RCW 82.32.045, the taxpayer shall remit telephone program excise taxes on an annual basis in accordance with RCW 82.32.045.

(3) The department may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year.

(4) Telephone program excise taxes are in addition to any taxes imposed upon the same persons under chapters 82.08, 82.12, and 82.14B RCW. [2004 c 254 § 7.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.060 Tax returns.** (1) A local exchange company shall file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A local exchange company filing returns on a cash receipts basis is not required to pay telephone program excise taxes on debts that are deductible as worthless for federal income tax purposes.

(2) A local exchange company is entitled to a credit or refund for telephone program excise taxes previously paid on debts that are deductible as worthless for federal income tax purposes. [2004 c 254 § 8.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.070 Liability for payment of taxes.** (1) Unless a local exchange company has taken from the buyer a resale certificate or equivalent document under RCW 82.04.470, the burden of proving that a sale of the use of a switched access line was not a sale to a subscriber is upon the person who made the sale.

(2) If a local exchange company does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the local exchange company remains liable for the telephone program excise taxes as provided in RCW 82.72.040, unless the local exchange company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of telephone program excise taxes.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on telephone program excise taxes that are due but not paid as a result of the improper use of a resale certificate. This subsection does not prohibit or restrict the application of other penalties authorized by law. [2004 c 254 § 9.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.080 Liability for payment of taxes upon termination, dissolution, or abandonment of business.** (1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of tax funds collected and held in trust under RCW 82.72.040, or who is charged with the responsibility for the filing of returns or the payment of tax funds collected and held in trust under RCW 82.72.040, is personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer or other person willfully fails to pay or to cause to be paid any taxes due from the corporation under this section. For the purposes of this section, any taxes that have been paid, but not collected, are deductible from the taxes collected but not paid. For purposes of this subsection "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for taxes collected that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability if nonpayment of the tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160 through 82.32.200.

(5) This section applies only if the department has determined that there is no reasonable means of collecting the tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law. [2004 c 254 § 10.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

**82.72.090 Applicability of chapter 82.32 RCW.** Unless otherwise stated in this chapter, the collection authority and procedures prescribed in chapter 82.32 RCW apply to collections under this section. [2004 c 254 § 11.]

**Effective date—2004 c 254:** See note following RCW 82.72.010.

## Chapter 82.73 RCW

### WASHINGTON MAIN STREET PROGRAM TAX INCENTIVES

#### Sections

82.73.010	Definitions.
82.73.020	Application for credit.
82.73.030	Credit authorized—Limitations.
82.73.040	Filing requirements.
82.73.050	Administrative assistance by CTED.
82.73.060	Application of chapter 82.32 RCW.

*Washington main street program: Chapter 43.360 RCW.*

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

(1) "Applicant" means a person applying for a tax credit under this chapter.

(2) "Contribution" means cash contributions.

(3) "Department" means the department of revenue.

(4) "Person" has the meaning given in RCW 82.04.030.

(5) "Program" means a nonprofit organization under internal revenue code sections 501(c)(3) or 501(c)(6), with the sole mission of revitalizing a downtown or neighborhood commercial district area, that is designated by the department of community, trade, and economic development as described in RCW 43.360.010 through 43.360.050.

(6) "Main street trust fund" means the department of community, trade, and economic development's main street trust fund account under RCW 43.360.050. [2005 c 514 § 902.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.020 Application for credit.** (1) Application for tax credits under this chapter must be made to the department before making a contribution to a program or the main street trust fund. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the proposed amount of contribution to a program or the main street trust fund, and other information required by the department to determine eligibility under chapter 514, Laws of 2005. The department shall rule on the application within forty-five days. Applications shall be approved on a first-come basis.

(2) The person must make the contribution described in the approved application by the end of the calendar year in which the application is approved to claim a credit allowed under RCW 82.73.030.

(3) The department shall not accept any applications before January 1, 2006. [2005 c 514 § 903.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.030 Credit authorized—Limitations.** (1) Subject to the limitations in this chapter, a credit is allowed against the tax imposed by chapters 82.04 and 82.16 RCW for approved contributions that are made by a person to a program or the main street trust fund.

(2) The credit allowed under this section is limited to an amount equal to:

(a) Seventy-five percent of the approved contribution made by a person to a program; or

(b) Fifty percent of the approved contribution made by a person to the main street trust fund.

(3) The department may not approve credit with respect to a program in a city or town with a population of one hundred ninety thousand persons or more.

(4) The department shall keep a running total of all credits approved under this chapter for each calendar year. The department shall not approve any credits under this section that would cause the total amount of approved credits state-

wide to exceed one million five hundred thousand dollars in any calendar year.

(5) The total credits allowed under this chapter for contributions made to each program may not exceed one hundred thousand dollars in a calendar year. The total credits allowed under this chapter for a person may not exceed two hundred fifty thousand dollars in a calendar year.

(6) The credit may be claimed against any tax due under chapters 82.04 and 82.16 RCW only in the calendar year immediately following the calendar year in which the credit was approved by the department and the contribution was made to the program or the main street trust fund. Credits may not be carried over to subsequent years. No refunds may be granted for credits under this chapter.

(7) The total amount of the credit claimed in any calendar year by a person may not exceed the lesser amount of the approved credit, or seventy-five percent of the amount of the contribution that is made by the person to a program and fifty percent of the amount of the contribution that is made by the person to the main street trust fund, in the prior calendar year. [2005 c 514 § 904.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.040 Filing requirements.** To claim a credit under this chapter, a person must electronically file with the department all returns, forms, and other information the department requires in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in an electronic format. As used in this section, "returns" has the same meaning as "return" in RCW 82.32.050. [2005 c 514 § 905.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.050 Administrative assistance by CTED.** The department of community, trade, and economic development shall provide information to the department to administer this chapter, including a list of designated programs that shall be updated as necessary. [2005 c 514 § 906.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**82.73.060 Application of chapter 82.32 RCW.** Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 514 § 907.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

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## Chapter 82.74 RCW TAX DEFERRALS FOR FRUIT AND VEGETABLE BUSINESSES

### Sections

82.74.010	Definitions.
82.74.020	Application for tax deferral.
82.74.030	Issuance of certificate.
82.74.040	Annual survey.
82.74.050	Repayment of deferred taxes.
82.74.060	Application of chapter 82.32 RCW.
82.74.070	Confidentiality of applications.

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Cold storage warehouse" means a storage warehouse owned or operated by a wholesaler or third-party warehouse as those terms are defined in RCW 82.08.820 to store fresh and/or frozen perishable fruits or vegetables, dairy products, seafood products, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

(3) "Dairy product" means dairy products that as of September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135, including byproducts from the manufacturing of the dairy products such as whey and casein.

(4) "Dairy product manufacturing" means manufacturing, as defined in RCW 82.04.120, of dairy products.

(5) "Department" means the department of revenue.

(6) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project. The lessor or owner of a qualified building is not eligible for a deferral unless (a) the underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or (b)(i) the lessor by written contract agrees to pass the economic benefit of the deferral to the lessee in the form of reduced rent payments, and (ii) the lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey under RCW 82.74.040. The economic benefit of the deferral to the lessee may be evidenced by any type of payment, credit, or any other financial arrangement between the lessor or owner of the qualified building and the lessee.

(7) "Fresh fruit and vegetable processing" means manufacturing as defined in RCW 82.04.120 which consists of the canning, preserving, freezing, processing, or dehydrating fresh fruits and/or vegetables.

(8)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (6) of this section; or

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(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (6) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(9) "Person" has the meaning given in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, and research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, plant, or laboratory used for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development. If a building is used partly for fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehouse, or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Recipient" means a person receiving a tax deferral under this chapter.

(13) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process related to fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, or cold storage warehousing before commercial sales have begun. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed one million dollars.

(14) "Seafood product" means any edible marine fish and shellfish that remains in a raw, raw frozen, or raw salted state.

(15) "Seafood product manufacturing" means the manufacturing, as defined in RCW 82.04.120, of seafood products. [2006 c 354 § 6; 2005 c 513 § 4.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.020 Application for tax deferral.** (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department.

(2) The department shall rule on the application within sixty days. The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(3) No application may be made under this chapter for a project for which a refund is requested under RCW 82.08.820 or 82.12.820. [2005 c 513 § 5.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.030 Issuance of certificate. (Expires July 1, 2012.)** (1) The department shall issue a sales and use tax deferral certificate for state and local sales and use taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project if the investment project is undertaken for the purpose of fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development.

(2) This section expires July 1, 2012. [2006 c 354 § 7; 2005 c 513 § 6.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.040 Annual survey.** (1)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Each recipient of a deferral granted under this chapter shall complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee shall complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and each of the seven succeeding calendar years. The department may extend the due date for timely filing of annual surveys under this section as provided in RCW 82.32.590. The survey shall include the amount of tax deferred. The survey shall also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars;

thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and

(iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(e) The department shall use the information from this section to prepare summary descriptive statistics by category. No fewer than three taxpayers shall be included in any category. The department shall report these statistics to the legislature each year by September 1st.

(f) The department shall also use the information to study the tax deferral program authorized under this chapter. The department shall report to the legislature by December 1, 2011. The report shall measure the effect of the program on job creation, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects.

(2)(a) If a recipient of the deferral fails to complete the annual survey required under subsection (1) of this section by the date due or any extension under RCW 82.32.590, twelve and one-half percent of the deferred tax shall be immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.74.010(6), the lessee shall be responsible for payment to the extent the lessee has received the economic benefit. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, and shall accrue until the amounts due are repaid.

(b) A recipient who must repay deferred taxes under RCW 82.74.050(2) because the department has found that an investment project is used for purposes other than fresh fruit and vegetable processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development is no longer required to file annual surveys under this section beginning on the date an investment project is used for nonqualifying purposes. [2006 c 354 § 8; 2005 c 513 § 7.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.050 Repayment of deferred taxes.** (1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2) If, on the basis of survey under RCW 82.74.040 or other information, the department finds that an investment project is used for purposes other than fresh fruit and vegeta-

ble processing, dairy product manufacturing, seafood product manufacturing, cold storage warehousing, or research and development at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due according to the following schedule:

Year in which nonqualifying use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(3) The department shall assess interest, but not penalties, on the deferred taxes under subsection (2) of this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date of deferral, and shall accrue until the deferred taxes are repaid. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2006 c 354 § 9; 2005 c 513 § 8.]

**Effective dates—2006 c 354:** See note following RCW 82.04.4268.

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.060 Application of chapter 82.32 RCW.** Chapter 82.32 RCW applies to the administration of this chapter. [2005 c 513 § 9.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

**82.74.070 Confidentiality of applications.** Applications received by the department under this chapter are not confidential and are subject to disclosure. [2005 c 513 § 10.]

**Effective dates—2005 c 513:** See note following RCW 82.04.4266.

## Chapter 82.75 RCW

TAX DEFERRALS FOR BIOTECHNOLOGY  
AND MEDICAL DEVICE  
MANUFACTURING BUSINESSES

## Sections

82.75.005	Findings—Intent.
82.75.010	Definitions.
82.75.020	Application for tax deferral.
82.75.030	Issuance of certificate.
82.75.040	Repayment of deferred taxes.
82.75.050	Application of chapter 82.32 RCW.
82.75.060	Confidentiality of applications.

**82.75.005 Findings—Intent.** The legislature finds that the state's economy is increasingly dependent on the expansion of knowledge-based sectors, including the life sciences. The legislature also finds that commercial enterprises in the life sciences create high-wage, high-skilled jobs that are part of the state's effort to encourage economic diversification and stability. However, the legislature also finds that commercial life sciences businesses, particularly in biotechnology product and medical device manufacturing, incur significant costs associated with capital infrastructure and job training often years before a product is licensed for marketing or a facility is licensed for manufacturing by governmental agencies in the United States and abroad. The legislature also finds that current state tax policy discourages the growth of these companies in two ways: (1) Washington state's higher rate of taxation compared with other states and nations encourages the export of intellectual property and commercial operations out of Washington; and (2) taxing these businesses before facilities, or products produced therein, are licensed for marketing by regulatory agencies.

The legislature further finds that targeted tax incentives may encourage the formation, expansion, and retention of commercial operations within the life sciences sector. The legislature also finds that tax incentives should be subject to the same rigorous requirements for efficiency and accountability as are other expenditure programs, and that tax incentives should therefore be focused to provide the greatest possible return on the state's investment.

For these reasons, the legislature hereby establishes a tax deferral program for commercial manufacturing facilities in this sector. The legislature declares that these limited programs serve the vital public purposes of incenting expenditures in commercial life science operations and the development of employment opportunities in this state. The legislature further declares its intent to create a contract within the meaning of Article I, section 23 of the state Constitution as to those businesses that make capital investments in consideration of the tax deferral program established in this chapter. [2006 c 178 § 1.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

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

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Biotechnology" means a technology based on the science of biology, microbiology, molecular biology, cellular

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biology, biochemistry, or biophysics, or any combination of these, and includes, but is not limited to, recombinant DNA techniques, genetics and genetic engineering, cell fusion techniques, and new bioprocesses, using living organisms, or parts of organisms.

(3) "Biotechnology product" means any virus, therapeutic serum, antibody, protein, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, or analogous product produced through the application of biotechnology that is used in the prevention, treatment, or cure of diseases or injuries to humans.

(4) "Department" means the department of revenue.

(5)(a) "Eligible investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(b) The lessor or owner of a qualified building is not eligible for a deferral unless:

(i) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.32.645; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(6)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in subsection (5)(b)(ii)(A) of this section.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" shall apply separately to each phase.

(7) "Manufacturing" has the meaning provided in RCW 82.04.120.

(8) "Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is designed or developed and:

(a) Recognized in the national formulary, or the United States pharmacopeia, or any supplement to them;

(b) Intended for use in the diagnosis of disease, or in the cure, mitigation, treatment, or prevention of disease or other conditions in human beings or other animals; or

(c) Intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

(9) "Person" has the meaning provided in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for biotechnology product manufacturing or medical device manufacturing activities, including plant offices, commercial laboratories for process development, quality assurance and quality control, and warehouses or other facilities for the storage of raw material or finished goods if the facilities are an essential or an integral part of a factory, plant, or laboratory used for biotechnology product manufacturing or medical device manufacturing. If a building is used partly for biotechnology product manufacturing or medical device manufacturing and partly for other purposes, the applicable tax deferral shall be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a biotechnology product manufacturing or medical device manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Recipient" means a person receiving a tax deferral under this chapter. [2006 c 178 § 2.]

**Effective date—2006 c 178:** "This act takes effect July 1, 2006." [2006 c 178 § 10.]

**Severability—2006 c 178:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2006 c 178 § 12.]

**82.75.020 Application for tax deferral.** Application for deferral of taxes under this chapter must be made and approved before initiation of the construction of the investment project or acquisition of equipment or machinery. The application shall be made to the department in a form and manner prescribed by the department. The application shall contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department shall rule on the application within sixty days. [2006 c 178 § 3.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**82.75.030 Issuance of certificate. (Expires January 1, 2017.)** (1) The department shall issue a sales and use tax

deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW for each eligible investment project.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter 82.60 or 82.63 RCW or this chapter.

(3) The department shall keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(4) This section expires January 1, 2017. [2006 c 178 § 4.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**82.75.040 Repayment of deferred taxes.** (1) Except as provided in subsection (2) of this section and RCW 82.32.645, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under RCW 82.32.645 or other information, the department finds that an investment project is used for purposes other than qualified biotechnology product manufacturing or medical device manufacturing activities at any time during the calendar year in which the eligible investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes shall be immediately due and payable according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If a recipient of the deferral fails to complete the annual survey required under RCW 82.32.645 by the date due, the amount of deferred tax specified in RCW 82.32.645(6) shall be immediately due and payable. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.75.010, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) For a violation of subsection (2)(a) of this section, the department shall assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes shall not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(4) Notwithstanding subsection (2) of this section, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase

would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565. [2006 c 178 § 5.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**82.75.050 Application of chapter 82.32 RCW.** Chapter 82.32 RCW applies to the administration of this chapter. [2006 c 178 § 6.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

**82.75.060 Confidentiality of applications.** Applications received by the department under this chapter are not confidential and are subject to disclosure. [2006 c 178 § 7.]

**Effective date—Severability—2006 c 178:** See notes following RCW 82.75.010.

## Chapter 82.80 RCW

### LOCAL OPTION TRANSPORTATION TAXES

#### Sections

82.80.005	"District" defined.
82.80.010	Motor vehicle and special fuel tax.
82.80.030	Commercial parking tax.
82.80.040	Street utility—Establishment.
82.80.050	Street utility—Charges, credits.
82.80.060	Use of other proceeds by utility.
82.80.070	Use of revenues.
82.80.080	Distribution of taxes.
82.80.090	Referendum.
82.80.100	Regional transportation investment district—Local option vehicle license fee.
82.80.110	Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan.
82.80.120	Motor vehicle and special fuel tax—Regional transportation investment district.
82.80.130	Passenger-only ferry service—Local option motor vehicle excise tax authorized.
82.80.140	Vehicle fee—Transportation benefit district—Exemptions.
82.80.900	Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42.

**82.80.005 "District" defined.** For the purposes of this chapter, "district" means a regional transportation investment district created under chapter 36.120 RCW. [2002 c 56 § 415.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.010 Motor vehicle and special fuel tax.** (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) Subject to the conditions of this section, any county may levy, by approval of its legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election, additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax

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rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition shall state the tax rate that is proposed. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax shall not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section shall be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county shall contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the levying county and cities contained therein the proceeds of the additional excise taxes collected under this section, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b) and under the conditions and limitations provided in RCW 82.80.080.

(8) The proceeds of the additional excise taxes levied under this section shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(9) A county may not levy the tax under this section if they are levying the tax in RCW 82.80.110 or if they are a member of a regional transportation investment district levying the tax in RCW 82.80.120. [2003 c 350 § 1; 1998 c 176 § 86; 1991 c 339 § 12; 1990 c 42 § 201.]

**Rules—Findings—Effective date—1998 c 176:** See RCW 82.36.800, 82.36.900, and 82.36.901.

**82.80.030 Commercial parking tax.** (1) Subject to the conditions of this section, the legislative authority of a county, city, or district may fix and impose a parking tax on all persons engaged in a commercial parking business within its respective jurisdiction. A city or county may impose the

tax only to the extent that it has not been imposed by the district, and a district may impose the tax only to the extent that it has not been imposed by a city or county. The jurisdiction of a county, for purposes of this section, includes only the unincorporated area of the county. The jurisdiction of a city or district includes only the area within its boundaries.

(2) In lieu of the tax in subsection (1) of this section, a city, a county in its unincorporated area, or a district may fix and impose a tax for the act or privilege of parking a motor vehicle in a facility operated by a commercial parking business.

The city, county, or district may provide that:

(a) The tax is paid by the operator or owner of the motor vehicle;

(b) The tax applies to all parking for which a fee is paid, whether paid or leased, including parking supplied with a lease of nonresidential space;

(c) The tax is collected by the operator of the facility and remitted to the city, county, or district;

(d) The tax is a fee per vehicle or is measured by the parking charge;

(e) The tax rate varies with zoning or location of the facility, the duration of the parking, the time of entry or exit, the type or use of the vehicle, or other reasonable factors; and

(f) Tax exempt carpools, vehicles with handicapped decals, or government vehicles are exempt from the tax.

(3) "Commercial parking business" as used in this section, means the ownership, lease, operation, or management of a commercial parking lot in which fees are charged. "Commercial parking lot" means a covered or uncovered area with stalls for the purpose of parking motor vehicles.

(4) The rate of the tax under subsection (1) of this section may be based either upon gross proceeds or the number of vehicle stalls available for commercial parking use. The rates charged must be uniform for the same class or type of commercial parking business.

(5) The county, city, or district levying the tax provided for in subsection (1) or (2) of this section may provide for its payment on a monthly, quarterly, or annual basis. Each local government may develop by ordinance or resolution rules for administering the tax, including provisions for reporting by commercial parking businesses, collection, and enforcement.

(6) The proceeds of the commercial parking tax fixed and imposed by a city or county under subsection (1) or (2) of this section shall be used for transportation purposes in accordance with RCW 82.80.070 or for transportation improvements in accordance with chapter 36.73 RCW. The proceeds of the parking tax imposed by a district must be used as provided in chapter 36.120 RCW. [2005 c 336 § 24; 2002 c 56 § 412; 1990 c 42 § 208.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.040 Street utility—Establishment.** A city or town may elect by action of its legislative authority to own, construct, maintain, operate, and preserve all or any described portion of its streets as a separate enterprise and facility, known as a street utility, and from time to time add other existing or new streets to that street utility, with full power to own, construct, maintain, operate, and preserve

such streets. The legislative authority of the city or town may include as a part of the street utility, street lighting, traffic control devices, sidewalks, curbs, gutters, parking facilities, and drainage facilities. The legislative authority of the city or town is the governing body of the street utility. [1991 c 141 § 1. Prior: 1990 c 42 § 209.]

**82.80.050 Street utility—Charges, credits.** (1) A city or town electing to own, construct, maintain, operate, and preserve its streets as a separate street utility may levy periodic charges for the use or availability of the streets in a total annual amount of up to fifty percent of the actual costs for maintenance, operation, and preservation of facilities under the jurisdiction of the street utility. The rates charged for the use must be uniform for the same class of service and all business and residential properties must be subject to the utility charge. Charges imposed on businesses shall be measured solely by the number of employees and shall not exceed the equivalent of two dollars per full-time equivalent employee per month. Charges imposed against owners or occupants of residential property shall not exceed two dollars per month per housing unit as defined in RCW 35.95.040. A client under the terms of a professional employer agreement is deemed to be the sole employer of a covered employee for purposes of this section. In such cases, a professional employer organization is not an employer and is not liable, primarily or secondarily, for remitting the charge authorized in this section with respect to covered employees. Charges authorized in this section shall not be imposed against owners of property: (a) Exempt under RCW 84.36.010; (b) exempt from the leasehold tax under chapter 82.29A RCW; or (c) used for nonprofit or sectarian purposes, which if said property were owned by such organization would qualify for exemption under chapter 84.36 RCW. The charges shall not be computed on the basis of an ad valorem charge on the underlying real property and improvements. This section shall not be used as a basis to directly or indirectly charge transportation impact fees or mitigation fees of any kind against new development. A city or town may contract with any other utility or local government to provide for billing and collection of the street utility charges.

(2) In classifying service furnished within the general categories of business and residential, the city or town legislative authority may in its discretion consider any or all of the following factors: The difference in cost of service to the various users or traffic generators; location of the various users or traffic generators within the city or town; the difference in cost of maintenance, operation, construction, repair, and replacement of the various parts of the enterprise and facility; the different character of the service furnished to various users or traffic generators within the city or town; the size and quality of the street service furnished; the time of use or traffic generation; capital contributions made to the facility including but not limited to special assessments; and any other matters that present a reasonable difference as a ground for distinction, or the entire category of business or residential may be established as a single class. The city or town may reduce or exempt charges on residential properties to the extent of their occupancy by low-income senior citizens and other low-income citizens as provided in RCW 74.38.070, or to the extent of their occupancy by the needy or infirm.

(3) The charges shall be charges against the property and the use thereof and shall become liens and be enforced in the same manner as rates and charges for the use of systems of sewerage under chapter 35.67 RCW.

(4) Any city or town ordinance or resolution creating a street utility must contain a provision granting to any business a credit against any street utility charge the full amount of any commuter or employer tax paid for transportation purposes by that business. A client under the terms of a professional employer agreement is entitled to the credit provided by this subsection (4) for any commuter or employer tax paid by the client with respect to covered employees.

(5) For the purposes of this section, "client," "covered employee," "professional employer agreement," and "professional employer organization" have the same meanings as in RCW 82.04.540. [2006 c 301 § 5; 2000 c 103 § 21; 1991 c 141 § 2. Prior: 1990 c 42 § 210.]

**Effective date—Act does not affect application of Title 50 or 51 RCW—2006 c 301:** See notes following RCW 82.32.710.

**82.80.060 Use of other proceeds by utility.** The city or town electing to own, construct, maintain, operate, and preserve its streets and related facilities as a utility under this chapter may finance the construction, operation, maintenance, and preservation through local improvement districts, utility local improvement districts, or with proceeds from general obligation bonds and revenue bonds payable from the charges issued in accordance with chapter 35.41, 35.92, or 39.46 RCW, or any combination thereof. The city or town may use, in addition to the charges authorized by RCW 82.80.050, funds from general taxation, money received from the federal, state, or other local governments, and other funds made available to it. The proceeds of the charges authorized by RCW 82.80.050 shall be used strictly for transportation purposes in accordance with this chapter and RCW 82.80.070. [1991 c 141 § 3. Prior: 1990 c 42 § 211.]

**82.80.070 Use of revenues.** (1) The proceeds collected pursuant to the exercise of the local option authority of RCW 82.80.010, 82.80.030, and 82.80.050 (hereafter called "local option transportation revenues") shall be used for transportation purposes only, including but not limited to the following: The operation and preservation of roads, streets, and other transportation improvements; new construction, reconstruction, and expansion of city streets, county roads, and state highways and other transportation improvements; development and implementation of public transportation and high capacity transit improvements and programs; and planning, design, and acquisition of right-of-way and sites for such transportation purposes. The proceeds collected from excise taxes on the sale, distribution, or use of motor vehicle fuel and special fuel under RCW 82.80.010 shall be used exclusively for "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(2) The local option transportation revenues shall be expended for transportation uses consistent with the adopted transportation and land use plans of the jurisdiction expending the funds and consistent with any applicable and adopted regional transportation plan for metropolitan planning areas.

(3) Each local government with a population greater than eight thousand that levies or expends local option transporta-

tion funds, is also required to develop and adopt a specific transportation program that contains the following elements:

(a) The program shall identify the geographic boundaries of the entire area or areas within which local option transportation revenues will be levied and expended.

(b) The program shall be based on an adopted transportation plan for the geographic areas covered and shall identify the proposed operation and construction of transportation improvements and services in the designated plan area intended to be funded in whole or in part by local option transportation revenues and shall identify the annual costs applicable to the program.

(c) The program shall indicate how the local transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions.

(d) The program shall include at least a six-year funding plan, updated annually, identifying the specific public and private sources and amounts of revenue necessary to fund the program. The program shall include a proposed schedule for construction of projects and expenditure of revenues. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for transportation improvements in the program.

(4) Local governments with a population greater than eight thousand exercising the authority for local option transportation funds shall periodically review and update their transportation program to ensure that it is consistent with applicable local and regional transportation and land use plans and within the means of estimated public and private revenue available.

(5) In the case of expenditure for new or expanded transportation facilities, improvements, and services, priorities in the use of local option transportation revenues shall be identified in the transportation program and expenditures shall be made based upon the following criteria, which are stated in descending order of weight to be attributed:

(a) First, the project serves a multijurisdictional function;

(b) Second, it is necessitated by existing or reasonably foreseeable congestion;

(c) Third, it has the greatest person-carrying capacity;

(d) Fourth, it is partially funded by other government funds, such as from the state transportation improvement board, or by private sector contributions, such as those from the local transportation act, chapter 39.92 RCW; and

(e) Fifth, it meets such other criteria as the local government determines is appropriate.

(6) It is the intent of the legislature that as a condition of levying, receiving, and expending local option transportation revenues, no local government agency use the revenues to replace, divert, or loan any revenues currently being used for transportation purposes to nontransportation purposes.

(7) Local governments are encouraged to enter into inter-local agreements to jointly develop and adopt with other local governments the transportation programs required by this section for the purpose of accomplishing regional transportation planning and development.

(8) Local governments may use all or a part of the local option transportation revenues for the amortization of local government general obligation and revenue bonds issued for

transportation purposes consistent with the requirements of this section.

(9) Subsections (1) through (8) of this section do not apply to a regional transportation investment district imposing a tax or fee under the local option authority of this chapter. Proceeds collected under the exercise of local option authority under this chapter by a district must be used in accordance with chapter 36.120 RCW. [2005 c 319 § 139; 2002 c 56 § 413; 1991 c 141 § 4. Prior: 1990 c 42 § 212.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.080 Distribution of taxes.** (1) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and \*82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution based on information supplied by the departments of licensing and revenue, as appropriate.

(2) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and \*82.80.020 levied by qualifying cities and towns to the levying cities and towns.

(3) The state treasurer shall distribute to the district revenues, less authorized deductions, generated by the local option taxes under RCW 82.80.010 or fees under RCW 82.80.100 levied by a district. [2002 c 56 § 414; 1998 c 281 § 2; 1990 c 42 § 213.]

**\*Reviser's note:** RCW 82.80.020 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.090 Referendum.** A referendum petition to repeal a county or city ordinance imposing a tax or fee authorized under RCW \*82.80.020 and 82.80.030 must be filed with a filing officer, as identified in the ordinance, within seven days of passage of the ordinance. Within ten days, the filing officer shall confer with the petitioner concerning form and style of the petition, issue an identification number for the petition, and write a ballot title for the measure. The ballot title shall be posed as a question so that an affirmative answer to the question and an affirmative vote on the measure results in the tax or fee being imposed and a negative answer to the question and a negative vote on the measure results in the tax or fee not being imposed. The petitioner shall be notified of the identification number and ballot title within this ten-day period.

After this notification, the petitioner has thirty days in which to secure on petition forms the signatures of not less than fifteen percent of the registered voters of the county for county measures, or not less than fifteen percent of the registered voters of the city for city measures, and to file the signed petitions with the filing officer. Each petition form

must contain the ballot title and the full text of the measure to be referred. The filing officer shall verify the sufficiency of the signatures on the petitions. If sufficient valid signatures are properly submitted, the filing officer shall submit the referendum measure to the county or city voters at a general or special election held on one of the dates provided in \*\*RCW 29.13.010 as determined by the county or city legislative authority, which election shall not take place later than one hundred twenty days after the signed petition has been filed with the filing officer.

The referendum procedure provided in this section is the exclusive method for subjecting any county or city ordinance imposing a tax or fee under RCW \*82.80.020 and 82.80.030 to a referendum vote. [1990 c 42 § 214.]

**Reviser's note:** \*(1) RCW 82.80.020 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

\*\*\*(2) RCW 29.13.010 was recodified as RCW 29A.04.320 pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.04.320 was subsequently repealed by 2004 c 271 § 193. Later enactment of RCW 29A.04.320, see RCW 29A.04.321.

**82.80.100 Regional transportation investment district—Local option vehicle license fee.** (1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, a regional transportation investment district may set and impose an annual local option vehicle license fee, or a schedule of fees based upon the age of the vehicle, of up to one hundred dollars per motor vehicle registered within the boundaries of the region on every motor vehicle. As used in this section "motor vehicle" has the meaning provided in RCW 46.04.320, but does not include farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181, off-road and nonhighway vehicles as defined in RCW 46.09.020, and snowmobiles as defined in RCW 46.10.010. Vehicles registered under chapter 46.87 RCW and the international registration plan are exempt from the annual local option vehicle license fee set forth in this section. The department of licensing shall administer and collect this fee on behalf of regional transportation investment districts and remit this fee to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(2) The local option vehicle license fee applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(3) A regional transportation investment district imposing the local option vehicle license fee or initiating an exemption process shall enter into a contract with the department of licensing. The contract must contain provisions that fully recover the costs to the department of licensing for collection and administration of the fee.

(4) A regional transportation investment district imposing the local option fee shall delay the effective date of the local option vehicle license fee imposed by this section at least six months from the date of the final certification of the approval election to allow the department of licensing to implement the administration and collection of or exemption from the fee. [2002 c 56 § 408.]

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**82.80.110 Motor vehicle and special fuel tax—Dedication by county to regional transportation investment district plan.** (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030.

(2) For purposes of dedication to a regional transportation investment district plan under chapter 36.120 RCW, subject to the conditions of this section, a county may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the county. The additional excise tax is subject to the approval of the county's legislative body and a majority of the registered voters of the county voting on the proposition at a general or special election. An election held under this section must be held not more than twelve months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition must state that the revenues from the tax will be used for a regional transportation investment district plan. The county's authority to levy additional excise taxes under this section includes the incorporated and unincorporated areas of the county. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the county fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified by the county election officer. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of a county to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a county shall contract with the department of revenue for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The department of revenue may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the county levying the tax as part of a regional transportation

investment plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a county in this section, to be used as a part of a regional transportation investment plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A county may not levy the tax under this section if they are a member of a regional transportation investment district that is levying the tax in RCW 82.80.120 or the county is levying the tax in RCW 82.80.010. [2003 c 350 § 2.]

**82.80.120 Motor vehicle and special fuel tax—Regional transportation investment district.** (1) For purposes of this section:

(a) "Distributor" means every person who imports, refines, manufactures, produces, or compounds motor vehicle fuel and special fuel as defined in RCW 82.36.010 and 82.38.020, respectively, and sells or distributes the fuel into a county;

(b) "Person" has the same meaning as in RCW 82.04.030;

(c) "District" means a regional transportation investment district under chapter 36.120 RCW.

(2) A regional transportation investment district under chapter 36.120 RCW, subject to the conditions of this section, may levy additional excise taxes equal to ten percent of the statewide motor vehicle fuel tax rate under RCW 82.36.025 on each gallon of motor vehicle fuel as defined in RCW 82.36.010 and on each gallon of special fuel as defined in RCW 82.38.020 sold within the boundaries of the district. The additional excise tax is subject to the approval of a majority of the voters within the district boundaries. Vehicles paying an annual license fee under RCW 82.38.075 are exempt from the district's fuel excise tax. The additional excise taxes are subject to the same exceptions and rights of refund as applicable to other motor vehicle fuel and special fuel excise taxes levied under chapters 82.36 and 82.38 RCW. The proposed tax may not be levied less than one month from the date the election results are certified. The commencement date for the levy of any tax under this section will be the first day of January, April, July, or October.

(3) The local option motor vehicle fuel tax on each gallon of motor vehicle fuel and on each gallon of special fuel is imposed upon the distributor of the fuel.

(4) A taxable event for the purposes of this section occurs upon the first distribution of the fuel within the boundaries of the district to a retail outlet, bulk fuel user, or ultimate user of the fuel.

(5) All administrative provisions in chapters 82.01, 82.03, and 82.32 RCW, insofar as they are applicable, apply to local option fuel taxes imposed under this section.

(6) Before the effective date of the imposition of the fuel taxes under this section, a district shall contract with the department of licensing for the administration and collection of the taxes. The contract must provide that a percentage amount, not to exceed one percent of the taxes imposed under this section, will be deposited into the local tax administration account created in the custody of the state treasurer. The

department of licensing may spend money from this account, upon appropriation, for the administration of the local taxes imposed under this section.

(7) The state treasurer shall distribute monthly to the district levying the tax as part of the regional transportation investment district plan, after the deductions for payments and expenditures as provided in RCW 46.68.090(1) (a) and (b).

(8) The proceeds of the additional taxes levied by a district in this section, to be used as a part of a regional transportation investment district plan, must be used in accordance with chapter 36.120 RCW, but only for those areas that are considered "highway purposes" as that term is construed in Article II, section 40 of the state Constitution.

(9) A district may only levy the tax under this section if the district is comprised of boundaries identical to the boundaries of a county or counties. A district may not levy the tax in this section if a member county is levying the tax in RCW 82.80.010 or 82.80.110. [2006 c 311 § 18; 2003 c 350 § 3.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**82.80.130 Passenger-only ferry service—Local option motor vehicle excise tax authorized.** (1) Public transportation benefit areas authorized to implement passenger-only ferry service under RCW 36.57A.200 whose boundaries (a) are on the Puget Sound, but (b) do not include an area where a regional transit authority has been formed, may submit an authorizing proposition to the voters and, if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding four-tenths of one percent on the value of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing passenger-only ferry service. The tax must be collected only at the time of vehicle license renewal under chapter 46.16 RCW. The tax will be imposed on vehicles previously registered in another state or nation when they are initially registered in this state. The tax will not be imposed at the time of sale by a licensed vehicle dealer. In a county imposing a motor vehicle excise tax surcharge under RCW 81.100.060, the maximum tax rate under this section must be reduced to a rate equal to four-tenths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed under RCW 81.100.060. This rate does not apply to vehicles licensed under RCW 46.16.070 with an unladen weight more than six thousand pounds, or to vehicles licensed under RCW 46.16.079, 46.16.085, or 46.16.090.

(2) The department of licensing shall administer and collect the tax in accordance with chapter 82.44 RCW. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds must be remitted to the custody of the state treasurer for monthly distribution to the public transportation benefit area.

(3) The public transportation benefit area imposing this tax shall delay the effective date at least six months from the date the fee is approved by the qualified voters of the authority area to allow the department of licensing to implement administration and collection of the tax.

(4) Before an authority may impose a tax authorized under this section, the authorization for imposition of the tax must be approved by a majority of the qualified electors of the authority area voting on that issue. [2006 c 318 § 4; 2003 c 83 § 206.]

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

**82.80.140 Vehicle fee—Transportation benefit district—Exemptions.** (1) Subject to the provisions of RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose an annual vehicle fee, not to exceed one hundred dollars per vehicle registered in the district, for each vehicle subject to license tab fees under RCW 46.16.0621 and for each vehicle subject to gross weight fees under RCW 46.16.070 with an unladen weight of six thousand pounds or less.

(2)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district up to twenty dollars of the vehicle fee authorized in subsection (1) of this section. If the district is countywide, the revenues of the fee shall be distributed to each city within the county by interlocal agreement. The interlocal agreement is effective when approved by the county and sixty percent of the cities representing seventy-five percent of the population of the cities within the county in which the countywide fee is collected.

(b) A district may not impose a fee under this subsection (2):

(i) For a passenger-only ferry transportation improvement unless the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district; or

(ii) That, if combined with the fees previously imposed by another district within its boundaries under RCW 36.73.065(4)(a)(i), exceeds twenty dollars.

If a district imposes or increases a fee under this subsection (2) that, if combined with the fees previously imposed by another district within its boundaries, exceeds twenty dollars, the district shall provide a credit for the previously imposed fees so that the combined vehicle fee does not exceed twenty dollars.

(3) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed one percent of the fees collected, for administration and collection expenses incurred by it. The department shall remit remaining proceeds to the custody of the state treasurer. The state treasurer shall distribute the proceeds to the district on a monthly basis.

(4) No fee under this section may be collected until six months after approval under RCW 36.73.065.

(5) The vehicle fee under this section applies only when renewing a vehicle registration, and is effective upon the registration renewal date as provided by the department of licensing.

(6) The following vehicles are exempt from the fee under this section:

(a) Farm tractors or farm vehicles as defined in RCW 46.04.180 and 46.04.181;

(b) Off-road and nonhighway vehicles as defined in RCW 46.09.020;

(c) Vehicles registered under chapter 46.87 RCW and the international registration plan; and

(d) Snowmobiles as defined in RCW 46.10.010. [2007 c 329 § 2; 2005 c 336 § 16.]

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**82.80.900 Purpose—Headings—Severability—Effective dates—Application—Implementation—1990 c 42.** See notes following RCW 82.36.025.

### Chapter 82.82 RCW

## COMMUNITY EMPOWERMENT ZONES— TAX DEFERRAL PROGRAM

#### Sections

82.82.010	Definitions.
82.82.020	Application for deferral—Annual survey.
82.82.030	Deferral certificate.
82.82.040	Repayment of deferred taxes.
82.82.050	Qualified employment positions—Requirements.

**82.82.010 Definitions.** (*Effective July 1, 2009.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Corporate headquarters" means a facility or facilities where corporate staff employees are physically employed, and where the majority of the company's management services are handled either on a regional or a national basis. Company management services may include: Accounts receivable and payable, accounting, data processing, distribution management, employee benefit plan, financial and securities accounting, information technology, insurance, legal, merchandising, payroll, personnel, purchasing procurement, planning, reporting and compliance, research and development, tax, treasury, or other headquarters-related services. "Corporate headquarters" does not include a facility or facilities used for manufacturing, wholesaling, or warehousing.

(3) "Department" means the department of revenue.

(4) "Eligible area" means a designated community empowerment zone approved under RCW 43.31C.020.

(5)(a) "Eligible investment project" means an investment project in a qualified building or buildings in an eligible area, as defined in subsection (4) of this section, which will have employment at the qualified building or buildings of at least three hundred employees in qualified employment positions, each of whom must earn for the year reported at least the average annual wage for the state for that year as determined by the employment security department.

(b) The lessor or owner of a qualified building or buildings is not eligible for a deferral unless:

(i) The underlying ownership of the building or buildings vests exclusively in the same person; or

(ii)(A) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(B) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual survey required under RCW 82.82.020; and

(C) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

(6) "Investment project" means a capital investment of at least thirty million dollars in a qualified building or buildings including tangible personal property and fixtures that will be incorporated as an ingredient or component of such buildings during the course of their construction, and including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacture" has the same meaning as provided in RCW 82.04.120.

(8) "Operationally complete" means a date no later than one year from the date the project is issued an occupancy permit by the local permit issuing authority.

(9) "Person" has the same meaning as provided in RCW 82.04.030.

(10) "Qualified building or buildings" means construction of a new structure or structures or expansion of an existing structure or structures to be used for corporate headquarters. If a building is used partly for corporate headquarters and partly for other purposes, the applicable tax deferral is determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified employment position" means a permanent full-time employee employed in the eligible investment project during the entire tax year. The term "entire tax year" means a full-time position that is filled for a period of twelve consecutive months. The term "full-time" means at least thirty-five hours a week, four hundred fifty-five hours a quarter, or one thousand eight hundred twenty hours a year.

(12) "Recipient" means a person receiving a tax deferral under this chapter.

(13) "Warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for storage for compensation.

(14) "Wholesale sale" has the same meaning as provided in RCW 82.04.060. [2008 c 15 § 1.]

**Effective date—2008 c 15:** "This act takes effect July 1, 2009." [2008 c 15 § 10.]

### **82.82.020 Application for deferral—Annual survey.**

(*Effective July 1, 2009.*) (1) Application for deferral of taxes under this chapter can be made at any time prior to completion of construction of a qualified building or buildings, but tax liability incurred prior to the department's receipt of an application may not be deferred. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within sixty days.

(2)(a) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order

to make policy choices regarding the best use of limited state resources the legislature needs information on how a tax incentive is used.

(b) Applicants for deferral of taxes under this chapter must agree to complete an annual survey. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee must agree to complete the annual survey and the applicant is not required to complete the annual survey. The survey is due by March 31st of the year following the calendar year in which the investment project is certified by the department as having been operationally complete and the seven succeeding calendar years. The survey must include the amount of tax deferred. The survey must also include the following information for employment positions in Washington:

- (i) The number of total employment positions;
- (ii) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (iii) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (iv) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(c) The department may request additional information necessary to measure the results of the deferral program, to be submitted at the same time as the survey.

(d) All information collected under this subsection, except the amount of the tax deferral taken, is deemed taxpayer information under RCW 82.32.330 and is not disclosable. Information on the amount of tax deferral taken is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request.

(3) The department must use the information to study the tax deferral program authorized under this chapter. The department must report to the legislature by December 1, 2014, and December 1, 2018. The reports must measure the effect of the program on job creation, the number of jobs created for Washington residents, company growth, the introduction of new products, the diversification of the state's economy, growth in research and development investment, the movement of firms or the consolidation of firms' operations into the state, and such other factors as the department selects. If fewer than three deferrals are granted under this chapter, the department may not report statistical information.

(4) Applications for deferral of taxes under this section may not be made after December 31, 2020. [2008 c 15 § 2.]

**Effective date—2008 c 15:** See note following RCW 82.82.010.

**82.82.030 Deferral certificate. (Effective July 1, 2009.)** (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project meeting the requirements of this chapter.

(2) No certificate may be issued for an investment project that has already received a deferral under chapter

82.60 or 82.63 RCW or this chapter, except that an investment project for qualified research and development that has already received a deferral may also receive an additional deferral certificate for adapting the investment project for use in pilot scale manufacturing.

(3) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(4) The number of eligible investment projects for which the benefits of this chapter will be allowed is limited to two per biennium. The department must approve deferral certificates for completed applications on a first in-time basis. During any biennium, only one deferral certificate may be issued per community empowerment zone. [2008 c 15 § 3.]

**Effective date—2008 c 15:** See note following RCW 82.82.010.

**82.82.040 Repayment of deferred taxes. (Effective July 1, 2009.)** (1) Except as provided in subsection (2) of this section, taxes deferred under this chapter need not be repaid.

(2)(a) If, on the basis of the survey under RCW 82.82.020 or other information, the department finds that an investment project is no longer an "eligible investment project" under RCW 82.82.010 at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes are immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(b) If a recipient of the deferral fails to complete the annual survey required under RCW 82.82.020 by the date due, twelve and one-half percent of the deferred tax is immediately due. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(c) If an investment project is meeting the requirement of RCW 82.82.010(5) at any time during the calendar year in which the investment project is certified as having been operationally complete and the recipient of the deferral fails to complete the annual survey due under RCW 82.82.020, the portion of deferred taxes immediately due is the amount on the schedule in (a) of this subsection. If the economic benefits of the deferral are passed to a lessee as provided in RCW 82.82.010(5), the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral. The debt for deferred taxes will not be

extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral. [2008 c 15 § 5.]

**Effective date—2008 c 15:** See note following RCW 82.82.010.

**82.82.050 Qualified employment positions—Requirements.** (*Effective July 1, 2009.*) The qualified employment positions must be filled by the end of the calendar year following the year in which the project is certified as operationally complete. If a recipient does not meet the requirements for qualified employment positions by the end of the second calendar year following the year in which the project is certified as operationally complete, all deferred taxes are immediately due. [2008 c 15 § 6.]

**Effective date—2008 c 15:** See note following RCW 82.82.010.

## Chapter 82.98 RCW CONSTRUCTION

### Sections

82.98.010	Continuation of existing law.
82.98.020	Title, chapter, section headings not part of law.
82.98.030	Invalidity of part of title not to affect remainder.
82.98.035	Saving—1967 ex.s. c 149.
82.98.040	Repeals and saving.
82.98.050	Emergency—1961 c 15.

**82.98.010 Continuation of existing law.** The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1961 c 15 § 82.98.010.]

**82.98.020 Title, chapter, section headings not part of law.** Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1961 c 15 § 82.98.020.]

**82.98.030 Invalidity of part of title not to affect remainder.** If any chapter, section, subdivision of a section, paragraph, sentence, clause or word of this title for any reason shall be adjudged invalid, such judgment shall not affect, impair or invalidate the remainder of this title but shall be confined in its operation to the chapter, section, subdivision of a section, paragraph, sentence, clause or word of the title directly involved in the controversy in which such judgment shall have been rendered. If any tax imposed under this title shall be adjudged invalid as to any person, corporation, association or class of persons, corporations or associations included within the scope of the general language of this title such invalidity shall not affect the liability of any person, corporation, association or class of persons, corporations, or associations as to which such tax has not been adjudged invalid. It is hereby expressly declared that had any chapter, section, subdivision of a section, paragraph, sentence, clause, word or any person, corporation, association or class of persons, corporations or associations as to which this title is declared invalid been eliminated from the title at the time the

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same was considered the title would have nevertheless been enacted with such portions eliminated. This section shall not apply to chapter 82.44 RCW. [1961 c 15 § 82.98.030.]

**Severability—1967 ex.s. c 149:** "If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1967 ex.s. c 149 § 64.]

**Severability—1965 ex.s. c 173:** "If any phrase, clause, subsection or section of this act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1965 ex.s. c 173 § 32.]

**Severability—1965 ex.s. c 141:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1965 ex.s. c 141 § 9.]

**Severability—1961 ex.s. c 24:** "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 ex.s. c 24 § 15.]

**Severability—1961 ex.s. c 7:** "If any provision of this act or the application thereof to any person, firm or corporation or circumstance is held invalid, in whole or in part, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and to this end the provisions of this act are declared to be severable.

If any provision of this act shall be declared unconstitutional or ineffective in whole or in part by a court of competent jurisdiction then to the extent that it is unconstitutional or ineffective, such provisions shall not be enforced, nor shall such determination be deemed to invalidate the remaining provisions of this act." [1961 ex.s. c 7 § 23.]

**82.98.035 Saving—1967 ex.s. c 149.** Nothing in chapter 149, Laws of 1967 ex. sess. shall be construed to affect any existing rights acquired or any existing liabilities incurred under the sections amended or repealed herein, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule or regulation promulgated thereunder, nor any administrative action taken thereunder. [1967 ex.s. c 149 § 63.]

**82.98.040 Repeals and saving.** See 1961 c 15 § 82.98.040.

**82.98.050 Emergency—1961 c 15.** This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1961 c 15 § 82.98.050.]



# Title 83

## ESTATE TAXATION

### Chapters

- 83.100 Estate and transfer tax act.**
- 83.110A Washington uniform estate tax apportionment act.**

*Probate and trust law: Title 11 RCW.*

*Tax returns, remittances, etc., filing and receipt: RCW 1.12.070.*

### Chapter 83.100 RCW

#### ESTATE AND TRANSFER TAX ACT

#### Sections

- 83.100.010 Short title.
- 83.100.020 Definitions.
- 83.100.040 Estate tax imposed—Amount of tax.
- 83.100.046 Deduction—Property used for farming—Requirements, conditions.
- 83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed.
- 83.100.050 Tax returns—Filing dates—Extensions—Extensions during state of emergency.
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- 83.100.902 New chapter.
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- 83.100.904 Captions—1988 c 64.
- 83.100.905 Severability—1988 c 64.

**83.100.010 Short title.** This chapter may be cited as the "Estate and Transfer Tax Act." [2005 c 516 § 19; 1988 c 64 § 1; 1981 2nd ex.s. c 7 § 83.100.010 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.020 Definitions.** As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal return" means any tax return required by chapter 11 of the Internal Revenue Code;

(4) "Federal tax" means a tax under chapter 11 of the Internal Revenue Code;

(5) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(6) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(7) "Person required to file the federal return" means any person required to file a return required by chapter 11 of the Internal Revenue Code, such as the personal representative of an estate;

(8) "Property" means property included in the gross estate;

(9) "Resident" means a decedent who was domiciled in Washington at time of death;

(10) "Taxpayer" means a person upon whom tax is imposed under this chapter, including an estate or a person liable for tax under RCW 83.100.120;

(11) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code. However, "transfer" does not include a qualified heir disposing of an interest in property qualifying for a deduction under RCW 83.100.046 or ceasing to use the property for farming purposes;

(12) "Internal Revenue Code" means, for the purposes of this chapter and \*RCW 83.110.010, the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005;

(13) "Washington taxable estate" means the federal taxable estate, less: (a) One million five hundred thousand dollars for decedents dying before January 1, 2006; and (b) two million dollars for decedents dying on or after January 1, 2006; and (c) the amount of any deduction allowed under RCW 83.100.046; and

(14) "Federal taxable estate" means the taxable estate as determined under chapter 11 of the Internal Revenue Code without regard to: (a) The termination of the federal estate tax under section 2210 of the Internal Revenue Code or any other provision of law, and (b) the deduction for state estate, inheritance, legacy, or succession taxes allowable under section 2058 of the Internal Revenue Code. [2005 c 516 § 2; 2001 c 320 § 15; 1999 c 358 § 19; 1998 c 292 § 401; 1994 c 221 § 70; 1993 c 73 § 9; 1990 c 224 § 1; 1988 c 64 § 2; 1981 2nd ex.s. c 7 § 83.100.020 (Initiative Measure No. 402, approved November 3, 1981).]

**\*Reviser's note:** Chapter 83.110 RCW was repealed by 2005 c 332 § 15, effective January 1, 2006, and replaced with new chapter 83.110A RCW.

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2001 c 320:** See note following RCW 11.02.005.

**Effective date—1999 c 358 §§ 1 and 3-21:** See note following RCW 82.04.3651.

**Part headings and section captions not law—Effective dates—1998 c 292:** See RCW 11.11.902 and 11.11.903.

**Effective dates—1994 c 221:** See note following RCW 11.94.070.

**83.100.040 Estate tax imposed—Amount of tax.** (1) A tax in an amount computed as provided in this section is imposed on every transfer of property located in Washington. For the purposes of this section, any intangible property owned by a resident is located in Washington.

(2)(a) Except as provided in (b) of this subsection, the amount of tax is the amount provided in the following table:

If Washington Taxable		The amount of Tax Equals		Of Washington Taxable
Estate is at least	But Less Than	Initial Tax Amount	Plus Tax Rate %	Estate Value Greater than
\$0	\$1,000,000	\$0	10.00%	\$0
\$1,000,000	\$2,000,000	\$100,000	14.00%	\$1,000,000
\$2,000,000	\$3,000,000	\$240,000	15.00%	\$2,000,000
\$3,000,000	\$4,000,000	\$390,000	16.00%	\$3,000,000
\$4,000,000	\$6,000,000	\$550,000	17.00%	\$4,000,000
\$6,000,000	\$7,000,000	\$890,000	18.00%	\$6,000,000
\$7,000,000	\$9,000,000	\$1,070,000	18.50%	\$7,000,000
Above \$9,000,000		\$1,440,000	19.00%	Above \$9,000,000

(b) If any property in the decedent's estate is located outside of Washington, the amount of tax is the amount determined in (a) of this subsection multiplied by a fraction. The numerator of the fraction is the value of the property located in Washington. The denominator of the fraction is the value of the decedent's gross estate. Property qualifying for a deduction under RCW 83.100.046 shall be excluded from the numerator and denominator of the fraction.

(3) The tax imposed under this section is a stand-alone estate tax that incorporates only those provisions of the Internal Revenue Code as amended or renumbered as of January 1, 2005, that do not conflict with the provisions of this chapter. The tax imposed under this chapter is independent of any federal estate tax obligation and is not affected by termination of the federal estate tax. [2005 c 516 § 3; 1988 c 64 § 4; 1981 2nd ex.s. c 7 § 83.100.040 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—2005 c 516:** "The legislature recognizes that on February 3, 2005, the Washington state supreme court decided in *Estate of Hemphill v. Dep't of Rev.*, Docket No. 74974-4, that Washington's estate tax is tied to the current federal Internal Revenue Code. The legislature finds that the revenue loss resulting from the *Hemphill* decision will severely affect the legislature's ability to fund programs vital to the peace, health, safety, and support of the citizens of this state. The legislature intends to address the adverse fiscal impact of the *Hemphill* decision and provide funding for education by creating a stand-alone state estate tax." [2005 c 516 § 1.]

**Application—2005 c 516:** "This act applies prospectively only and not retroactively. Sections 2 through 17 of this act apply only to estates of decedents dying on or after May 17, 2005." [2005 c 516 § 20.]

**Severability—2005 c 516:** "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2005 c 516 § 21.]

**Effective date—2005 c 516:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 17, 2005]." [2005 c 516 § 22.]

**83.100.046 Deduction—Property used for farming—Requirements, conditions.** (1) For the purposes of determining the Washington taxable estate, a deduction is allowed from the federal taxable estate for:

(a) The value of qualified real property reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the decedent was at the time of his or her death a citizen or resident of the United States.

(b) The value of any tangible personal property used by the decedent or a member of the decedent's family for a qualified use on the date of the decedent's death, reduced by any amounts allowable as a deduction in respect of the tangible personal property under section 2053(a)(4) of the internal revenue code, if all of the requirements of subsection (10)(f)(i)(A) of this section are met and the decedent was at the time of his or her death a citizen or resident of the United States.

(c) The value of real property that is not deductible under (a) of this subsection solely by reason of subsection

(10)(f)(i)(B) of this section, reduced by any amounts allowable as a deduction in respect of the qualified real property and tangible personal property under section 2053(a)(4) of the internal revenue code, if the requirements of subsection (10)(f)(i)(C) of this section are met with respect to the property and the decedent was at the time of his or her death a citizen or resident of the United States.

(2) Property shall be considered to have been acquired from or to have passed from the decedent if:

(a) The property is so considered under section 1014(b) of the Internal Revenue Code;

(b) The property is acquired by any person from the estate; or

(c) The property is acquired by any person from a trust, to the extent the property is includible in the gross estate of the decedent.

(3) If the decedent and the decedent's surviving spouse at any time held qualified real property as community property, the interest of the surviving spouse in the property shall be taken into account under this section to the extent necessary to provide a result under this section with respect to the

property which is consistent with the result which would have obtained under this section if the property had not been community property.

(4) In the case of any qualified woodland, the value of trees growing on the woodland may be deducted if otherwise qualified under this section.

(5) If property is qualified real property with respect to a decedent, hereinafter in this subsection referred to as the "first decedent," and the property was acquired from or passed from the first decedent to the surviving spouse of the first decedent, active management of the farm by the surviving spouse shall be treated as material participation by the surviving spouse in the operation of the farm.

(6) Property owned indirectly by the decedent may qualify for a deduction under this section if owned through an interest in a corporation, partnership, or trust as the terms corporation, partnership, or trust are used in section 2032A(g) of the Internal Revenue Code. In order to qualify for a deduction under this subsection, the interest, in addition to meeting the other tests for qualification under this section, must qualify under section 6166(b)(1) of the Internal Revenue Code as an interest in a closely held business on the date of the decedent's death and for sufficient other time, combined with periods of direct ownership, to equal at least five years of the eight-year period preceding the death.

(7)(a) If, on the date of the decedent's death, the requirements of subsection (10)(f)(i)(C)(II) of this section with respect to the decedent for any property are not met, and the decedent (i) was receiving old age benefits under Title II of the social security act for a continuous period ending on such date, or (ii) was disabled for a continuous period ending on this date, then subsection (10)(f)(i)(C)(II) of this section shall be applied with respect to the property by substituting "the date on which the longer of such continuous periods began" for "the date of the decedent's death" in subsection (10)(f)(i)(C) of this section.

(b) For the purposes of (a) of this subsection, an individual shall be disabled if the individual has a mental or physical impairment which renders that individual unable to materially participate in the operation of the farm.

(8) Property may be deducted under this section whether or not special valuation is elected under section 2032A of the Internal Revenue Code on the federal return. For the purposes of determining the deduction under this section, the value of property is its value as used to determine the value of the gross estate.

(9)(a) In the case of any qualified replacement property, any period during which there was ownership, qualified use, or material participation with respect to the replaced property by the decedent or any member of the decedent's family shall be treated as a period during which there was ownership, use, or material participation, as the case may be, with respect to the qualified replacement property.

(b) Subsection (9)(a) of this section shall not apply to the extent that the fair market value of the qualified replacement property, as of the date of its acquisition, exceeds the fair market value of the replaced property, as of the date of its disposition.

(c) For the purposes of this subsection (9), the following definitions apply:

(i) "Qualified replacement property" means any real property:

(A) Which is acquired in an exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) The acquisition of which results in the nonrecognition of gain under section 1033 of the Internal Revenue Code.

The term "qualified replacement property" only includes property which is used for the same qualified use as the replaced property was being used before the exchange.

(ii) "Replaced property" means the property was:

(A) Transferred in the exchange which qualifies under section 1031 of the Internal Revenue Code; or

(B) Compulsorily or involuntarily converted within the meaning of section 1033 of the Internal Revenue Code.

(10) For the purposes of this section, the following definitions apply:

(a) "Active management" means the making of the management decisions of a farm, other than the daily operating decisions.

(b) "Farm" includes stock, dairy, poultry, fruit, furbearing animal, and truck farms; plantations; ranches; nurseries; ranges; greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities; and orchards and woodlands.

(c) "Farming purposes" means:

(i) Cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of animals on a farm;

(ii) Handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and

(iii)(A) The planting, cultivating, caring for, or cutting of trees; or

(B) The preparation, other than milling, of trees for market.

(d) "Member of the family" means, with respect to any individual, only:

(i) An ancestor of the individual;

(ii) The spouse of the individual;

(iii) A lineal descendant of the individual, of the individual's spouse, or of a parent of the individual; or

(iv) The spouse of any lineal descendant described in (d)(iii) of this subsection.

For the purposes of this subsection (10)(d), a legally adopted child of an individual shall be treated as the child of such individual by blood.

(e) "Qualified heir" means, with respect to any property, a member of the decedent's family who acquired property, or to whom property passed, from the decedent.

(f)(i) "Qualified real property" means real property which was acquired from or passed from the decedent to a qualified heir of the decedent and which, on the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family, but only if:

(A) Fifty percent or more of the adjusted value of the gross estate consists of the adjusted value of real or personal property which:

(I) On the date of the decedent's death, was being used for a qualified use by the decedent or a member of the decedent's family; and

(II) Was acquired from or passed from the decedent to a qualified heir of the decedent;

(B) Twenty-five percent or more of the adjusted value of the gross estate consists of the adjusted value of real property which meets the requirements of (f)(i)(A)(II) and (f)(i)(C) of this subsection; and

(C) During the eight-year period ending on the date of the decedent's death there have been periods aggregating five years or more during which:

(I) The real property was owned by the decedent or a member of the decedent's family and used for a qualified use by the decedent or a member of the decedent's family; and

(II) There was material participation by the decedent or a member of the decedent's family in the operation of the farm. For the purposes of this subsection (f)(i)(C)(II), material participation shall be determined in a manner similar to the manner used for purposes of section 1402(a)(1) of the Internal Revenue Code.

(ii) For the purposes of this subsection, the term "adjusted value" means:

(A) In the case of the gross estate, the value of the gross estate, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction under section 2053(a)(4) of the Internal Revenue Code; or

(B) In the case of any real or personal property, the value of the property for purposes of chapter 11 of the Internal Revenue Code, determined without regard to any special valuation under section 2032A of the Internal Revenue Code, reduced by any amounts allowable as a deduction in respect of such property under section 2053(a)(4) of the Internal Revenue Code.

(g) "Qualified use" means the property is used as a farm for farming purposes. In the case of real property which meets the requirements of (f)(i)(C) of this subsection, residential buildings and related improvements on the real property occupied on a regular basis by the owner or lessee of the real property or by persons employed by the owner or lessee for the purpose of operating or maintaining the real property, and roads, buildings, and other structures and improvements functionally related to the qualified use shall be treated as real property devoted to the qualified use. For tangible personal property eligible for a deduction under subsection (1)(b) of this section, "qualified use" means the property is used primarily for farming purposes on a farm.

(h) "Qualified woodland" means any real property which:

(i) Is used in timber operations; and

(ii) Is an identifiable area of land such as an acre or other area for which records are normally maintained in conducting timber operations.

(i) "Timber operations" means:

(i) The planting, cultivating, caring for, or cutting of trees; or

(ii) The preparation, other than milling, of trees for market. [2005 c 514 § 1201; 2005 c 516 § 4.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2005 c 514:** See note following RCW 82.04.4272.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**83.100.047 Marital deduction, qualified domestic trust—Election—Other deductions taken for income tax purposes disallowed.** (1) If the federal taxable estate on the federal return is determined by making an election under section 2056 or 2056A of the Internal Revenue Code, or if no federal return is required to be filed, the department may provide by rule for a separate election on the Washington return, consistent with section 2056 or 2056A of the Internal Revenue Code, for the purpose of determining the amount of tax due under this chapter. The election shall be binding on the estate and the beneficiaries, consistent with the Internal Revenue Code. All other elections or valuations on the Washington return shall be made in a manner consistent with the federal return, if a federal return is required, and such rules as the department may provide.

(2) Amounts deducted for federal income tax purposes under section 642(g) of the Internal Revenue Code of 1986, shall not be allowed as deductions in computing the amount of tax due under this chapter. [2005 c 516 § 13.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.050 Tax returns—Filing dates—Extensions—Extensions during state of emergency.** (1) A Washington return must be filed if: (a) A federal return is required to be filed; or (b) for decedents dying prior to January 1, 2006, the gross estate exceeds one million five hundred thousand dollars; or (c) for decedents dying on or after January 1, 2006, the gross estate exceeds two million dollars.

(2)(a) A person required to file a federal return shall file with the department on or before the date the federal return is required to be filed, including any extension of time for filing under subsection (4) or (6) of this section, a Washington return for the tax due under this chapter.

(b) If no federal return is required to be filed, a taxpayer shall file with the department on or before the date a federal return would have been required to be filed, including any extension of time for filing under subsection (5) or (6) of this section, a Washington return for the tax due under this chapter.

(3) A Washington return delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which the return is mailed, if the postmark date is within the time allowed for filing the Washington return, including extensions.

(4) In addition to the Washington return required to be filed in subsection (2) of this section, a person, if required to file a federal return, shall file with the department on or before the date the federal return is required to be filed a copy of the federal return along with all supporting documentation. If the person required to file the federal return has obtained an extension of time for filing the federal return, the person shall file the Washington return within the same time period and in the same manner as provided for the federal return. A copy of the federal extension shall be filed with the department on or before the date the Washington return is due, not including

any extension of time for filing, or within thirty days of issuance, whichever is later.

(5) A person may obtain an extension of time for filing the Washington return as provided by rule of the department, if the person is required to file a Washington return under subsection (2) of this section, but is not required to file a federal return.

(6) During a state of emergency declared under RCW 43.06.010(12), the department, on its own motion or at the request of any taxpayer affected by the emergency, may extend the time for filing a Washington return under this section as the department deems proper. [2008 c 181 § 504; 2005 c 516 § 5; 1988 c 64 § 6; 1986 c 44 § 1; 1981 2nd ex.s. c 7 § 83.100.050 (Initiative Measure No. 402, approved November 3, 1981).]

**Part headings not law—2008 c 181:** See note following RCW 43.06.220.

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.060 Date payment due—Extensions.** (1) The taxes imposed by this chapter shall be paid by the person required to file a Washington return on or before the date the Washington return is required to be filed under RCW 83.100.050, not including any extension of time for filing. Payment delivered to the department by United States mail shall be considered to have been received by the department on the date of the United States postmark stamped on the cover in which payment is mailed, if the postmark date is within the time allowed for making the payment, including any extensions.

(2) If the person has obtained an extension of time for payment of the federal tax or has elected to pay such tax in installments, the person may elect to pay the tax imposed by this chapter within the same time period and in the same manner as provided for payment of the federal tax. A copy of the federal extension shall be filed on or before the date the tax imposed by this chapter is due, not including any extension of time for payment, or within thirty days of issuance, whichever is later.

(3) A person who is required to file a Washington return under RCW 83.100.050, but is not required to file a federal return, may obtain an extension of time for payment of the Washington tax or elect to pay such tax in installments as provided by rule of the department.

(4) The periods of limitation in RCW 83.100.130 and 83.100.095 shall extend an additional three years beyond the due date of the last scheduled installment payment authorized under this section. [2005 c 516 § 6; 1988 c 64 § 7; 1981 2nd ex.s. c 7 § 83.100.060 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.070 Interest on amount due—Penalty for late filing—Exceptions—Rules.** (1) For periods before January 2, 1997, any tax due under this chapter which is not paid by the due date under RCW 83.100.060(1) shall bear interest at the rate of twelve percent per annum from the date the tax is due until the date of payment.

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(2) Interest imposed under this section for periods after January 1, 1997, shall be computed at the rate as computed under RCW 82.32.050(2). The rate so computed shall be adjusted on the first day of January of each year.

(3)(a) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the Washington return under RCW 83.100.050 voluntarily files the Washington return with the department before the department notifies the person in writing that the department has determined that the person has not filed a Washington return, no penalty is imposed on the person required to file the Washington return.

(b) If the Washington return is not filed when due under RCW 83.100.050 and the person required to file the Washington return under RCW 83.100.050 does not file a return with the department before the department notifies the person in writing that the department has determined that the person has not filed a Washington return, the person required to file the Washington return shall pay, in addition to interest, a penalty equal to five percent of the tax due for each month after the date the return is due until filed. However, in no instance may the penalty exceed the lesser of twenty-five percent of the tax due or one thousand five hundred dollars.

(c) If the department finds that a return due under this chapter has not been filed by the due date, and the delinquency was the result of circumstances beyond the control of the responsible person, the department shall waive or cancel any penalties imposed under this chapter with respect to the filing of such a tax return. The department shall adopt rules for the waiver or cancellation of the penalties imposed by this section. [2005 c 516 § 7; 2000 c 105 § 1; 1997 c 136 § 1; 1996 c 149 § 13; 1988 c 64 § 8; 1981 2nd ex.s. c 7 § 83.100.070 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Effective date—2000 c 105:** "This act takes effect July 1, 2000." [2000 c 105 § 2.]

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.080 Department to issue release.** The department shall issue a release when the tax due under this chapter has been paid. Upon issuance of a release, all property subject to the tax shall be free of any claim for the tax by the state. [1988 c 64 § 9; 1986 c 44 § 2; 1981 2nd ex.s. c 7 § 83.100.080 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.090 Amended returns—Adjustments or final determinations.** Notwithstanding the periods of limitation in RCW 83.100.095 and 83.100.130:

(1) If the person required to file the Washington return under RCW 83.100.050 files an amended federal return, that person shall immediately file with the department an amended Washington return with a copy of the amended federal return. If the amended Washington return requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.

(2) Upon any adjustment in, or final determination of, the amount of federal tax due, the person required to file the

Washington return under RCW 83.100.050 shall notify the department in writing within one hundred twenty days after the adjustment or final determination. If the adjustment or final determination requires payment of an additional tax under this chapter, the tax shall be paid in accordance with RCW 83.100.060 and interest shall be paid in accordance with RCW 83.100.070.

(3) If the department determines the amended Washington return, adjustment, or final determination requires payment of an additional tax under this chapter, the department may assess against the taxpayer an additional amount found to be due within one year of receipt of the amended Washington return or written notice as required by this section, or at any time if no amended Washington return is filed or notice is provided as required by this section. The execution of a written waiver at the request of the department by the person required to file the Washington return under RCW 83.100.050 may extend this limitation. Interest shall be added to the amount of tax assessed by the department in accordance with RCW 83.100.070. The department shall notify the taxpayer by mail of the additional amount, and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(4) If the department determines the amended Washington return, adjustment, or final determination requires the refund of overpaid tax, penalties, or interest under this chapter, the department shall refund the amount of the overpayment with interest in accordance with RCW 83.100.130. The person required to file the Washington return under RCW 83.100.050 shall provide the department with any additional information or supporting documents necessary to determine if a refund is due. The execution of a written waiver to extend the period for assessment under subsection (3) of this section shall extend the time for making a refund, if prior to the expiration of the waiver period an application for refund of the taxes is made by the person required to file the Washington return under RCW 83.100.050, or the department discovers a refund is due. [2005 c 516 § 8; 1988 c 64 § 10; 1981 2nd ex.s. c 7 § 83.100.090 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.095 Examination by department of returns, other information—Assessment of additional tax, interest.** (1) If upon examination of any returns or from other information obtained by the department it appears that a tax or penalty has been paid less than that properly due, the department shall assess against the taxpayer an additional amount found to be due and shall add interest as provided in RCW 83.100.070 on the tax only. The department shall notify the taxpayer by mail of the additional amount, and the additional amount shall become due and shall be paid within thirty days from the date of the notice, or within such further time as the department may provide.

(2) Interest shall be computed from the original due date of the Washington return until the due date of the notice. If payment in full is not made by the due date of the notice, additional interest shall be computed until the date of payment.

(3) No assessment or correction of an assessment for additional taxes, penalties, or interest due may be made by the department more than four years after the close of the calendar year in which a Washington return is due under this chapter, including any extension of time for filing, except upon a showing of fraud or of misrepresentation of a material fact by the taxpayer or as provided under subsection (4) or (5) of this section or as otherwise provided in this chapter.

(4) For persons liable for tax under RCW 83.100.120, the period for assessment or correction of an assessment shall extend an additional three years beyond the period described in subsection (3) of this section.

(5) A taxpayer may extend the periods of limitation under subsection (3) or (4) of this section by executing a written waiver. The execution of the waiver shall also extend the period for making a refund as provided in RCW 83.100.130. [2005 c 516 § 14.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.110 Tax lien.** (1) Unless any tax due under this chapter is sooner paid in full, it shall be a lien upon the property subject to the tax for a period of ten years from the date of the transfer, except that any part of the property which is used for the payment of claims against the property or expenses of its administration, allowed by any court having jurisdiction thereof, shall be divested of the lien. Liens created under this subsection shall be qualified as follows:

(a) Any part of the property subject to the tax which is sold to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds of the sale; and

(b) The lien shall be subordinate to any mortgage or deed of trust on the property pursuant to an order of court for payment of claims against the property or expenses of administration. The lien shall attach to any proceeds from the sale of the property in excess of the obligations secured by the mortgage or deed of trust and the expenses of sale, including a reasonable charge by the trustee and by his or her attorney where the property has been sold by a nonjudicial trustee's sale pursuant to chapter 61.24 RCW, and including court costs and any attorneys' fees awarded by the superior court of the county in which the property is sold at sheriff's sale pursuant to a judicial foreclosure of the mortgage or deed of trust.

(2) If the person required to file the Washington return under RCW 83.100.050 has obtained an extension of time for payment of the tax or has elected to pay such tax in installments, the tax lien under this section shall be extended as necessary to prevent its expiration prior to twelve months following the expiration of any such extension or the installment.

(3) The tax lien shall be extended as necessary to prevent its expiration prior to twelve months following the conclusion of litigation of any question affecting the determination of the amount of tax due if a lis pendens has been filed with the auditor of the county in which the property is located. [2005 c 516 § 9; 1988 c 64 § 11; 1981 2nd ex.s. c 7 § 83.100.110 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.120 Liability for failure to pay tax before distribution or delivery.** (1) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property that is or has come into the possession of the personal representative, as of the time the security is furnished.

(2) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Washington without first paying, securing another's payment of, or furnishing security for payment of the taxes due under this chapter is liable for the taxes due under this chapter to the extent of the value of the property delivered. Security for payment of the taxes due under this chapter shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Washington by such a person.

(3) For the purposes of this section, persons who do not have possession of a decedent's property include anyone not responsible primarily for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(4) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release certificate or the release of nonliability certificate, furnished by the department to the personal representative, as evidence of compliance with the requirements of this chapter, and make such deliveries and transfers as the personal representative may direct without being liable for any taxes due under this chapter. [1981 2nd ex.s. c 7 § 83.100.120 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.130 Refund for overpayment—Requirements.** (1) If, upon receipt of an application by a taxpayer for a refund, or upon examination of the returns or records of any taxpayer, the department determines that within the statutory period for assessment of taxes, penalties, or interest prescribed by RCW 83.100.095 a person required to file the Washington return under RCW 83.100.050 has overpaid the tax due under this chapter, the department shall refund the amount of the overpayment, together with interest as provided in subsection (2) of this section. If the application for refund, with supporting documents, is filed within one hundred twenty days after an adjustment or final determination of federal tax liability, the department shall pay interest until the date the refund is mailed. If the application for refund, with supporting documents, is filed after one hundred twenty days after the adjustment or final determination, the depart-

ment shall pay interest only until the end of the one hundred twenty-day period.

(2) Interest refunded under this section for periods before January 2, 1997, shall be computed at the rate provided in RCW 83.100.070(1). Interest refunded under this section for periods after January 1, 1997, through December 31, 1998, shall be computed on a daily basis at the rate as computed under RCW 82.32.050(2) less one percentage point. Interest allowed for periods after December 31, 1998, shall be computed at the rate as computed under RCW 82.32.050(2). Except as provided in subsection (1) of this section, interest shall be refunded from the date of overpayment until the date the refund is mailed. The rate so computed shall be adjusted on the first day of January of each year.

(3) Except as otherwise provided in subsection (4) of this section and RCW 83.100.090, no refund shall be made for taxes, penalties, or interest paid more than four years prior to the beginning of the calendar year in which the refund application is made or an examination of records is complete.

(4) The execution of a written waiver under RCW 83.100.095 shall extend the time for making a refund if, prior to the expiration of the waiver period, an application for refund is made by the taxpayer or the department discovers a refund is due.

(5) An application for refund shall be on a form prescribed by the department and shall contain any information and supporting documents the department requires. [2005 c 516 § 10; 1997 c 157 § 6; 1996 c 149 § 14; 1988 c 64 § 12; 1981 2nd ex.s. c 7 § 83.100.130 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.140 Criminal acts relating to tax returns.** Any person required to file the Washington return who willfully fails to file a Washington return when required by this chapter or who willfully files a false return commits a gross misdemeanor as defined in Title 9A RCW and shall be punished as provided in Title 9A RCW for the perpetration of a gross misdemeanor. [2005 c 516 § 11; 1988 c 64 § 13; 1981 2nd ex.s. c 7 § 83.100.140 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.150 Collection of tax—Findings filed in court.** The department may collect the estate tax imposed under RCW 83.100.040, including interest and penalties, and shall represent this state in all matters pertaining to the same, either before courts or in any other manner. At any time after the Washington return is due, the department may file its findings regarding the amount of the tax computed as provided in RCW 83.100.040, the person required to file the Washington return under RCW 83.100.050, and all persons having an interest in property subject to the tax with the clerk of the superior court in the matter of the estate of the decedent or, if no probate or administration proceedings have been commenced in any court of this state, of the superior court for the county in which the decedent was a resident, if the resident

was a domiciliary, or, if the decedent was a nondomiciliary, of any superior court which has jurisdiction over the property. Such a court first acquiring jurisdiction shall retain jurisdiction to the exclusion of every other court. [2005 c 516 § 12; 1988 c 64 § 14; 1981 2nd ex.s. c 7 § 83.100.150 (Initiative Measure No. 402, approved November 3, 1981).]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.160 Clerk to give notice of filings.** Upon filing findings under RCW 83.100.150, the clerk of the superior court shall give notice of the filing by causing notice thereof to be posted at the courthouse in the county in which the court is located. In addition, the department of revenue shall give notice of the filing to all persons interested in the proceeding by mailing a copy of the notice to all persons having an interest in property subject to the tax. The department of revenue is not required to conduct a search for persons interested in the proceedings or property. The department of revenue must mail a copy of the notice only to persons of whom the department has received actual notice as having an interest in the proceeding or property, and, if a probate or administrative proceeding has been commenced in this state, to persons who are listed in the court file as having an interest in the proceedings or property. [1993 c 413 § 1; 1988 c 64 § 15.]

**83.100.170 Court order.** At any time after the expiration of sixty days from the mailing of the notice under RCW 83.100.160, if no objection to the findings is filed, the superior court or a judge thereof shall, without further notice, give and make its order confirming the findings and fixing the tax in accordance therewith. [1988 c 64 § 16.]

**83.100.180 Objections.** At any time prior to the making of an order under RCW 83.100.170, any person having an interest in property subject to the tax may file objections in writing with the clerk of the superior court and serve a copy thereof upon the department, and the same shall be noted for trial before the court and a hearing had thereon as provided for hearings in RCW 11.96A.080 through 11.96A.200. [1999 c 42 § 636; 1988 c 64 § 17.]

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**83.100.190 Hearing by court.** Upon the hearing of objections under RCW 83.100.180, the court shall make such order as it may deem proper. For the purposes of the hearing, the findings of the department shall be presumed to be correct and it shall be the duty of the objector or objectors to proceed in support of the objection or objections. [1988 c 64 § 18.]

**83.100.200 Administration—Rules.** The department shall adopt such rules as may be necessary to carry into effect the provisions of this chapter, including rules relating to returns for taxes due under this chapter. The rules shall have the same force and effect as if specifically set forth in this chapter, unless declared invalid by a judgment of a court of record not appealed from. [1988 c 64 § 19.]

**83.100.210 Application of chapter 82.32 RCW—Closing agreements authorized.** (1) The following provisions of chapter 82.32 RCW have full force and application with respect to the taxes imposed under this chapter unless the context clearly requires otherwise: RCW 82.32.110, 82.32.120, 82.32.130, 82.32.320, and 82.32.340. The definitions in this chapter have full force and application with respect to the application of chapter 82.32 RCW to this chapter unless the context clearly requires otherwise.

(2) The department may enter into closing agreements as provided in RCW 82.32.350 and 82.32.360. [2005 c 516 § 15; 1996 c 149 § 18.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**Findings—Intent—Effective date—1996 c 149:** See notes following RCW 82.32.050.

**83.100.220 Deposit of funds into education legacy trust account.** All receipts from taxes, penalties, interest, and fees collected under this chapter must be deposited into the education legacy trust account. [2005 c 516 § 16.]

**Finding—Intent—Application—Severability—Effective date—2005 c 516:** See notes following RCW 83.100.040.

**83.100.230 Education legacy trust account.** The education legacy trust account is created in the state treasury. Money in the account may be spent only after appropriation. Expenditures from the account may be used only for deposit into the student achievement fund and for expanding access to higher education through funding for new enrollments and financial aid, and other educational improvement efforts. During the 2007-2009 fiscal biennium, moneys in the account may also be transferred into the state general fund. [2008 c 329 § 924; 2005 c 514 § 1101.]

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Effective date—2005 c 514:** "Except for sections 110(5), 114 through 116, 401 through 403, 501, 701, 1001 through 1004, 1106, 1201, 1311, and 1312 of this act, this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2005." [2005 c 514 § 1302.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**83.100.900 Repeals and saving.** (1) The following chapters and their session law bases are each repealed: Chapters 83.01, 83.04, 83.05, 83.08, 83.12, 83.14, 83.16, 83.20, 83.24, 83.28, 83.32, 83.36, 83.40, 83.44, 83.48, 83.52, 83.58, 83.60, and 83.98 RCW.

(2) These repeals shall not be construed as affecting any existing right acquired under the statutes repealed or under any rule, regulation, or order adopted pursuant thereto; nor as affecting any proceeding instituted thereunder. [1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.901 Section captions not part of law.** As used in this act, section captions constitute no part of the law. [1981 2nd ex.s. c 7 § 83.100.170 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.902 New chapter.** Sections 83.100.010 through 83.100.150 of this act shall constitute a new chapter in Title 83 RCW to be designated chapter 83.100 RCW. [1981 2nd ex.s. c 7 § 83.100.180 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.903 Effective date—1981 2nd ex.s. c 7.** This act shall take effect January 1, 1982. [1981 2nd ex.s. c 7 § 83.100.190 (Initiative Measure No. 402, approved November 3, 1981).]

**83.100.904 Captions—1988 c 64.** As used in this act, captions constitute no part of the law. [1988 c 64 § 30.]

**83.100.905 Severability—1988 c 64.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 64 § 31.]

**Chapter 83.110A RCW**  
**WASHINGTON UNIFORM ESTATE TAX**  
**APPORTIONMENT ACT**

Sections

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83.110A.903	Severability—2005 c 332.
83.110A.904	Application—2005 c 332.

**83.110A.010 Definitions.** The following definitions apply throughout this chapter unless the context clearly requires otherwise.

(1) "Apportionable estate" means the value of the gross estate as finally determined for purposes of the estate tax to be apportioned reduced by:

(a) Any claim or expense allowable as a deduction for purposes of the tax;

(b) The value of any interest in property that, for purposes of the tax, qualifies for a marital or charitable deduction or otherwise is deductible or is exempt; and

(c) Any amount added to the decedent's gross estate because of a gift tax on transfers made before death.

(2) "Estate tax" means a federal, state, or foreign tax imposed because of the death of an individual and interest and penalties associated with the tax. The term does not include an inheritance tax, income tax, or generation-skipping transfer tax other than a generation-skipping transfer tax incurred on a direct skip taking effect at death.

(3) "Gross estate" means, with respect to an estate tax, all interests in property subject to the tax.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(5) "Ratable" means apportioned or allocated pro rata according to the relative values of interests to which the term is to be applied. "Ratably" has a corresponding meaning.

(6) "Time-limited interest" means an interest in property which terminates on a lapse of time or on the occurrence or nonoccurrence of an event or which is subject to the exercise of discretion that could transfer a beneficial interest to another person. The term does not include a cotenancy unless the cotenancy itself is a time-limited interest.

(7) "Value" means, with respect to an interest in property, fair market value as finally determined for purposes of the estate tax that is to be apportioned, reduced by any outstanding debt secured by the interest without reduction for taxes paid or required to be paid or for any special valuation adjustment.

(8) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered as of January 1, 2005. [2005 c 332 § 2.]

**83.110A.020 Apportionment by will or other dispositive instrument.** (1) Except as otherwise provided in subsection (3) of this section, the following rules apply:

(a) To the extent that a provision of a decedent's will provides for the apportionment of an estate tax, the tax must be apportioned accordingly.

(b) Any portion of an estate tax not apportioned pursuant to (a) of this subsection must be apportioned in accordance with any provision of a revocable trust of which the decedent was the settlor which provides for the apportionment of an estate tax. If conflicting apportionment provisions appear in two or more revocable trust instruments, the provision in the most recently dated instrument prevails. For purposes of this subsection (1)(b):

(i) A trust is revocable if it was revocable immediately after the trust instrument was executed, even if the trust subsequently becomes irrevocable; and

(ii) The date of an amendment to a revocable trust instrument is the date of the amended instrument only if the amendment contains an apportionment provision.

(c) If any portion of an estate tax is not apportioned pursuant to (a) or (b) of this subsection, and a provision in any other dispositive instrument provides that any interest in the property disposed of by the instrument is or is not to be applied to the payment of the estate tax attributable to the interest disposed of by the instrument, the provision controls the apportionment of the tax to that interest.

(2) Subject to subsection (3) of this section, and unless the decedent provides to the contrary, the following rules apply:

(a) If an apportionment provision provides that a person receiving an interest in property under an instrument is to be exonerated from the responsibility to pay an estate tax that would otherwise be apportioned to the interest:

(i) The tax attributable to the exonerated interest must be apportioned among the other persons receiving interests passing under the instrument; or

(ii) If the values of the other interests are less than the tax attributable to the exonerated interest, the deficiency must be apportioned ratably among the other persons receiving interests in the apportionable estate that are not exonerated from apportionment of the tax.

(b) If an apportionment provision provides that an estate tax is to be apportioned to an interest in property a portion of which qualifies for a marital or charitable deduction, the estate tax must first be apportioned ratably among the holders of the portion that does not qualify for a marital or charitable deduction and then apportioned ratably among the holders of the deductible portion to the extent that the value of the non-deductible portion is insufficient.

(c) Except as otherwise provided in (d) of this subsection, if an apportionment provision provides that an estate tax be apportioned to property in which one or more time-limited interests exist, other than interests in specified property under RCW 83.110A.060, the tax must be apportioned to the principal of that property, regardless of the deductibility of some of the interests in that property.

(d) If an apportionment provision provides that an estate tax is to be apportioned to the holders of interests in property in which one or more time-limited interests exist and a charity has an interest that otherwise qualifies for an estate tax charitable deduction, the tax must first be apportioned, to the extent feasible, to interests in property that have not been distributed to the persons entitled to receive the interests. No tax shall be paid from a charitable remainder annuity trust or a charitable remainder unitrust described in section 664 of the Internal Revenue Code and created during the decedent's life.

(3) A provision that apportions an estate tax is ineffective to the extent that it increases the tax apportioned to a person having an interest in the gross estate over which the decedent had no power to transfer immediately before the decedent executed the instrument in which the apportionment direction was made. For purposes of this section, a testamentary power of appointment is a power to transfer the property that is subject to the power. [2005 c 332 § 3.]

**83.110A.030 Statutory apportionment of estate taxes.** To the extent that apportionment of an estate tax is not controlled by an instrument described in RCW 83.110A.020 and except as otherwise provided in RCW 83.110A.050 and 83.110A.060, the following rules apply:

(1) Subject to subsections (2), (3), and (4) of this section, the estate tax is apportioned ratably to each person that has an interest in the apportionable estate.

(2) A generation-skipping transfer tax incurred on a direct skip taking effect at death is charged to the person to which the interest in property is transferred.

(3) If property is included in the decedent's gross estate because of section 2044 of the Internal Revenue Code or any similar estate tax provision, the difference between the total estate tax for which the decedent's estate is liable and the amount of estate tax for which the decedent's estate would have been liable if the property had not been included in the decedent's gross estate is apportioned ratably among the holders of interests in the property. The balance of the tax, if any, is apportioned ratably to each other person having an interest in the apportionable estate.

(4) Except as otherwise provided in RCW 83.110A.020(2)(d) and except as to property to which RCW 83.110A.060 applies, an estate tax apportioned to persons holding interests in property subject to a time-limited interest must be apportioned, without further apportionment, to the principal of that property.

(5) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable. [2005 c 332 § 4.]

**83.110A.040 Credits and deferrals.** Except as otherwise provided in RCW 83.110A.050 and 83.110A.060, the following rules apply to credits and deferrals of estate taxes:

(1) A credit resulting from the payment of gift taxes or from estate taxes paid on property previously taxed inures ratably to the benefit of all persons to which the estate tax is apportioned.

(2) A credit for state or foreign estate taxes inures ratably to the benefit of all persons to which the estate tax is apportioned, except that the amount of a credit for a state or foreign tax paid by a beneficiary of the property on which the state or foreign tax was imposed, directly or by a charge against the property, inures to the benefit of the beneficiary.

(3) If payment of a portion of an estate tax is deferred because of the inclusion in the gross estate of a particular interest in property, the benefit of the deferral inures ratably to the persons to which the estate tax attributable to the interest is apportioned. The burden of any interest charges incurred on a deferral of taxes and the benefit of any tax deduction associated with the accrual or payment of the interest charge is allocated ratably among the persons receiving an interest in the property. [2005 c 332 § 5.]

**83.110A.050 Insulated property—Advancement of tax.** (1) As used in this section:

(a) "Advanced fraction" means a fraction that has as its numerator the amount of the advanced tax and as its denominator the value of the interests in insulated property to which that tax is attributable.

(b) "Advanced tax" means the aggregate amount of estate tax attributable to interests in insulated property which is required to be advanced by uninsulated holders under subsection (3) of this section.

(c) "Insulated property" means property subject to a time-limited interest which is included in the apportionable estate and is unavailable for payment of an estate tax because of impossibility or impracticability. Insulated property does not include property from which the beneficial holder has the unilateral right to cause distribution to himself or herself.

(d) "Uninsulated holder" means a person who has an interest in uninsulated property.

(e) "Uninsulated property" means property included in the apportionable estate other than insulated property.

(2) If an estate tax is to be advanced pursuant to subsection (3) of this section by persons holding interests in uninsulated property subject to a time-limited interest other than property to which RCW 83.110A.060 applies, the tax must be

advanced, without further apportionment, from the principal of the uninsulated property.

(3) Subject to RCW 83.110A.080 (2) and (4), an estate tax attributable to interests in insulated property must be advanced ratably by uninsulated holders.

(4) A court having jurisdiction to determine the apportionment of an estate tax may require a beneficiary of an interest in insulated property to pay all or part of the estate tax otherwise apportioned to the interest if the court finds that it would be substantially more equitable for that beneficiary to bear the tax liability personally than for that part of the tax to be advanced by uninsulated holders.

(5) Upon payment by an uninsulated holder of estate tax required to be advanced, a court may require the beneficiary of an interest in insulated property to provide a bond or other security, including a recordable lien on the property of the beneficiary, for repayment of the advanced tax.

(6) When a distribution of insulated property is made, each uninsulated holder may recover from the distributee a ratable portion of the advanced fraction of the property distributed. To the extent that undistributed insulated property ceases to be insulated, each uninsulated holder may recover from the property a ratable portion of the advanced fraction of the total undistributed property. [2005 c 332 § 6.]

**83.110A.060 Apportionment and recapture of special elective benefits.** (1) As used in this section:

(a) "Special elective benefit" means a reduction in an estate tax obtained by an election for:

(i) A reduced valuation of specified property that is included in the gross estate;

(ii) A deduction from the gross estate, other than a marital or charitable deduction, allowed for specified property; or

(iii) An exclusion from the gross estate of specified property.

(b) "Specified property" means property for which an election has been made for a special elective benefit.

(2) If an election is made for one or more special elective benefits, an initial apportionment of a hypothetical estate tax must be computed as if no election for any of those benefits had been made. The aggregate reduction in estate tax resulting from all elections made must be allocated among holders of interests in the specified property in the proportion that the amount of deduction, reduced valuation, or exclusion attributable to each holder's interest bears to the aggregate amount of deductions, reduced valuations, and exclusions obtained by the decedent's estate from the elections. If the estate tax initially apportioned to the holder of an interest in specified property is reduced to zero, any excess amount of reduction reduces ratably the estate tax apportioned to other persons that receive interests in the apportionable estate.

(3) An additional estate tax imposed to recapture all or part of a special elective benefit must be charged to the persons that are liable for the additional tax under the law providing for the recapture. [2005 c 332 § 7.]

**83.110A.070 Securing payment of estate tax from property in possession of fiduciary.** (1) A fiduciary may defer a distribution of property until the fiduciary is satisfied

that adequate provision for payment of the estate tax has been made.

(2) A fiduciary may withhold from a distributee the estate tax apportioned to and the estate tax required to be advanced by the distributee.

(3) As a condition to a distribution, a fiduciary may require the distributee to provide a bond or other security for the estate tax apportioned to and the estate tax required to be advanced by the distributee. [2005 c 332 § 8.]

**83.110A.080 Collection of estate tax by fiduciary.** (1)

A fiduciary responsible for payment of an estate tax may collect from any person the estate tax apportioned to and the estate tax required to be advanced by the person.

(2) Except as otherwise provided in RCW 83.110A.050, any estate tax due from a person that cannot be collected from the person may be collected by the fiduciary from other persons in the following order of priority:

(a) Any person having an interest in the apportionable estate which is not exonerated from the tax;

(b) Any other person having an interest in the apportionable estate;

(c) Any person having an interest in the gross estate.

(3) A domiciliary fiduciary may recover from an ancillary personal representative the estate tax apportioned to the property controlled by the ancillary personal representative.

(4) The total tax collected from a person pursuant to this chapter may not exceed the value of the person's interest. [2005 c 332 § 9.]

**83.110A.090 Right of reimbursement.** (1) A person required under RCW 83.110A.080 to pay an estate tax greater than the amount due from the person under RCW 83.110A.020 or 83.110A.030 has a right to reimbursement from another person to the extent that the other person has not paid the tax required by RCW 83.110A.020 or 83.110A.030 and a right to reimbursement ratably from other persons to the extent that each has not contributed a portion of the amount collected under RCW 83.110A.080(2).

(2) A fiduciary may enforce the right of reimbursement under subsection (1) of this section on behalf of the person that is entitled to the reimbursement and shall take reasonable steps to do so if requested by the person. [2005 c 332 § 10.]

**83.110A.100 Action to determine or enforce chapter—Application of chapter 11.96A RCW.** Chapter 11.96A RCW applies to issues, questions, or disputes that arise under or that relate to this chapter. Any and all such issues, questions, or disputes may be resolved judicially or nonjudicially under chapter 11.96A RCW. [2005 c 332 § 11.]

**83.110A.110 Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2005 c 332 § 12.]

**83.110A.900 Short title.** This chapter may be cited as the Washington Uniform Estate Tax Apportionment Act of 2005. [2005 c 332 § 1.]

**83.110A.901 Captions not law.** Captions used in this chapter are not part of the law. [2005 c 332 § 16.]

**83.110A.902 Effective date—2005 c 332.** This act takes effect January 1, 2006. [2005 c 332 § 17.]

**83.110A.903 Severability—2005 c 332.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2005 c 332 § 13.]

**83.110A.904 Application—2005 c 332.** (1) This act takes effect for estate tax due on account of decedents who die on or after January 1, 2006.

(2) Sections 2 through 7 of this act do not apply to a decedent who dies after December 31, 2005, if the decedent continuously lacked testamentary capacity from January 1, 2006, until the date of death. For such a decedent, estate tax must be apportioned pursuant to the law in effect immediately before January 1, 2006. [2005 c 332 § 14.]